

**URGENCY ORDINANCE NO. 1174**

**AN URGENCY ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO APPROVING A ONE-YEAR EXTENSION OF A TEMPORARY MORATORIUM ON APPROVAL OF APPLICATIONS FOR NEW AND EXPANDED GAS SERVICE STATION USES IN THE TOWN OF SAN ANSELMO**

WHEREAS, pursuant to the California Constitution and State Government Code, the Town of San Anselmo ("Town") may make and enforce all regulations and ordinances using its police powers to regulate municipal affairs and may enact ordinances for the preservation of the public peace, health, or safety; and

WHEREAS, California Government Code Section 65858 provides that the Town Council may, to protect public safety, health and welfare, adopt as an urgency measure an interim ordinance prohibiting any uses that may conflict with a contemplated general plan or zoning proposal that the Council, the Planning Commission or the Planning Department is considering or studying or intends to study within a reasonable time; that adoption of such urgency measures requires a four-fifths vote of the Council; that such measures shall be of no effect 45 days from the date of adoption, and may be extended a maximum to two times and have a maximum total duration of two years; and

WHEREAS, on February 8, 2022, the Town Council adopted Urgency Ordinance No. 1163 establishing a 45-day moratorium on the approval of new or expanded gas service station uses; and

WHEREAS, on March 25, 2022, pursuant to Government Code section 65858, the Town Council held a noticed public hearing and voted to extend Urgency Ordinance No. 1163 for an additional period of 10 months and 15 days; and

WHEREAS, following the initial extension, Government Code section 65858 permits the Town Council to subsequently extend an urgency ordinance for an additional one year; and

WHEREAS, at its meeting of January 24, 2023, the Town Council held a duly noticed public hearing to consider a one-year extension of the moratorium imposed by Ordinance No. 1163 to provide additional time for the Planning Department to study how best to prevent the impacts of gas service stations and evaluate the General Plan and Zoning Code and develop appropriate regulations; and

WHEREAS, 55% of the San Anselmo community Greenhouse Gas ("GHG") Emissions are from the transportation sector, mostly from passenger cars; and

WHEREAS, the Town adopted a Climate Action Plan (initially in 2011, last updated 2019) with a goal for the Town to reduce greenhouse gas emissions by 54% by 2030 (from a 2005 baseline) and to be carbon neutral by 2045, and declared a Climate Emergency on February 11, 2020; and

WHEREAS the Town has identified goals to reduce GHG emissions from the transportation sector through a variety of means, including expansion of electric vehicle charging infrastructure,

and promotion of low-carbon fuels; and

WHEREAS, in 2019, the Town took steps to lower GHG emissions from transportation through adopting an amendment to the General Plan Circulation Element to support transportation improvements and emerging vehicle technology that help reduce greenhouse gas emissions and an Electric Vehicle strategy; and

WHEREAS, at its January 11, 2022, meeting, the Town Council agreed to discuss various measures to decarbonize the Town's transportation sector, including limitations on further development and expansion of service station uses, as defined by section 10-3.1702 of the San Anselmo Municipal Code; and

WHEREAS, on January 4, 2022, the Town received an application for additional gas pumps at an existing service station; and

WHEREAS, vehicle technology is rapidly evolving such that reliance on gas is steadily declining and state policy is changing to discourage the use of fossil fuels in the transportation sector; and

WHEREAS, for example, on September 23, 2020, Governor Newsom issued Executive Order N-79-20 to require that, by 2035, all new cars and passenger trucks sold in California be zero-emission vehicles and to direct the state to take more actions to address oil extraction and move the state further away from its reliance on climate change-causing fossil fuels; and

WHEREAS, as a result of these technological and policy changes, the declining demand for gasoline may increase competition amongst existing service stations in Town such that closures may occur over time; and

WHEREAS, gasoline stations have the potential to leak hazardous substances that contaminate soil, groundwater, surface water and affect indoor air space and four Town gas station sites are listed on the State of California Water Board's Leaking Underground Storage Tank (LUST) data management system as sites that impact, or have the potential to impact, water quality in the Town; and

WHEREAS, the Town of San Anselmo is predominantly a residential community and any gas station in the Town will be located close to where people live or work, or where housing is proposed, and exposure to gas station emissions may lead to adverse health impacts for people nearby, including cancer, from pollutants including benzene, toluene, ethyl-benzene, xylenes, naphthalene, propylene, and n-Hexane; and

WHEREAS, due to their propensity to become brownfield sites, service stations require remediation for potential ground contamination prior to redevelopment and closed service station sites may be abandoned and left unused for long periods of time and the removal of contaminants may present health risks for neighboring communities and sensitive receptors, which could result in blight and dangerous conditions throughout the Town, threatening public health, safety and welfare; and

WHEREAS, the Town Council finds and determines that there is an immediate threat to the public health, safety, or welfare, that could result from new or expanded gas service station uses within the Town, through negative impacts that include, but are not limited to contaminant exposure, health risks, soil, groundwater and surface water contamination and potential blight in and around the site in the future; and

WHEREAS, the Town Council finds that time provided by this moratorium will allow for a comprehensive analysis on how to manage and reduce the impacts of new and/or expanded service stations in Town; including the potential impacts on the public health and welfare, impacts on public safety related to the provision of public safety to service stations, and potential for blight in connection with the declining demand for gas; and

WHEREAS, these studies will help the Council and Town's Planning Department determine how best to prevent impacts to public health, safety and welfare, and evaluate the General Plan and Zoning Code and develop appropriate regulations to achieve positive outcomes for the Town's residents, business community, property owners, developers and the environment.

