



CITY COUNCIL REPORT

10.A.

DATE: APRIL 2, 2024
TO: MAYOR AND COUNCIL MEMBERS
FROM: Eric Casher, City Attorney, N/A, ecasher@meyersnave.com
Lilly Whalen, Community Development Director, 510-724-9832,
lwhalen@pinole.gov
SUBJECT: URGENCY ORDINANCE ENACTING A TEMPORARY MORATORIUM ON
THE ESTABLISHMENT OF NEW SERVICE STATIONS OR EXPANSION OF
EXISTING SERVICE STATIONS

RECOMMENDATION

Staff recommends that the City Council adopt an urgency ordinance enacting a temporary moratorium on the establishment of new service stations or expansion of existing service stations

BACKGROUND

Human-induced climate change is already affecting many weather and climate extremes in every region across the globe. The significant risks to the public health, safety, and welfare caused by climate change are too numerous to mention, but include air pollution, extreme weather events, increased food insecurity, and rising sea levels.

One main contributor to climate change is the transportation industry. Highway vehicles release about 1.5 billion tons of greenhouse gases (GHGs) into the atmosphere each year—mostly in the form of carbon dioxide (CO₂)—contributing to global climate change. Each gallon of gasoline burned creates 20 pounds of GHG. Fossil-fuel based transportation remains the largest contributor of GHG emissions and criteria pollutant emissions in California. Reducing GHG emissions to improve environmental and human health will require a massive transition away from internal combustion engines to zero-emission vehicles.

Government agencies at the federal, state, and local levels have all set priorities to shift consumers toward electric vehicles over traditional gasoline-powered vehicles. For example, the Biden Administration, in 2021, published a 2023 goal of 50% of all new passenger cars and light trucks sold to be zero-emission vehicles. At the state level, Governor Newsom issued Executive Order N-79-20, establishing a goal of all new vehicles sold to be zero-emission by 2035. In 2022, the California Air Resources Board approved the Advanced Clean Cars II rule in order to implement the 2035 goal.

Cities in the Bay Area have begun to create policies encouraging electric vehicle use as well. Some cities, including but not limited to, Santa Rosa, Windsor, American Canyon, and Petaluma, have banned new service stations (gas stations) within their city limits through amending their zoning codes.

The Pinole Zoning Code, Title 17 of the Municipal Code, defines “service stations” as “a retail business selling gasoline or other motor vehicle fuels.” Service stations are not a permitted use in any Zoning District in Pinole. However, service stations are conditionally permitted (with the issuance of a conditional use permit) in the following Zoning Districts:

1. OIMU in the Service Sub-Area in the San Pablo Avenue Corridor.
2. OPMU in the Service Sub-Area in the Appian Way Corridor.
3. CMU in the Mixed Use Sub-Area in the Appian Way Corridor.
4. RC Zoning District.

Chapter 17.34 of the City's Zoning Code contains various regulations related to service stations (commonly referred to as gas stations), such as location requirements as well as development and design standards. There are currently eight (8) existing service stations in Pinole, including one undergoing reconstruction.

At the July 18, 2023 City Council meeting, the City Council directed staff to present information regarding enacting such a ban in the City of Pinole. Information regarding the option for prohibiting new gas stations was considered at the February 6, 2024 City Council meeting. The City Council directed staff to prepare an urgency ordinance enacting a moratorium on new service stations and include development of a permanent ordinance as an action in the Climate Action and Adaptation Plan (CAAP).

REVIEW AND ANALYSIS

California Government Code Section 65858 authorizes the City Council to adopt, as an urgency measure to preserve the public peace, health, and safety, a zoning moratorium prohibiting any uses that may be in conflict with a contemplated zoning proposal that the City Council is considering or studying.

The proposed urgency ordinance, if adopted, would enact a moratorium on the establishment of new service stations anywhere in the City of Pinole. The proposed ordinance would make service stations already existing in the City a legal nonconforming use, which allows existing service stations to continue operating. The ordinance would prohibit the expansion of existing service stations, as well as accessory buildings on the same site, such as convenience stores. The ordinance would generally allow repairs and maintenance of existing service stations as long as they did not result in an expansion of the existing use. Additionally, the owner of an existing service station would lose the status as a legal nonconforming use if the station ceased to sell or dispense fossil fuel for a period of 180 days or more.

Importantly, the proposed ordinance will not impact the ability of an existing service station to expand, modify or retrofit their facilities if such renovation supports a transition towards serving zero-emission vehicles. Existing Pinole Municipal Code Section 17.34.060 allows for the incorporation of biodiesel or other alternative fuels or charging stations for electric vehicles via simple administrative plan check procedures, which the proposed ordinance acknowledges.

