



Staff Report

RESOLUTION PLACING A PROPOSITION ON THE BALLOT FOR THE NOVEMBER 8, 2005 MUNICIPAL ELECTION REQUIRING VOTER APPROVAL OF CERTAIN FUTURE AMENDMENTS TO THE EXISTING HILLSIDE DEVELOPMENT STANDARDS; AND DIRECTING CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS OF SAID PROPOSITION

Honorable Mayor and Council Members:

Summary

On July 26, 2005, the City Council again considered this matter and asked staff to follow up on three items:

1. Further simplifying the title of the proposition;
2. Analyzing the implications of including the road standards in the Ordinance;
3. Determining whether the Ordinance language regarding land use changes should be modified to minimize the chance of new land use classifications being created to circumvent the proposition.

The July 26, 2005 Staff Report, which includes the prior July 12, 2005 Staff Report, is attached hereto as Exhibit A for reference.

Background

As noted above, this item was considered at the July 12, 2005 meeting (continued from the June 28, 2005 meeting), and again at the July 26, 2005 meeting, and referred back to staff for further analysis.

Discussion

The first issue was whether the title of the measure to be submitted to the voters could be further simplified. Staff has incorporated a new title which staff believes is easier to understand. It is based on a ballot label successfully used in several Southern California cities which have

adopted open space preservation measures using language of this sort. Moreover, the opening phrase, “Shall Ordinance No. ___ be adopted to ...” is required by the Elections Code. Other than that requirement, and a requirement that the question not exceed 75 words, there is substantial freedom in framing the question and the Council may wish to amend it. The Secretary of State does recommend, however, that ballot materials be written at a 6th-grade reading level, so it is best to use as simple and straightforward a sentence structure as is possible in light of the issues the Council wishes to communicate. Multiple subordinate clauses and parentheticals will be confusing to at least some voters.

The second issue was whether the Ordinance language should be modified with respect to Sections 7-11, 7-12, and 7-13 of the Belmont Municipal Code. Essentially, the question was whether a vote of the people would be required if a developer proposed roads which fell below the minimum standards in these sections. The answer, as discussed at the last meeting, is “yes.” However, these sections include an exception procedure in Section 7-13(e)(7) which would remain available to developers, if the Council could make the required findings. Accordingly, staff does not recommend any change to the Ordinance language in this regard.

The third issue is whether the Ordinance language could be circumvented by the creation of new zoning districts. In order to minimize this possibility, staff has modified the language in the Ordinance to clarify that any amendments to the HROP or the HRO-1, HRO-2, and HRO-3 land use classifications which will allow increased density would require a vote of the people.

Since the last meeting, staff has received several questions regarding the effect of proposition. One question was whether a proposal for clustering development would require a vote of the people. Under Zoning Code Section 4.7.3(k), clustered dwelling units are allowed as a conditional use in the HRO-1 and HRO-3 zones. Townhouses are allowed as a conditional use in the HRO-2 zone. The Planning Commission, and ultimately the City Council, retain the discretion to grant a conditional use for these zones in Section 4.7.10(c), 4.7.11(d), and 4.7.12C. Thus, a vote of the people would not be required for such development if the Planning Commission and Council made the appropriate findings to issue a conditional use permit. It is also important to note that under Section 4.7.13, all HRO standards are subject to the City’s variance procedures. With respect to road extension standards, 7-11 through 7-13 of the Municipal Code provide an exception procedure, as noted above. In addition, those standards also allow Council to eliminate sidewalks or parking lanes under certain circumstances. Thus, if the proposition were to pass, the Council would retain this discretion.

An issue was also raised with respect to a possible typographical error in Section 7-13(e)(10)h.2. Staff has checked the original ordinance #800 adopted by the City Council, and there are no typographical errors in that ordinance. Apparently, the codifier introduced the error into the codified version. This can be easily corrected and does not affect the ballot measure.