**NOW THEREFORE, THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO** hereby ordains as follows:

**SECTION 1. Findings**

- a. The recitals set forth above are true and correct and are hereby incorporated herein by this reference as if fully set forth in their entirety.
- b. There exists a current and immediate threat to the public health, safety, and welfare requiring immediate implementation of an urgency ordinance to prevent the approval of new and/or expanded service stations in the Town of San Anselmo.
- c. The urgency ordinance is necessary for the immediate preservation of the public peace, health, and safety because an expanded or new service station would negatively impact the public welfare and potentially, the unique quality and character of the Town and a moratorium will prevent negative impacts that include, but are not limited to contaminant exposure, health risks, soil, groundwater and surface water ground contamination and potential blight in and around the site in the future.
- d. Based on the recent changes in technology, state policy and the Town's commitment to addressing the climate emergency, there is a need for the Town to prohibit approval of new or expanded service stations, which may be in conflict with a contemplated general plan or zoning proposal that the Town Council, Planning Commission or the Planning Department intends to study within a reasonable time.

**SECTION 2. Environmental Review.**

The Town Council hereby finds that adoption of a temporary moratorium on new or expanded service station uses is not a "project" under the California Environmental Quality Act, because it does not involve an activity which has the potential to cause a direct or reasonably foreseeable

indirect physical change in the environment. (Cal. Pub. Res. Code § 21065). If the ordinance constitutes a CEQA project, it is also exempt from CEQA review in accordance with Sections 15307 and 15308 because it constitutes action taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource and protection of the environment.

**SECTION 3. Declaration of Threat to Public Health, Safety, and Welfare Necessitating Urgency Ordinance.**

The Town Council of the Town of San Anselmo hereby finds and declares that there is a current and immediate threat to the public health, safety and welfare and a need for the immediate preservation of the public health and safety that warrants this urgency ordinance, based upon the facts, findings, and declarations stated in the findings of this Ordinance.

**SECTION 4. Extending a Temporary Moratorium on New or Expanded Gas Service Station Uses.**

- A. In order to protect the public health, safety and welfare and pursuant to the provisions of Government Code section 65858, the temporary moratorium enacted by Ordinance No. 1163 on the approval of permits and entitlements for service station development and/or expansion, is hereby extended for an additional one year. Notwithstanding any other ordinance or provision of the San Anselmo Municipal Code, no application for an entitlement or permit for such use shall be approved during the term of this temporary moratorium as extended by this Ordinance.
- B. Nothing contained in this Interim Urgency Ordinance shall preclude the improvement, renovation, or demolition of an existing service station, provided that such development otherwise conforms to applicable law and does not result in an increase to the number of gas pumping or storage facilities.
- C. Special Conditional Use Permit.
  1. Notwithstanding any other provision of this Interim Urgency Ordinance, the Town may accept, process and approve applications for special conditional use permits for development or use of property otherwise subject to this Interim Urgency Ordinance, if the Town Council finds, after receipt of a recommendation from the Planning Commission, that an owner of property subject to the moratorium imposed by this Interim Urgency Ordinance will be deprived of all economically viable use of their land unless the property owner is allowed to develop or use the property for a service station, or that the law of California or of the United States otherwise requires the Town to approve an application for a permit or an entitlement for the development or use.
  2. The special conditional use permit provided by the Section shall be an available entitlement process and permit for a property owner affected by the moratorium whether or not a conditional use permit would otherwise be required by the Municipal Code. A special conditional use permit submitted pursuant to this Section shall be processed in accordance with the Municipal Code, except that the Town Council shall serve as the final decision-making body, which shall make the additional findings

required by this Section prior to approving the special conditional use permit.

**SECTION 5. Severability.** If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The Town Council hereby declares that it would have adopted the Ordinance and each section, sub-section, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, sub-sections, sentences, clauses, phrases or portions to be declared invalid or unconstitutional.

**SECTION 6. Effective Date.** This is an Interim Urgency Ordinance enacted and extended under California Government Code 65858 and it will take effect immediately upon adoption by a four-fifths (4/5) vote of the Town Council. This Ordinance shall remain in effect for one year, unless the Town Council repeals the ordinance.


Within fifteen days after the passage of this Ordinance, the Town Clerk shall cause this ordinance or a summary thereof to be published once, with the names of those Town Councilmembers voting for or against it in a newspaper of general circulation in the Town of San Anselmo, as required by law.

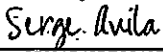
**THE FOREGOING INTERIM URGENCY ORDINANCE** was introduced and adopted at a regular meeting of the San Anselmo Town Council on January 24, 2023, by the following vote:

AYES:	COUNCILMEMBERS:	Kullaway, Colbert, Fineman, Burke, Mayor Burdo
NOES:	COUNCILMEMBERS:	None
ABSENT:	COUNCILMEMBERS:	None
ABSTAIN:	COUNCILMEMBERS:	None

APPROVED:

ATTEST:

DocuSigned by:  
  
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 Steve Burdo, Mayor of Town of San Anselmo

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 Serge Avila, Town Clerk