The purpose of the moratorium is to give the City time to study and enact permanent changes to the Zoning Code prohibiting service stations as part of the City's efforts to facilitate the transition to zero-emissions vehicles and combat the effects of climate change. The permanent

ordinance could incorporate more nuance and comprehensive regulations. For example, the proposed moratorium temporarily prohibits any expansion of existing service stations, including accessory buildings on the same site, such as a car wash or convenience store. The permanent regulations can address under what circumstances such expansions unrelated to the main fueling use is allowed. The permanent regulations might allow such expansions in exchange for other changes that facilitate the transition to zero emission vehicles, such as the addition of EV-charging stations. The moratorium gives the City time to study and evaluate these important details.

There are many public health and environmental impacts associated with service stations, such as toxic air pollution, surface water runoff, and leaks from underground fuel storage tanks. Two main goals of the Pinole General Plan are to promote sustainability, and to improve air quality through efforts to reduce vehicle emissions. Banning the development of new service stations in the City would align with these goals. Accordingly, the moratorium is consistent with the City's General Plan.

Other public agencies must generally comply with the City's Zoning Ordinances, except in limited circumstances. However, the County is generally exempt from the City's Zoning Ordinance. This also applies to joint powers authorities of which the County is a member, such as the Western Contra Costa Transit Authority ("WestCAT"). Accordingly, this moratorium would not prohibit the County or WestCAT from establishing new service stations in Pinole.

If adopted by a four-fifths (4/5) vote of the City Council, the proposed urgency ordinance will go into effect immediately and be in effect for 45 days. The Council could then renew the ordinance for a total combined period of time of up to two years. The proposed ordinance includes findings supporting the determination that the moratorium is necessary to protect public peace, health, and safety.

Development of the permanent ordinance will be included as action in the Climate Action and Adaptation Plan (CAAP), with a development and adoption timeline to not exceed the total combined period of time for renewal of the urgency ordinance. The public review draft of the CAAP will be presented to the City Council on April 16, 2024, with adoption of the CAAP at a subsequent Council meeting in May or June, or as directed by the Council.

FISCAL IMPACT

There is no direct fiscal impact of adopting the moratorium. The moratorium will not prevent existing service stations from continuing to operate, nor the ability of the City to collect sales tax. As part of studying and developing a permanent ordinance prohibiting service stations, staff will analyze long term fiscal impacts of that change.

ATTACHMENTS

- A. Urgency Ordinance Service Station Ban
- B. Service Station Moratorium PPT

ATTACHMENT A

AN URGENCY ORDINANCE OF THE CITY OF PINOLE MAKING FINDINGS AND ESTABLISHING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT OF NEW SERVICE STATIONS AND THE EXPANSION OF EXISTING SERVICE STATIONS

WHEREAS, national, state, and local governmental authorities are responding to the increasing negative effects of burning fossil fuels and the increasing impacts of climate change generally; and

WHEREAS, the significant risks to the public health, safety, and welfare caused by climate change are too numerous to mention, but include air pollution, extreme weather events, increased food insecurity, and rising sea levels; and

WHEREAS, even with efforts to transition to zero-emission vehicles at the state-level, many local residents will continue to be affected by poor air quality associated with fossil fuel-burning vehicles; and

WHEREAS, burning fossil fuels, such as in gasoline-powered vehicles, negatively impacts local residents by causing a variety of health concerns, such as asthma and other respiratory illnesses; and

WHEREAS, burning fossil fuels also negatively affects children's ability to play outside during school due to restricted activity days due to poor air quality; and

WHEREAS, the City of Pinole has an overriding interest in planning and regulating the use of property within the City and maintaining the quality of life; and

WHEREAS, the Zoning Code currently contains various permits and allowable uses relating to service stations, which are defined as "retail businesses selling gasoline or other motor vehicle fuels"; and

WHEREAS, because fossil-fuel based transportation remains the largest contributor of greenhouse gas emissions and criteria pollutant emissions in California, reducing greenhouse gas emissions to improve environmental and human health will require a massive transition away from internal combustion engines to zero emission vehicles ("ZEVs"); and

WHEREAS, to aid in reducing severe negative public health impacts that residents are experiencing, and will continue to experience, due to the use of fossil fuels, the City desires to ban the development of new service stations, prohibit the expansion of existing service stations, and encourage the use of ZEVs; and