Finally, upon further legal review, a new Section 1 has been added, the subsequent

sections have been renumbered, and minor wording changes have been made in the ordinance to Section 3. A new Section 5 has been added, which exempt legally required revisions or minor technical changes from a vote of the people, and also clarifies that lands designated HROP or zoned HRO-1, HRO-2, and HRO-3 after the election shall become subject to the requirements of the proposition. A new Section 6 has been added clarifying that the ordinance may only be amended or repealed by a vote of the people. Minor technical revisions were made to Section 8 regarding the effective date of the ordinance. A new Section 10 was added specifically authorizing the Mayor to sign the ordinance to evidence its adoption.

Fiscal Impact

The Ordinance has carried forward a provision requiring a proponent of any amendments covered by the Ordinance to pay for the costs of placing that matter on the ballot.

The City Clerk's office recommends that any net increase to the City's elections budget as a result of the placement of this initiative on the November 2005 ballot would require an amendment to the fiscal year 2006 budget, to be addressed at the mid-year budget review.

Public Contact

Posting of City Council agenda. This matter does not require a noticed public hearing.

Recommendation

Staff has prepared a modified Resolution reflecting the further changes recommended following the last council meeting. Staff has also prepared a modified Ordinance which makes the changes discussed in this report.

If the City Council wishes to adopt a Resolution placing this Ordinance on the ballot, it can do so by voting on the modified Resolution attached to this Staff Report. Note that the motion to approve the Resolution should designate which Councilmember(s) are to prepare the ballot argument in favor of, or opposed to, the Proposition or provide for the deletion of that language if none of you is to do so, leaving the arguments to be written by bona fide associations of voters or individual voters.

Alternatives

1. Do not adopt the attached Resolution.
2. Refer the matter to staff for further analysis, or continue the matter to a subsequent agenda; however, these alternatives would result in insufficient time to place the matter on the November 2005 ballot given the August 12, 2005 deadline for the submission of ballot measures to the County Registrar.

Attachments

- A. Staff report from meeting of July 12, 2005, including attachments.
- B. Staff report from meeting of July 26, 2005, including attachments.
- C. Modified Resolution, and Revised Ordinance to be submitted to the voters.

Respectfully submitted,

Marc L. Zafferano
City Attorney

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT
TO PLACE BEFORE THE VOTERS OF THE CITY OF BELMONT AN
ORDINANCE REQUIRING THAT CERTAIN FUTURE AMENDMENTS TO
THE EXISTING HILLSIDE RESIDENTIAL AND OPEN SPACE DISTRICTS
(HRO-1, HRO-2, AND HRO-3); ANY FUTURE AMENDMENTS TO MUNICIPAL
CODE SECTIONS 7-11, 7-12, AND 7-13; AND CERTAIN FUTURE
AMENDMENTS TO THE GENERAL PLAN LAND USE DESIGNATION FOR
LANDS CURRENTLY IDENTIFIED AS HILLSIDE RESIDENTIAL AND OPEN
SPACE (HROP), BE APPROVED BY THE VOTERS OF THE CITY OF
BELMONT**

WHEREAS, the City Council desires to submit to the voters at the municipal election on November 8, 2005 an ordinance that would require that certain amendments to the HRO-1, HRO-2, and HRO-3 Zoning Districts, any amendments to Belmont Municipal Code sections 7-11, 7-12, and 7-13, and certain amendments to the General Plan Land Use designation for land currently identified as Hillside Residential and Open Space (HROP), be approved by the voters.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Belmont does hereby resolve as follows:

Section 1. That the City Council orders submitted to the voters at the General Municipal Election to be held and consolidated with the Statewide General Election on Tuesday November 8, 2005, the following question:

“Shall Ordinance No. ____ be adopted to protect and preserve hillside areas of Belmont by requiring voter approval of any future amendments to the HRO-1, HRO-2, and HRO-3 Zoning Districts; Belmont Municipal Code Sections 7-11, 7-12 and 7-13; or the General Plan land use designation HROP (which collectively constitute the City’s Hillside Development Standards), if such amendments would allow more intense development of hillside areas?”	YES
	NO

Section 2. The ordinance to be enacted by a majority of the voters pursuant to Section 1 above shall be in the form set forth in Exhibit A, attached hereto.

