



AGENDA SUMMARY REPORT

SUBJECT: Adoption of Resolution Approving the Building Official's Recommendations Regarding Palace Hotel Property and Exemption Determinations under Ukiah City Code Section 3016(b)(2) and the California Environmental Quality Act.

DEPARTMENT: City Attorney

PREPARED BY: David Rapport, City Attorney

PRESENTER: David Rapport, City Attorney

ATTACHMENTS:

1. 2015-07 CC Resolution
2. Receivership Chronology
3. 2022.04.06 State - Discharge Order
4. Draft Discharge Notice and Order
5. Determination of Exemption- signed cbo and cdd 10-24-23
6. 1.31.23-Winter-Storms-EO
7. 3.8.23-SOE-Storms-Additional-Counties (002)
8. Proposed Resolution
9. Power Point Presentation - Palace Hotel Inspection

Summary: Council will consider adopting a Resolution approving the Building Official's recommendations regarding Palace Hotel property and exemption determinations under Ukiah City Code Section 3016(b)(2) and the California Environmental Quality Act.

Background: In Resolution No. 2015-07 adopted in 2015, the City Council found that the Palace Hotel Property (at that time owned by Questex Corporation) was a dangerous building under Ukiah City Code ("UCC") § 3300 et seq. and a public nuisance and directed the City Engineer to petition the Mendocino County Superior Court for the appointment of a receiver to take control of the property and abate the public nuisance conditions. (See Resolution No. 2015-07 (Attachment 1).) The resolution directed the City Engineer to return to the City Council for further instructions if the receivership failed to remedy the condition of the property.

A receiver was appointed on January 9, 2017, who subsequently borrowed funds, secured by a receivership certificate on the Palace property. The receiver used the borrowed funds to pay receivership expenses, including engineered plans to seismically retrofit the unreinforced masonry walls, repair the roof and make other necessary repairs to the roof and window and door openings. (See chronology in Attachment 2 which are taken verbatim from the recitals in the Settlement Agreement among the receiver, the property owner and the City pursuant to which the receiver was discharged and the receivership terminated.) However, the receivership could not raise sufficient funds to construct these improvements and title to the hotel changed when Questex Corporation could not repay the loan and the lender foreclosed on the receivership certificate.

The receiver has been discharged and the receivership terminated. (See Order Discharging Court-Appointed Receiver, and Dismissing Action When Conditions Stated in the Settlement Agreement Are Met ("Discharge Order"), attached as Attachment 3.)

Discussion: CURRENT CONDITIONS

On September 29, 2023, the City's Chief Building Official and its Fire Chief and two Battalion Chiefs, with the Owner's consent, conducted an inspection of the Property and recorded their observations in photographs, which are contained in a Power Point Presentation prepared by the Chief Building Official. ("Power Point Presentation.") Based on that inspection, the Building Official has determined that the former hotel has deteriorated dramatically since the City Council adopted Resolution 2015-07. (See Power Point Presentation; included as Attachment #9.) Based on that inspection, in his opinion, the building poses an imminent risk of damage to persons or property due to its advanced stage of deterioration. In the Building Official's opinion, heavy rains from last winter's storms have caused or substantially contributed to the building's current unstable condition. It appears that the heavy rains last winter resulted in major water intrusion into the building, which has accelerated its deterioration. (See Attachments 5 and 6.)

As can be seen in the photographs taken by the Building Official official, some flooring has collapsed and is hanging vertically. Substantial portions of the floors on all three stories of the building have buckled and cracked. Wooden crossbeams providing lateral support have cracked or broken. In the Building Official's opinion, any weight on substantial portions of the flooring on all three stories could cause them to collapse. Some portions of the unreinforced masonry in interior walls have collapsed. Portions of the roof are sagging. Rainwater enters the building from the deteriorated roof and open windows. There has been substantial deterioration of the mortar in the outside brick walls of the Palace fronting State and Smith Streets and contiguous to the back of buildings on Standley Street.

Given that the building fronts on State, Smith and School Streets and is contiguous to buildings on Standley Street, any outward failure of the structure could injure people on those streets or in those buildings and cause property damage to vehicles on the streets and to the adjacent buildings and their contents.

BUILDING OFFICIAL RECOMMENDATIONS

The Building Official recommends that he issue a notice to the Building Owner pursuant to the Building Official's authority under Sections 116 and 117 of the California Building Code. The order will require the Owner to submit within 30 days after service of the order a plan and application for permits to stabilize and demolish the hotel structure. The plan must include interim measures to prevent damage to persons or property and a reasonable timeline for completing the work. In the alternative, the notice will allow the property owner to submit a study from a California licensed structural engineer providing an alternative to demolition that will abate the imminent risk of collapse posed by the structure's current condition and applications for the permits required to perform the work recommended by the study. (See draft Notice and Order, attached as Attachment 4.)

EXEMPTION FROM HISTORICAL REVIEW UNDER UKIAH CITY CODE SECTION 3016.B(4)

The Palace Hotel is over 50 years old and listed on the National Register of Historic Places. Under Ukiah City Code ("UCC") section 3016.D, a review of the building's historic significance is required before a building permit can be issued for its demolition. However, under UCC §3016.C, if the Planning Director or his designee determines that immediate demolition of the building is necessary to protect the public health or safety and the failure to immediately demolish the building would constitute a serious threat to the public health or safety, no review of the building's historic significance is required.

Based on the September 29 inspection, in the Building Official's opinion, as the designee of the Director of Community Development, demolition of the building is necessary to prevent an imminent risk and serious threat to public health or safety. (See Determination of Exemption from Review for Historical and Architectural Significance under Ukiah City Code Section 3016) (Attachment 5.)

EXEMPTION FROM ENVIRONMENTAL REVIEW UNDER CALIFORNIA ENVIRONMENTAL QUALITY ACT.

The California Environmental Quality Act ("CEQA") requires environmental review of projects either undertaken by or subject to approval of the City.¹ The issuance of a demolition permit by the City's Building

Official would ordinarily be considered a ministerial project exempt from environmental review under CEQA.² However, Ukiah has modified the California Building Code as adopted in Ukiah to require the City Council to determine the historical significance of buildings, like the Palace Hotel, that are over 50 years old,³ and Public Resources Code Section 5028 requires approval from the State Historic Preservation Office (“SHPO”) before a building listed on the National Register of Historic Places is demolished. Under these authorities, issuance of the demolition permit may not qualify as a ministerial project.⁴

Based on the condition of the Palace Hotel, however, two exemptions from environmental review under CEQA apply: (1) Projects undertaken or approved by the City to maintain, repair, restore, demolish, or replace a building damaged or destroyed as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to the Emergency Services Act⁵ and (2) Specific actions necessary to prevent or mitigate an emergency.⁶

Both of these statutory exemptions apply to the Building Official’s recommendations and the subsequent actions taken to implement the actions recommended by the Building Official.

1. The significant deterioration of the Palace Hotel resulting in its current unstable condition likely resulted from the heavy rains last winter causing heavy water intrusion.

PRC § 21060.3 defines “Emergency” as a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. Under PRC §21080(b)(1) demolition or stabilization of the Palace Hotel is subject to this statutory exemption from CEQA, if damage is the result of a disaster in a disaster-stricken area in which the Governor has proclaimed an emergency under the California Emergency Services Act. §15269 of the CEQA Guidelines⁷ adds that: This includes projects that will remove, destroy, or significantly alter an historical resource when that resource represents an imminent threat to the public of bodily harm or of damage to adjacent property.”

In Executive Order N-2-23, on January 16, 2023, the Governor did declare an emergency under the Emergency Services Act in response to the impact of the severe winter storms on “impacted communities across the State . . . causing [flooding and] infrastructure damage”. (See copy of emergency declaration. (Attachment 6.) On March 1, 2023, the Governor made an additional emergency declaration for 13 identified counties, including Mendocino County and on March 8, 2023, he extended that proclamation based on the forecasted impact of atmospheric rivers on those counties. (See Proclamation of State of Emergency attached as Attachment 7.)

In the Building Official’s opinion, based on the current condition of the building as compared to the conditions observed in the 2017 inspection and his opinion that the observed conditions are caused by water intrusion which weakens the wooden floors, joists and beams and increases the weight load on these structures, the unusually heavy rains in the 2022-23 rainy season substantially contributed to the current condition of the building. The deterioration of the building since its last inspection by the Building Official and the extensive buckling and cracking of flooring and wooden support structures can only be explained by extensive water damage. While damage from water intrusion likely occurred between 2017 and 2022, the storms in the 2022-23 season were historically severe, especially as compared to the drought conditions in 2019, 2020 and 2021. A preponderance of the evidence supports a finding that the need for immediate action to stabilize and demolish the building has been caused by the storms last winter. These same facts support the need to take action before the rainy season this winter.