WHEREAS, on September 23, 2020, the Governor of California signed Executive Order N-79- 20, initiating a phase-out of gas-powered vehicles and setting a target for all new passenger cars and trucks sold in California to be ZEVs by the year 2035; and

WHEREAS, on August 5, 2021, President Biden signed Executive Order 14037, Strengthening American Leadership in Clean Cars and Trucks, setting a goal that 50% of all new passenger cars and light trucks sold in the United States be ZEVs by the year 2030; and

ATTACHMENT A

WHEREAS, the establishment of new service stations or the expansion of existing service stations will adversely affect the ability to meet the City, State, and Federal Government's climate and emission reduction goals; and

WHEREAS, the failure of the City, State and Federal Governments to meet their respect climate and emission reductions goals will have a significant negative impact on the fight against climate change, and wills result in a threats to public health, safety, and welfare, such as an increase in extreme weather events and rising sea levels; and

WHEREAS, the City Council desires to enact permanent regulations regarding service stations within the City which account for the transition to ZEVs and the ongoing fight against climate change; and

WHEREAS, the permanent regulation will establish rules regarding how and when existing service stations can modify; and

WHEREAS, it is urgent and essential to the public health, safety, and welfare to immediately prohibit for a limited time the issuance of building, zoning, occupancy, and all other permits and licenses for the establishment and expansion of services stations to provide time to study the issue so that appropriate permanent land use controls can be developed; and

WHEREAS, the City Council expressly finds and declares that this Ordinance is necessary for protecting the public safety, health, and welfare, and urgent action is needed for the City to study and consider: (1) the potential negative effects of service stations on public health, welfare and safety, as detailed herein; (2) the zoning and economic development impacts of services stations; and (3) appropriate controls for service station for the protection of public health, safety, and welfare, and to facilitate the transition to ZEVs; and

WHEREAS, California Constitution, Article XI, Section 7, provides cities and counties with the authority to enact ordinances to protect the public health, safety, and general welfare of their citizens; and

WHEREAS, California Government Code Section 65858 authorizes the City Council to adopt as an urgency measure to preserve the public peace, health, and safety a zoning moratorium, prohibiting any uses that may be in conflict with a contemplated zoning proposal that the legislative body is considering or studying; and

WHEREAS, the City Council finds and determines that the approval of additional entitlements related to service stations in the City would result in a threat to public health and welfare, and that temporarily banning the development of new service stations and the expansion of existing service stations within the City is essential so that the City has time to consider permanent regulations that enable the City to combat the effects of climate change and improve air quality in the City and thereby serve the public peace, health, and safety; and

WHEREAS, the City Council finds that as existing Pinole Municipal Code Section 17.34.060 incentivizes the expansion, modification, or retrofit of an existing service station to incorporate biodiesel or other alternative fuels or charging stations for electric vehicles through simple administrative plan check procedures, and it is the intent of the urgency ordinance to encourage such an expansion, modification or retrofit to transition away from fossil fuels; and

ATTACHMENT A

WHEREAS, an urgency ordinance that is effective immediately is necessary to avoid the immediate threat to public peace, health, and safety, as failure to adopt this urgency ordinance could result in new services stations in Pinole, or expansion of existing service stations, which will cause an escalation of effects of climate change and worsening of health effects associated with fossil fuel use; and

WHEREAS, this Ordinance is exempt from further environmental review under the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines Section 15061(b)(3), the common sense exemption that CEQA applies only to projects that have the potential for causing a significant effect on the environment; the proposed Ordinance does not authorize or approve any use or project, but rather prohibits the temporary establishment of new service stations, and expansion of existing service stations, and preserves the status quo, and therefore has no potential for resulting in physical change in the environment, directly or indirectly.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PINOLE, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Findings

The City Council of the City of Pinole finds that all of the above Recitals are true and correct and incorporated herein by this reference.

SECTION 2. Urgency Findings

The City Council of the City of Pinole hereby finds that there is a threat to the public health, safety and/or welfare and a need for immediate preservation of the public peace, health, or safety that warrants this urgency ordinance, which finding is based upon the facts stated in the recitals above, and in the staff report dated April 2, 2024, as well as oral and written testimony at the April 2, City Council meeting. This Ordinance is declared by the City Council to be an urgency measure necessary for the protection of the public peace, health, or safety. The facts constituting such urgency are all of those certain facts set forth and referenced in this Ordinance and the entirety of the record before the City Council.

