

BEFORE THE COUNCIL OF THE CITY OF SAN MATEO IN THE  
COUNCIL CHAMBERS, 330 WEST 20TH AVENUE

ORDINANCE ADOPTION TO BE CONSIDERED AT 7 P.M. May 16, 2011

URGENCY ORDINANCE NO. 2011~~1~~<sup>2</sup>

AN URGENCY ORDINANCE OF THE CITY OF SAN MATEO EXTENDING AN  
URGENCY ORDINANCE IMPOSING A MORATORIUM ON SPECIFIED RENTAL  
HOUSING DEVELOPMENT PROJECTS, ADOPTING A REPORT AS REQUIRED BY  
GOVERNMENT CODE SECTION 65858(d), AND DIRECTING ISSUANCE OF THE  
REPORT

WHEREAS, on November 5, 1991, City of San Mateo voters approved an initiative amending the City's General Plan ("Measure H"); and

WHEREAS, Measure H amended the City's General Plan to require that the City adopt an inclusionary housing ordinance requiring residential development projects to include ten percent of the residential units as affordable housing units; and

WHEREAS, by the enactment of Measure H, the City's voters enshrined within the City's land use constitution the principle that *all* housing projects within the City should provide opportunities for purchase and rent of such housing to households with incomes less than those necessary to support the costs of housing in the Bay Area real estate market; and

WHEREAS, Measure H further advanced this principle by requiring, subject to narrow exceptions, provision of affordable units on site within each project, and also prohibited the use of fees to satisfy the City's affordable housing requirement; and

WHEREAS, Measure H provided that it was to remain in effect through the year 2005; and

WHEREAS, on November 2, 2004, City of San Mateo voters approved an initiative extending the provisions of Measure H, with some modifications, for another fifteen years ("Measure P"); and

WHEREAS, Measure P retained the General Plan requirement that the City require development projects to provide a minimum of ten percent of residential units for exclusive use as affordable units and carried forward the requirement that affordable units be provided on site within each project; and

WHEREAS, Measure P also retained the General Plan prohibition against the use of fees to satisfy the City's affordable housing requirement; and

WHEREAS, in accordance with Measures H and P, the City of San Mateo has adopted a Below Market Rate Housing Program (the "BMR Program"), which requires, among other things, that developers of new rental housing include 15% of units affordable to low-income households or 10% of units affordable to very low-income households;

WHEREAS, in 2009, a Los Angeles appellate court decided the case of *Palmer v. City of Los Angeles*, 175 Cal.App.4<sup>th</sup> 1396 (2009) (the "*Palmer* decision"); and

WHEREAS, the *Palmer* decision has brought into question the City's ability to require that a percentage of a residential rental development project's units be affordable; and

WHEREAS, a residential developer first challenged the City's BMR requirement in reliance on the *Palmer* decision in February of 2011; and

WHEREAS, as a result of the *Palmer* decision, the City Council is concerned about the City's ability to continue to provide rental housing opportunities for its lower and moderate income households through its BMR program, or through other means, and is considering the adoption of a housing impact fee to fund the development of affordable housing in rental housing projects to address the impacts of the *Palmer* decision; and

WHEREAS, Measure P prohibits the collection of a fee to fund affordable housing; and

WHEREAS, Measure P requires a vote of the people to amend its terms; and

WHEREAS, the City Council has determined that the inability to provide rental housing opportunities to lower and moderate income households through its BMR program or through other means would adversely impact the public health, safety, and general welfare; and

WHEREAS, in order to insure that affordable housing continues to be provided, the City needs to study the issue raised by the *Palmer* decision, develop a means to fund affordable housing, and present a ballot measure amending the City's General Plan to the voters at the November, 2011, election;

WHEREAS, pending the City's study of these issues, the City wishes to impose a moratorium on the development of specified residential rental units; and

WHEREAS, applicants for rental housing projects may choose to agree to comply with the City's BMR Program; and

WHEREAS, the City does not wish to delay the processing of applications for residential ownership units or for residential rental units in which the applicant voluntarily commits to complying with the City's BMR Program by one of the following: use of financial assistance from the City or entry into an agreement to comply with the City's BMR Program; and

WHEREAS, the City of San Mateo is a charter city; and

WHEREAS, City Charter section 2.16 provides that any ordinance declared by the City Council to be necessary as an emergency measure for preserving the public peace, health, safety, or welfare and containing the reasons for its urgency, may be introduced and passed at one meeting; and

WHEREAS, Municipal Code section 27.06.080(4) excepts the state procedures for the enactment of zoning ordinances, including interim ordinances/moratoria from the state planning and zoning regulations incorporated into Title 27 of the City's Municipal Code; and

WHEREAS, notwithstanding the City's status as a charter city and the exemption set forth in Municipal Code section 27.06.080(4), the City is in compliance with procedural requirements of Government Code section 65858 even though not legally required; and

WHEREAS, Government Code section 65858 provides that a city may adopt an interim ordinance to protect the public health, safety, and welfare that prohibits any uses that may be in conflict with a contemplated general plan amendment; and