The Building Official’s recommendation allows the building owner 30 days to submit a plan and permit application to stabilize and demolish the building or a study from a licensed California structural engineer to demonstrate an alternative that will abate the current imminent risk of public harm posed by the property’s current condition. If the Owner submits a plan and permit application to demolish the hotel, SHPO approval may be required. If the Owner proposes an alternative, SHPO approval may not be required.

2. Demolition or repair is exempt from environmental review under CEQA because specific actions have been found by the Building Official to be necessary to prevent or mitigate an emergency.

PRC §21080(b)(4) provides an additional statutory exemption from environmental review under CEQA for demolition or repair if such work is necessary to prevent or mitigate an emergency, There must be a likelihood of damage to persons or property if the existing condition of the Palace Hotel is not abated by temporary protective measures followed by demolition or other measures, if capable of timely performance.⁸

Based on the Building Official's investigation and opinion,⁹ the work is necessary to prevent an emergency that will occur, if the building were to collapse in a way that impacts areas outside the building, including as a result of rain this winter.¹⁰ In the Building Official's opinion, based on his inspection of the property as reported to the City Council, there is a likelihood of such damage occurring, unless the measures he is recommending are taken. Unlike the statutory exemption in PRC §21080(b)(1), the exemption in Subd. (b)(4) does not require that the damage be caused by a natural disaster, only that the work is necessary to prevent or mitigate an emergency condition.¹¹

CONCLUSION

The City Council's approval is not required for the Building Official to take the actions he is proposing under Sections 116 and 117 of the California Building Code. Given the Palace Hotel's listing on the National Register of Historic Places and the many efforts that the City and the Ukiah community have made to preserve this historic resource, City Staff wanted to present the Building Official's findings and recommendations to the City Council and the general public at a City Council meeting and for the City Council to determine whether the statutory exemptions from environmental review apply to the actions required to abate the existing hazard posed by the building's current condition.

The recommendation is for Council to adopt the proposed resolution seen in Attachment 8.

FOOTNOTES:

1. Public Resources Code ("PRC") §21080(a).

2. PRC §21080(b)(1).

3. UCC §3016.

4. See 14 California Code of Regulations ("CCR") § 15369.

5. Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code

6. PRC §21080(b)(4).

7. 14 California Administrative Code § 15000 et seq.

8. *Western Mun. Water Dist. v. Superior Court* (1986) 187 Cal. App. 3d 1104, 1113-1114 [statutory exemption for prevention of emergency applied and exempted from environmental review under CEQA the drilling and operation of two "dewatering" wells, the sole purpose of which was to pump groundwater from the saturated pressure zone in the aquifer beneath the City of San Bernardino to prevent subsidence and contamination of drinking water wells.]

9. The Building Official will present his opinions and the factual basis for them during the City Council meeting.

10. According to the National Oceanic and Atmospheric Administration ("NOAA"), there is an equal chance of below or above normal precipitation in Ukiah this winter. (<https://www.msn.com/en-us/weather/topstories/noaa-releases-2023-2024-winter-predictions/ar-AA1hoj0k>.) A four-month advance prediction by the National Center for Atmospheric Research ("NCAR") predicts a super El Nino this winter on a par with the severe El Nino in the 1997-98 winter. (<https://news.ucar.edu/132912/ncar-experimental-prediction-system-calls-super-el-nino-winter>.)

11. (See *CREED-21 v. City of San Diego* (2015) 234 Cal.App.4th 488 [emergency repair to a storm drain to prevent future flooding of private property subject to the exemption from environmental review under PRC §21080(b)(4).]; (*County of Ventura v. City of Moorpark* (2018) 24 Cal.App.5th 377, 386 [The emergency exemption from environmental review under Pub. Resources Code, § 21080, subd. (b)(4), applied to a geologic hazard abatement district's entire beach restoration project].)

Recommended Action: Adopt Resolution approving the Building Official's recommendations regarding Palace Hotel property and exemption determinations under Ukiah City Code Section 3016(b)(2) and the California Environmental Quality Act.

BUDGET AMENDMENT REQUIRED: N/A

CURRENT BUDGET AMOUNT: N/A

PROPOSED BUDGET AMOUNT: N/A

FINANCING SOURCE: N/A

PREVIOUS CONTRACT/PURCHASE ORDER NO.: N/A

COORDINATED WITH: Community Development Department, Public Works Department, Ukiah Valley Fire Authority, and City Manager's Office

DIVERSITY-EQUITY INITIATIVES (DEI):N/A

CLIMATE INITIATIVES (CI): N/A

GENERAL PLAN ELEMENTS (GP): GP-A6 - Safety Element

Approved: 
Sage Sangiacomo, City Manager