SECTION 3. Ordinance

The City Council hereby makes the findings contained herein and hereby adopts the uncodified Ordinance to read as follows:

ORDINANCE PROHIBITING THE DEVELOPMENT OF NEW SERVICE STATIONS AND EXPANSION OF EXISTING SERVICE STATIONS WITHIN THE CITY OF PINOLE AND DEEMING ALL EXISTING SERVICE STATIONS AS A LEGAL NONCONFORMING USE

Section 1. Purpose

The purpose of this Ordinance is to:

- A. Support the transition to zero emission vehicles as a tool to reduce greenhouse gas emissions and combat climate change.

ATTACHMENT A

- B. Allow time for the City to study and develop permanent regulations regarding service stations that enable the City to combat the effects of climate change and improve air quality in the City, and, thereby serve the public peace and health.
- C. Provide for the continued operation of service station uses as legal nonconforming uses.
- D. Allow alterations to service stations when such changes provide greater protection for the environment, safeguard public health, and safety, and promote the use of zero emission vehicles.

Section 2. Moratorium Imposed.

A. From and after the effective date of this Ordinance, no permit or any other applicable license or entitlement for use shall be approved or issued for the establishment or operation of a service station, as defined in Pinole Municipal Code Title 17, in the City of Pinole.

B. This moratorium shall not apply to the issuance or renewal of a business license for an existing business, or a new business license for an existing service station, provided that the applicant seeks to maintain the business without expansion and in its current location and the establishment complies with all City, State, Federal or otherwise applicable codes, rules, regulations, or laws.

Section 3. Modifications to Service Stations, Generally.

Except as provided herein, service station uses and structures related thereto, including structures for accessory uses, shall not be enlarged, extended, or moved to a different portion of the lot or parcel of land occupied by such.

This Section shall not prohibit repair, maintenance, or modification of existing service stations, as long as such repair, maintenance, or modification does not result in an expansion of the use and is completed in compliance with the applicable requirement of Pinole Municipal Code Chapter 17.14.

This Section shall not prohibit the expansion, modification, or retrofit of existing service stations to incorporate biodiesel or other alternative fuels or charging stations for electric vehicles as long as such expansion, modification or retrofit promotes the use of zero emissions vehicles and is in compliance with the applicable requirements of Pinole Municipal Code Section 17.34.060.

Section . Modifications to Improve Soil, Groundwater, and Storm Water Quality

Service station uses may be modified to conform to current stormwater quality control regulations or to remediate contamination of the soil or groundwater.

Section 5. Loss of Legal Nonconforming Use Status.

Service stations in existence as of the date this Ordinance is adopted may continue operating. Without any further action by the City, a nonconforming service station shall be conclusively presumed to have abandoned the service station's legal nonconforming status, and such status shall terminate, if and when:

1. The nonconforming service station ceases selling, storing, or dispensing fossil fuels for a continuous period of 6-months or more; or
2. The nonconforming service station is converted to or replaced by a permitted, non-fossil fuel station use.

ATTACHMENT A

Section 6. Termination

The Ordinance shall take effect immediately and shall remain in effect for 45 days, unless extended by the City Council pursuant to Government Code section 65858.

SECTION 4. Severability

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Ordinance are severable. The City Council of the City of Pinole hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION 5. Effective Date

Following adoption by at least a four-fifths vote of the City Council, this Ordinance shall be effective immediately upon adoption pursuant to Government Code section 65858. The City Clerk shall certify as to the adoption of this Urgency Ordinance and shall cause it to be published within fifteen (15) days of the adoption and shall post a certified copy of this Urgency Ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with California Government Code Section 36933.

PASSED AND ADOPTED at a regular meeting of the Pinole City Council held on the 2nd day of April, 2024 by the following vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

ABSTAIN: COUNCILMEMBERS:

Maureen Toms, Mayor

ATTEST:

Heather Bell, City Clerk

APPROVED AS TO FORM:

ATTACHMENT A

Eric S. Casher, City Attorney

Urgency Ordinance Enacting a Temporary Moratorium on the Establishment of New Service Stations or Expansion of Existing Service Stations in the City of Pinole

Tuesday, April 2, 2024

City Council



Background

- July 18, 2023: Future agenda item request to present information regarding enacting a ban on service stations in the City of Pinole (Councilmember Sasai)
- February 6, 2024:
 - Council received information
 - Council directed staff to prepare an urgency ordinance enacting a moratorium on new service stations and include development of a permanent ordinance as an action in the Climate Action and Adaptation Plan (CAAP)



Climate Change and Government Regulation



Climate change poses significant risks to public health, safety, and welfare (i.e., air pollution, extreme weather events, increased food insecurity, and rising sea levels)