Section 3. This measure is submitted to the voters pursuant to Elections Code Section 9222.

Section 4. The ballots used at the election shall be in the form and content as is required by law.

Section 5. The City Attorney is hereby directed to prepare and submit and impartial

analysis.

Section 6. The City Council authorizes _____ to prepare a written argument in favor of the ballot proposition, on behalf of the City Council, not to exceed 300 words. The City Council authorizes _____ to prepare and submit a written rebuttal argument in the event a written argument opposing the initiative measure is submitted. The City Council also authorizes submission of rebuttal arguments not to exceed 250 words.

Section 7. The City Clerk is hereby directed to deliver forthwith certified copies of this Resolution to the Clerk of the Board of Supervisors of San Mateo County and the Registrar of Voters of San Mateo County promptly upon its adoption.

Section 8. That the City Clerk is authorized, instructed and directed to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election.

Section 9. That the polls for the election shall be open at seven o'clock a.m. of the day of the election and shall remain open continuously from that time until eight o'clock p.m. of the same day when the polls shall be closed, except as provided in Section 14401 of the Elections Code of the State of California.

Section 10. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections.

Section 11. That notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

Section 12. That the City Clerk shall certify to the adoption of this resolution and shall cause the same to be processed in the manner required by law.

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the City of Belmont at a regular meeting thereof held on August 9, 2005 by the following vote:

AYES, COUNCILMEMBERS: _____

NOES, COUNCILMEMBERS: _____

ABSTAIN, COUNCILMEMBERS: _____

ABSENT, COUNCILMEMBERS: _____

CLERK of the City of Belmont

APPROVED:

MAYOR of the City of Belmont

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BELMONT REQUIRING THAT CERTAIN FUTURE AMENDMENTS TO THE EXISTING HILLSIDE RESIDENTIAL AND OPEN SPACE DISTRICTS (HRO-1, HRO-2, AND HRO-3), ANY FUTURE AMENDMENTS TO BELMONT MUNICIPAL CODE SECTION 7-11, 7-12, AND 7-13, AND CERTAIN FUTURE AMENDMENTS TO THE GENERAL PLAN LAND USE DESIGNATION FOR LANDS CURRENTLY IDENTIFIED AS HILLSIDE RESIDENTIAL AND OPEN SPACE (HROP), BE APPROVED BY THE VOTERS OF THE CITY OF BELMONT

WHEREAS, on April 11, 1989 and then on August 8, 1991, the City Council after extensive public input adopted Ordinance Nos. 808 and 848, respectively, which are generally known as the Hillside Residential and Open Space (HRO) District;

WHEREAS, the purpose of said Ordinances is to promote and encourage the orderly development of the hillside areas of the City by the application of regulations and requirements established to meet the particular problems associated with development of hillside areas, including, but not limited to, geologic problems, slope stability, safe access, and aesthetic impacts of hillside development; and

WHEREAS, the primary regulations of said Ordinances are set forth at Section 4.7 et seq. of the Belmont Zoning Ordinance and in Sections 7-11, 7-12, and 7-13 of the Belmont Municipal Code; and

WHEREAS, the City's General Plan, through the San Juan Hills Area Plan and the Western Hills Area Plan, designates certain property within the hillside areas of the City as Hillside Residential and Open Space (HROP); and

WHEREAS, the City now desires that certain future amendments to the existing HRO-1, HRO-2, and HRO-3 districts, any future amendments to Belmont Municipal Code sections 7-11, 7-12, and 7-13, and certain future amendments to the General Plan Land Use designations for lands currently identified as Hillside Residential and Open Space (HROP), be approved by the voters before becoming effective.

The People of the City of Belmont do ordain as follows:

Section 1. Readoption of General Plan Designations

The City's General Plan Land Use Map, through the San Juan Area Hills Plan, and the Western Hills Area Plan as "HROP", with respect to lands currently classified as HRO-1, HRO-2, and HRO-3 on the City's Zoning Map, as adopted and amended through November 8, 2005 is hereby readopted.

