



## **CITY COUNCIL REPORT**

**4.A.**

**DATE:** MAY 7, 2024

**TO:** MAYOR AND COUNCIL MEMBERS

**FROM:** Lilly Whalen, Community Development Director, 510-724-9832,  
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**SUBJECT:** URGENCY ORDINANCE EXTENDING A TEMPORARY MORATORIUM ON  
THE ESTABLISHMENT OF NEW SERVICE STATIONS OR EXPANSION OF  
EXISTING SERVICE STATIONS

### **RECOMMENDATION**

Adopt an urgency Ordinance extending 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 (CO<sub>2</sub>)—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 2035 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.

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.

On April 2, the City Council adopted an urgency ordinance to enact a moratorium on the establishment of new service stations anywhere in the City of Pinole. The ordinance made service stations already existing in the City a legal nonconforming use, which allows existing service stations to continue operating. The ordinance prohibits the expansion of existing service stations, as well as accessory buildings on the same site, such as convenience stores. The ordinance generally allows repairs and maintenance of existing service stations as long as they do not result in an expansion of the existing use. Additionally, the owner of an existing service station loses the status as a legal nonconforming use if the station ceases to sell or dispense fossil fuel for a period of 180 days or more.

Importantly, the ordinance did 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 zoning moratorium adopted on April 2 lasts for 45 days, but may be extended by the City Council for an additional 22 months and 15 days.

## **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 would extend the existing zoning moratorium on new or expanded service stations for 22 months and 15 days from the date of adoption. Other than the expiration date, all other provisions of the proposed urgency ordinance are the same as the ordinance originally adopted on April 2.

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 services 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.

As required by Government Code section 65858, a report was prepared describing the measures taken by the City to alleviate the conditions that led to the adoption of the ordinance. Given the short amount of time that has past since the initial adoption of the ordinance, staff has not yet made significant progress on preparing a permanent ordinance. However, 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 May 7, 2024.

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.

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 22 months and 15 days. The proposed ordinance includes findings supporting the determination that the moratorium is necessary to protect public peace, health, and safety.

### **FISCAL IMPACT**

There is no direct fiscal impact of extending 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 Extending Service Station Ban
- B. Report on Implementation of Moratorium

## **ORDINANCE NO. 2024-XX**

### **AN URGENCY ORDINANCE OF THE CITY OF PINOLE MAKING FINDINGS AND EXTENDING 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

**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 will 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

**WHEREAS**, on April 2, 2024, following a noticed public hearing, the City Council adopted an urgency ordinance enacting a zoning moratorium on new or expanded services stations within the City of Pinole; and

**WHEREAS**, the conditions that created the need for the zoning moratorium still exist, and therefore the City Council desires to adopt an urgency ordinance to extend the zoning moratorium on new or expanded services stations by 22 months and 15 days; and

**WHEREAS**, in accordance with the requirements of Government Code 65858, a report was issued describing the measures taken to alleviate the condition which led to the adoption of the ordinance, a copy of which was attached to the May 7 staff report; and

**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 May 7, 2024, as well as oral and written testimony at the May 7, 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. In accordance with the requirements of Government Code section 65858, a report was issued describing the measures taken to alleviate the condition which led to the adoption of the ordinance, a copy of which was attached to the May 7 staff report.

### **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.
- 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 4. 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.
- 3.

## **Section 6. Termination**

The Ordinance shall take effect immediately and shall remain in effect for 22 months and 15 days, unless sooner terminated by the City Council.

## **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 7th day of May, 2024 by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:

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Maureen Toms, Mayor

ATTEST:

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Heather Bell, City Clerk

APPROVED AS TO FORM:

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Eric S. Casher, City Attorney



## **REPORT PURSUANT TO GOVERNMENT CODE 65858(d).**

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 (CO<sub>2</sub>)—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.

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City staff have begun researching and analyzing possible elements of a permanent ordinance. Given the short amount of time that has passed since the moratorium was adopted, there has not yet been significant progress toward preparation of the permanent ordinance. However, 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.