One main contributor to climate change is the transportation industry

Government agencies at the federal, state, and local levels have all set priorities to shift consumers toward electric vehicles over traditional gasoline-powered vehicles

Gas/Service Station Regulation in Other Communities

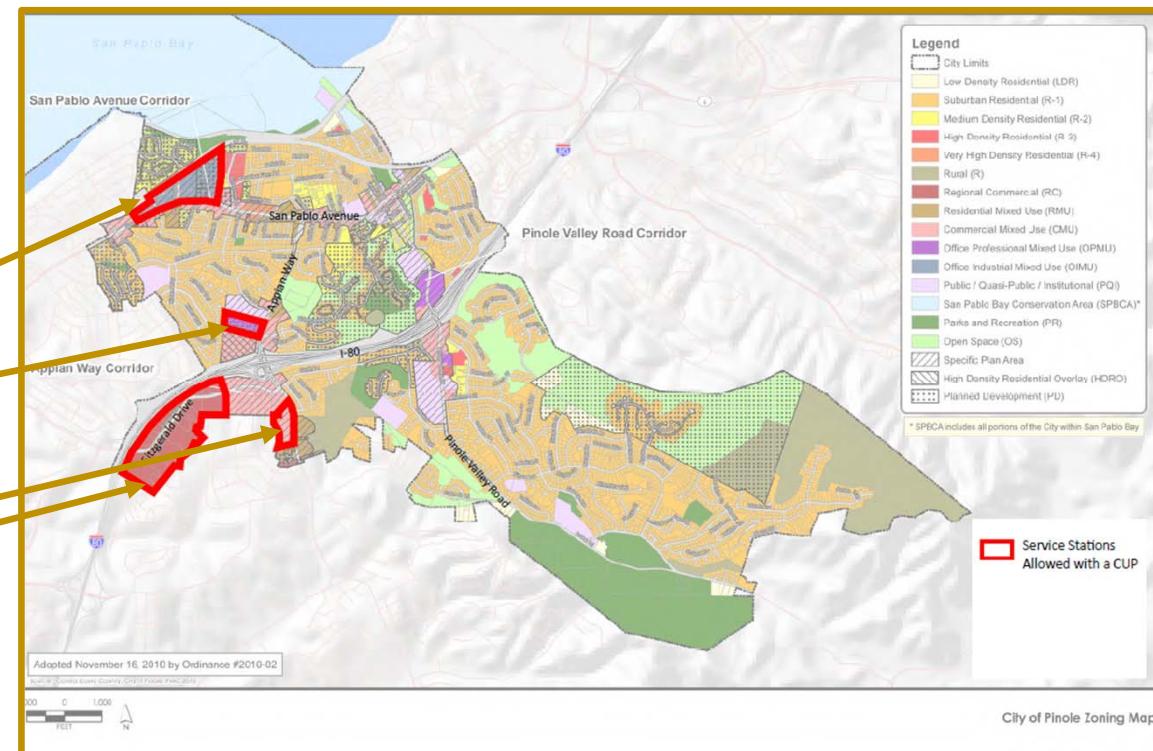
City	County	Date of Ban	# Existing and Proposed Gas Stations Regulated by Ordinance	Population
Petaluma	Sonoma	Mar 2021	17	59,403
Rohnert Park	Sonoma	Mar 2022	13	44,411
Sebastopol	Sonoma	Apr 2022	3	7,448
Cotati	Sonoma	Jun 2022	5	7,498
Windsor	Sonoma	Oct 2022	4	26,039
Santa Rosa	Sonoma	Aug 2022	44	176,938
Sonoma County	Sonoma	Mar 2023	46	485,887
Yountville	Napa	Sept 2023	1	3,360
American Canyon	Napa	Feb 2022	3	21,605
Calistoga	Napa	Dec 2021	3	5,187
Napa	Napa	Apr 2023	20	78,818
St. Helena	Napa	Ban is pending	3	5,386
Novato	Marin	October 2022	14	52,708
San Anselmo	Marin	November 2023	3	12,693
Fairfax	Marin	November 2023	2	7,521

Where are Service Stations in Pinole Allowed?

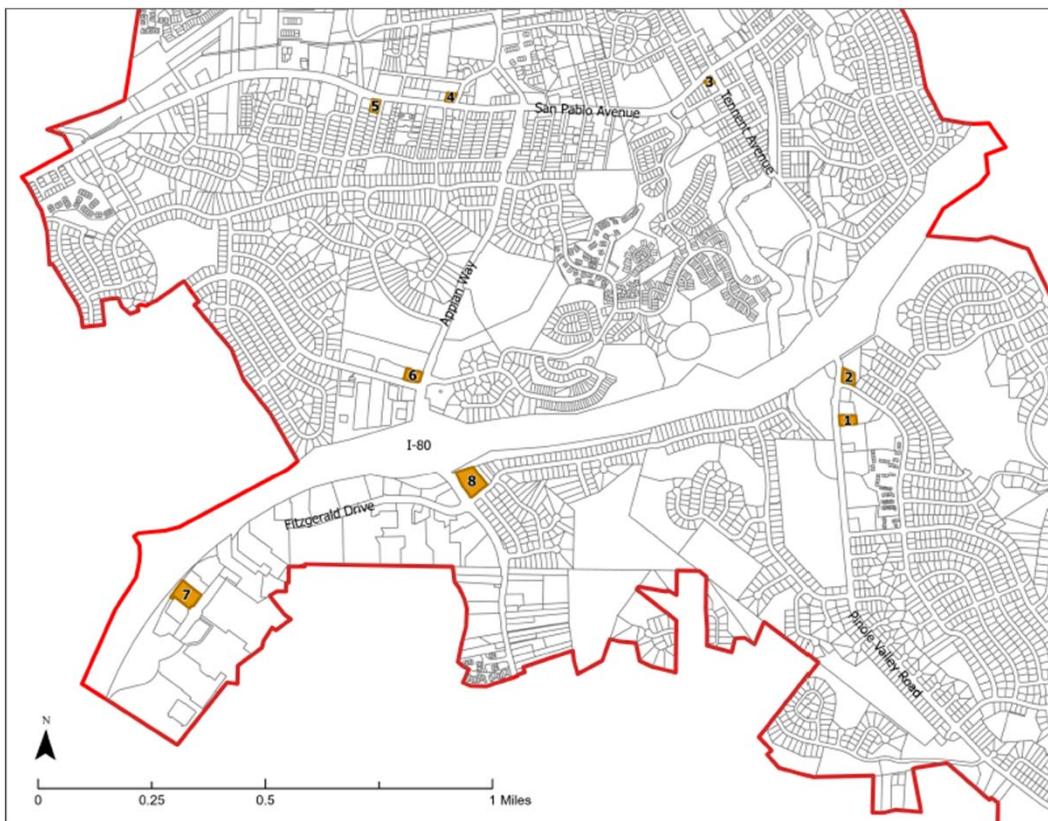
Service Stations: *retail businesses selling gasoline or other motor vehicle fuels.*

Allowed with a CUP only:

- OIMU in the Service Sub-Area in the San Pablo Avenue Corridor.
- OPMU in the Service Sub-Area in the Appian Way Corridor.
- CMU in the Mixed Use Sub-Area in the Appian Way Corridor.
- RC Zoning District.

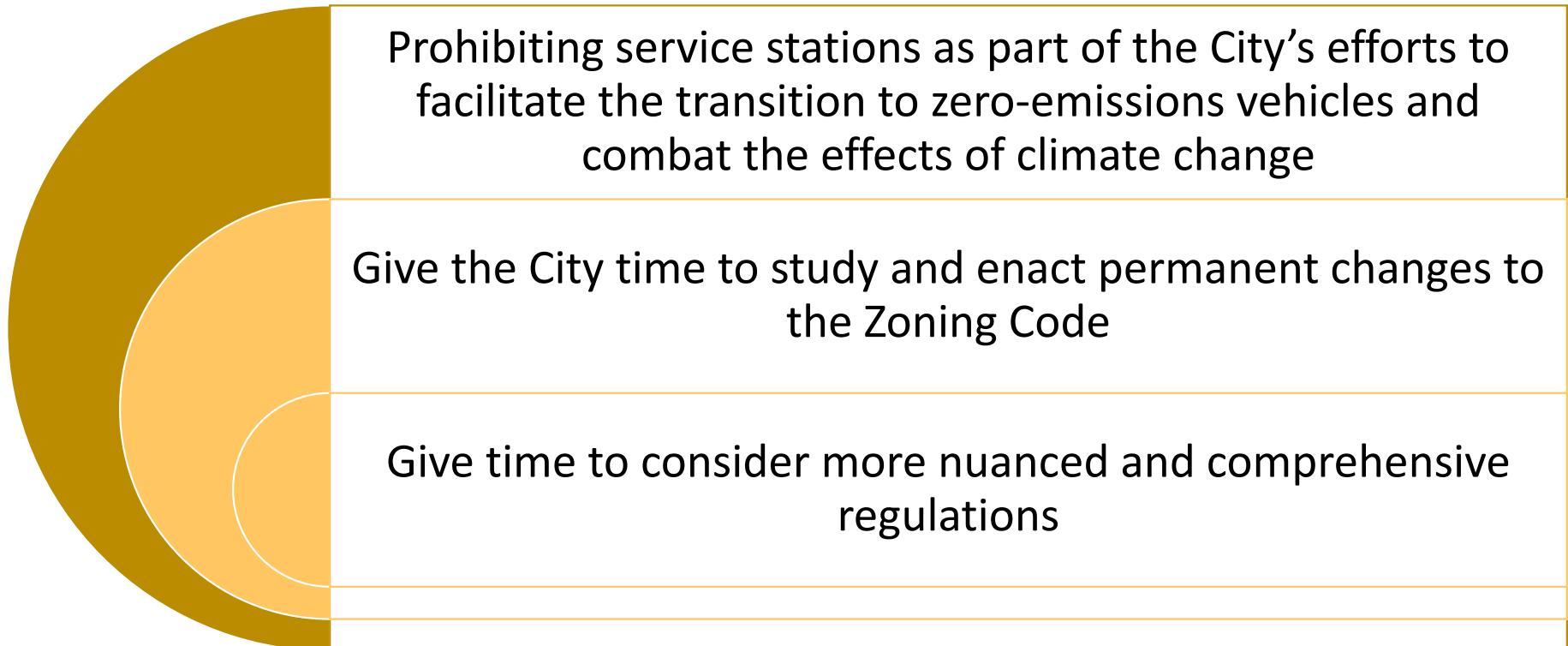


Existing Service Stations in Pinole



ID	Station	Address	Zoning District	Built (effective year)
1	ARCO	2737 & 2747 Pinole Valley Rd	CMU (Commercial Mixed Use)	1976
2	Chevron - Pinole Valley	2695 Pinole Valley Rd	CMU	1959 (1970)
3	Pump House	700 Tennent Ave	CMU	1961 (1965)
4	Grand	1390 San Pablo Ave	CMU	1984
5	Smart Stop	1007 San Pablo Ave	CMU	1984
6	Chevron - Appian Way	2298 Appian Way	CMU	1967 (1980)
7	Shell	1401 Fitzgerald Dr	RC (Regional Commercial)	1999 (2000)
8	1401 Fitzgerald	2401 Appian Way	CMU	1999 (2000)

Purpose of Moratorium



Proposed Urgency Ordinance

Gov't Code Section 65858 authorizes the City Council to adopt, as an urgency measure to preserve the public peace, health, and safety, a zoning moratorium prohibiting any uses that may be in conflict with a contemplated zoning proposal that the City Council is considering or studying.

The urgency ordinance will:

Enact a moratorium on the establishment of new service stations anywhere in the City

Make service stations already existing in the City a legal nonconforming use, which allows existing service stations to continue operating

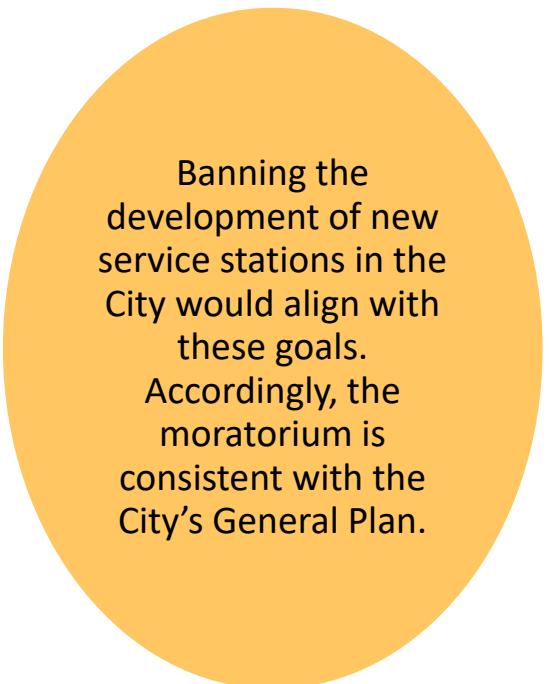
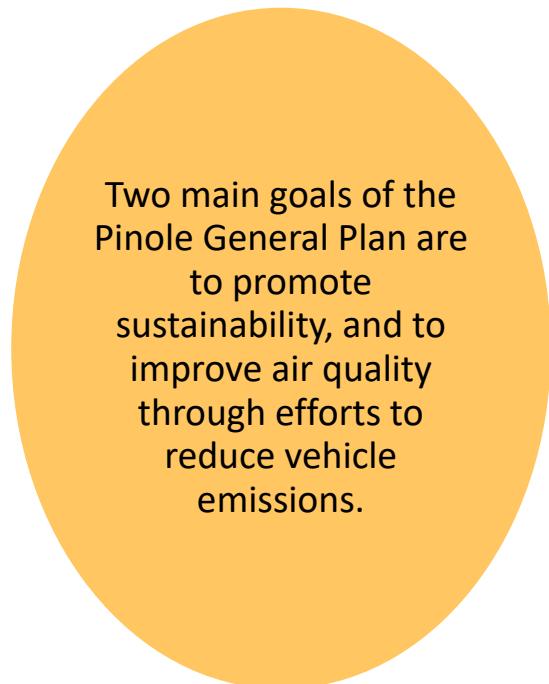
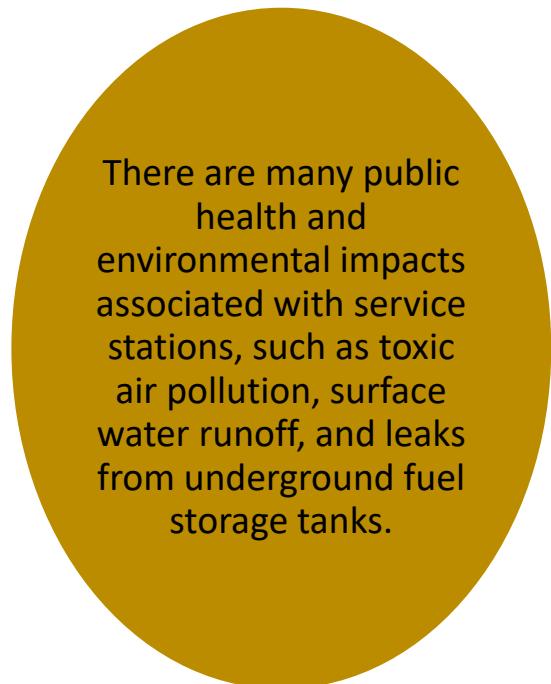
Prohibit the expansion of existing service stations, as well as accessory buildings on the same site, such as convenience stores

Generally allow repairs and maintenance of existing service stations as long as they did not result in an expansion of the existing use

Ensure that if a service station ceased to sell or dispense fossil fuel for a period of 180 days or more they would lose the status as a legal nonconforming use

Not impact the ability of an existing service station to expand, modify or retrofit their facilities if such renovation supports a transition towards serving zero-emission vehicles

Consistency with General Plan



Applicability of Urgency Ordinance on Other Public Agencies

Other public agencies must generally comply with the City's Zoning Ordinances, except in limited circumstances.

However, the County is generally exempt from the City's Zoning Ordinance.

This also applies to joint powers authorities of which the County is a member, such as the Western Contra Costa Transit Authority ("WestCAT").

Accordingly, this moratorium would not prohibit the County or WestCAT from establishing new service stations in Pinole.

Urgency Ordinance Process and Timeline

Urgency Ordinance can be adopted tonight if so desired by the City Council

Findings supporting the determination that the moratorium is necessary to protect the public peace, health and safety (included in proposed ordinance)

Approval by four-fifths (4/5) vote of the City Council is required

Urgency ordinance will go into effect immediately for 45 days

Council can renew the ordinance for a total combined period of time of up to two years

Permanent Ordinance Process and Timeline

Included as action in the CAAP, with a development and adoption timeline not to exceed two years

Staff will study and consider: (1) the potential negative effects of service stations on public health, welfare and safety; (2) the zoning and economic development impacts of services stations; and (3) appropriate controls for service station for the protection of public health, safety, and welfare, and to facilitate the transition to ZEVs

Planning Commission will provide a recommendation on the draft permanent ordinance

The City Council will ultimately consider adopting the permanent ordinance.

Fiscal Impact

There is no direct fiscal impact of adopting the moratorium. The moratorium will not prevent existing service stations from continuing to operate, nor the ability of the City to collect sales tax. As part of studying and developing a permanent ordinance prohibiting service stations, staff will analyze long term fiscal impacts of that change.



Staff Recommendations

- Staff recommends that the City Council adopt an urgency ordinance enacting a temporary moratorium on the establishment of new service stations or expansion of existing service stations