Section 2. Certain Future Amendments to the HRO Ordinance Must Be Approved by the Voters

Future amendments to the existing Hillside Residential and Open Space Districts, Section 4.7 et seq. of the Belmont Zoning Ordinance, except amendments which would decrease the maximum allowed development density of any property presently in such Districts, shall be approved by the Belmont voters before taking effect.

Section 3. Certain Future Amendments to the General Plan Land Use designation for lands currently identified as Hillside Residential and Open Space (HROP) Must Be Approved by the Voters.

Future amendments to the City's General Plan Land Use Map, through the San Juan Area Hills Plan, and the Western Hills Area Plan as "HROP", with respect to lands currently classified as HRO-1, HRO-2, and HRO-3 on the City's Zoning Map, as adopted and amended through November 8, 2005, that redesignate or reclassify such land to allow increased development density shall be approved by the Belmont voters before taking effect.

Section 4. Future Amendments to Municipal Code Road Development Standards.

Future amendments to existing Municipal Code Sections 7-11, 7-12, and 7-13 shall be approved by the Belmont voters before taking effect.

Section 5. Exceptions.

(a) The requirements of Sections 2, 3 and 4 of this Ordinance shall be inapplicable to:

1. Amendments determined by the City Council, on the advice of the City Attorney, to be necessary to avoid an unconstitutional taking of private property or otherwise required by law;

2. Reorganization, renumbering or updating elements of the General Plan or the Zoning Ordinance in accordance with State law, provided that such actions do not reduce the property designated HROP by the General Plan or zoned HRO-1, HRO-2, and HRO-3.

(b) Any land designated HROP or zoned HRO-1, HRO-2, and HRO-3 after November 8, 2005 shall become subject to the requirements of this section upon such designation.

Section 6. Amendment or Repeal.

Except as authorized in Section 5 of this Ordinance, the provisions of this Ordinance may be amended or repealed only by the voters of the City of Belmont.

Section 7. Costs of Election.

The proponent of any amendments subject to a vote of the people under this ordinance shall pay all costs associated with placing said amendments on the ballot.

Section 8. Publication and Effective Date.

This Ordinance shall take effect then (10) days after its adoption by the voters of Belmont.

Section 9. Severability.

In the event any section or portion of this ordinance shall be determined invalid or unconstitutional, such section or portion shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

Section 10. Certification.

The Mayor is hereby authorized to subscribe this Ordinance where indicated below to evidence its adoption by the voters of the City and upon that subscription, the City Clerk shall certify to the passage and adoption of this ordinance and shall cause it to be published according to law.

REGULAR

ORDINANCE NO.

TITLE: AN ORDINANCE OF THE CITY OF BELMONT REQUIRING THAT CERTAIN FUTURE AMENDMENTS TO THE EXISTING HILLSIDE RESIDENTIAL AND OPEN SPACE DISTRICTS (HRO-1, HRO-2, AND HRO-3), ANY FUTURE AMENDMENTS TO BELMONT MUNICIPAL CODE SECTIONS 7-11, 7-12, AND 7-13, AND CERTAIN FUTURE AMENDMENTS TO THE GENERAL PLAN LAND USE DESIGNATION FOR LANDS CURRENTLY IDENTIFIED AS HILLSIDE RESIDENTIAL AND OPEN SPACE (HROP) BE APPROVED BY THE VOTERS OF THE CITY OF BELMONT PRIOR TO BECOMING EFFECTIVE

HISTORY: This Ordinance was approved by the voters at the general election On November 8, 2005.

AYES:

NOES:

APPROVED:

Dave Warden
Mayor of the City of Belmont

ATTEST:

Terri Cook
Clerk of the City of Belmont

APPROVED AS TO FORM:

Marc L. Zafferano
City Attorney of the City of Belmont

ORDAINING CLAUSE:

THE CITIZENS OF THE CITY OF BELMONT DO ORDAIN AS FOLLOWS: