

ORDINANCE NO. 61

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, VACATING AND REPEALING ORDINANCE NO. 54 APPROVING CHANGE OF ZONE 7440(CITY PROJECT NO. 08-0162) TO AMEND THE OFFICIAL ZONING MAP OF THE CITY OF WILDOMAR FROM RURAL RESIDENTIAL (R-R) TO GENERAL COMMERCIAL (C-1/C-P) FOR A 2.28 ACRE SITE LOCATED AT THE NORTHWEST CORNER OF PALOMAR STREET AND KILGORE LANE (ASSESSOR'S PARCEL NO. 380-140-004)

WHEREAS, on November 10, 2010 the City Council conducted a duly noticed public hearing and approved first reading of Ordinance No. 54; and

WHEREAS, at the City Council meeting of December 8, 2010, the City Council approved the second reading of Ordinance No. 54 approving Change of Zone #7440; and

WHEREAS, Petitioner Protect Our Wildomar, filed legal action against the City and Real Party in Interest Kenney Robles ("Robles"), challenging, among other things, the City's adoption of Ordinance No. 54 approving Zone Change #7440 and setting forth credible arguments and evidence in support of a challenge to Ordinance No. 54 under the California Environmental Quality Act (California Public Resource Code Sections 21000 *et seq.*) ("CEQA"); and

WHEREAS, Robles is currently in arrears with regard to applicable fees for the processing of Zone Change #7440 and has stated his unwillingness to comply with the indemnification provisions of the conditions of approval for Zone Change #7440; and

WHEREAS, on January 25, 2011, the City and Petitioner entered into a settlement agreement (the "Agreement") which was approved by the City Council that requires the City to vacate and repeal adoption of Ordinance No. 54 approving Change of Zone #7440 and to fully comply regard to any future development on this property with CEQA; and

WHEREAS, the City Council desires to vacate and repeal adoption of Ordinance No. 54 approving Zone Change #7440 in order to limit the costs and expenses to the City associated with these matters, including without limitation attorney fees; and

WHEREAS, the City gave public notice as required by California law of the holding of a public hearing for consideration of this Ordinance No. 54; and

WHEREAS, at the public hearing on February 24, 2011, the City Council heard and considered comments and testimony on the adoption of this Ordinance No. 54; and

WHEREAS, in order to comply with the provisions of the Agreement, to limit costs associated with continuing litigation with regard to Zone Change #7440, the City must adopt this ordinance vacating and repealing Ordinance No. 54.

NOW, THEREFORE, the City Council of the City of Wildomar does ordain as follows:

SECTION 1. FINDINGS

1. Legal action has been filed against the City of Wildomar by petitioner with regard to processing of Zone Change #7440 that is credible and likely to result in a negative ruling against the City that could result in an award of attorney's fees and court costs in a substantial amount.

2. Robles, real party in interest, has affirmatively stated that he cannot and will not be able to cover the cost to the City of continued litigation and an award of attorney's fees in the event that an adverse ruling is entered against City.

3. The actual and anticipatory breach of Robles obligation to indemnify, protect, defend, and hold harmless the City in this litigation and to reimburse the City for the costs and expenses it has incurred in the course of its defense in these matters puts the City at significant risk.

4. The claimed legal fees for opposing counsel total \$26,108.30 and have been paid in full by the City pursuant to the Agreement approved by the City Council.

5. Vacating and repealing the adoption of Ordinance 54 is necessary to limit the City's immediate costs and expenses associated with this matter and to limit additional potential risk for additional attorney's fees incurred by the petitioner in these matters.

SECTION 2. CITY COUNCIL ACTION

The City Council hereby ordains as follows:

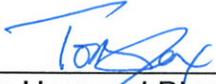
1. **Ordinance No. 54:** The City Council hereby repeals Ordinance 54 approving Zone Change #7440, which is attached hereto as Exhibit "A".

PASSED, APPROVED, AND ADOPTED this 9th day of March, 2011.



Marsha Swanson
Mayor

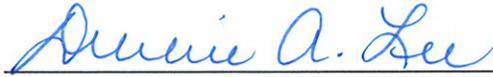
APPROVED AS TO FORM:



Julie Hayward Biggs
City Attorney

By: Thomas Jex
Assistant City Attorney

ATTEST:



Debbie A. Lee, CMC
City Clerk

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, Debbie A. Lee, CMC, City Clerk of the City of Wildomar, California, do hereby certify that the foregoing Ordinance No. 61 was introduced at an adjourned regular meeting of the City Council of the City of Wildomar, California, on February 24, 2011, and was duly adopted at a regular meeting held on March 9, 2011, by the City Council of the City of Wildomar, California, by the following vote:

AYES: Mayor Swanson, Mayor Pro Tem Benoit, Council Members Cashman, Moore, Walker

NOES: None

ABSTAIN: None

ABSENT: None



Debbie A. Lee, CMC
City Clerk
City of Wildomar