WHEREAS, Municipal Code section 27.02.120 also authorizes the adoption of interim moratoria to prohibit any uses that may be in conflict with a contemplated general plan amendment;

WHEREAS, the San Mateo City Council adopted an urgency ordinance imposing a moratorium on specified rental housing development projects on April 18, 2011; and

WHEREAS, Government Code section 65858(c) requires special findings for the extension of an urgency ordinance that would have the effect of denying approvals needed for the development of projects with a significant component of multifamily housing; and

WHEREAS, per Government Code section 65858(g), the "development of multifamily housing projects" does not include, among other things, projects that will result in a reduction of the number of affordable units in a multifamily housing project; and

WHEREAS, with the goal of preserving affordable housing, the City's urgency ordinance exempts projects that are in compliance with the City's BMR program; and

WHEREAS, projects not in compliance with the City's BMR Program would result in a reduction of the number of affordable units in a multifamily housing project; and

WHEREAS, as a result, the City's urgency ordinance does not impact the "development of multifamily housing projects" in that the moratorium only affects rental projects without affordable units; and

WHEREAS, as a result, section 65858's requirement for special findings is inapplicable; and

WHEREAS, nonetheless, the City can make the special findings set forth in section 65858; and

WHEREAS, Government Code section 65858(a) provides that an urgency ordinance shall be of no further force and effect 45 days from the date of its adoption, but, after notice in accordance with Government Code section 65090 and a public hearing, may be extended by a 4/5 vote of the City Council for an additional 10 months and 15 days;

WHEREAS, in accordance with Government Code section 65858(d), ten days prior to the expiration of the original urgency ordinance, the City Council will issue a written report describing the measures taken to alleviate the condition which led to the adoption of the ordinance;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN MATEO FINDS AND ORDAINS AS FOLLOWS:

**Section 1.** Findings. Because the City of San Mateo is a charter city and has not adopted the state procedures for the adoption of urgency ordinances, Government Code section 65858 is inapplicable. Nonetheless, the City Council finds, in accordance with both City Charter Section 2.15 and Government Code section 65858, that this Ordinance is necessary as an emergency measure to preserve the public health, safety, and welfare for the following reasons. These findings are based on evidence presented at the public hearing and referenced in the Administrative Report and its exhibits accompanying this Ordinance. In addition, the Recitals set forth above are incorporated as findings.

- a. There is a current and immediate threat to the City's ability to provide sufficient affordable rental units in the City, because there are currently several proposals to develop rental housing that are likely to be considered for approval this year. The number of prospective rental units now totals 627, because one project for 197 rental units is in compliance with the City's BMR Program and has been approved since the date on which the moratorium was originally adopted. The *Palmer* decision has called into question the City's ability to require that a percentage of rental units in residential development projects be affordable. The development of residential rental units without affordable rental units is in conflict with the City's existing General Plan and BMR Program. As a result, the City is considering an amendment to its General Plan and BMR Program to implement a housing impact fee, which will require a vote of the people. However, Measure P prohibits the imposition of a fee for affordable housing. Measure P also requires that any amendments to its provisions be approved by a vote of the people. Therefore, absent amendment of Measure P at an election, the City might not be able to require residential developers of rental housing to provide affordable housing.
- b. The urgency of this matter first came to the City's attention when a residential developer objected to the City's BMR requirement in February of 2011 in reliance on the *Palmer* decision. Based on conversations with residential developers, the City has learned that the residential market has changed, rendering rental units more profitable than ownership units for the first time in a number of years. As a result, the City expects to receive more applications for rental housing projects than ownership housing projects in the next few years.
- c. The approval of additional rental housing projects pending voter consideration of an

amendment to Measure P will contribute to this threat to the public health, safety, or welfare, because residential rental projects could be built without providing for affordable housing opportunities. It is a public purpose of the City and a policy of the State to achieve a diverse and balanced community with housing available for households of all income levels. Economic diversity fosters social and environmental conditions that protect and enhance the social fabric of the City and are beneficial to the health, safety, and welfare of its residents. State law pertaining to general plans and the Housing Element of the City's General Plan require that the City regulate land use development and use its authority to provide an adequate supply of housing for all economic segments of the community. Located within one of the country's most expensive housing markets, the City is experiencing, and has for many years experienced, a shortage of rental housing affordable to very low and low income households as evidenced by a City-maintained waiting list of 1200 people for affordable rental housing and the fact that over 1000 people applied for 67 spaces in a recently-developed affordable rental housing development. A significant number of persons in low and very low income households live in overcrowded or substandard housing and devote an overly large percentage of their income to pay for rental housing. As a result, this segment of the City's population is exposed to conditions that threaten their physical safety, as well as their physical and mental health. As of September 2008, average market rents in the County of San Mateo were \$1,613 for a one-bedroom unit and \$1,849 for a two-bedroom unit. (City of San Mateo, *Housing Element*, 2009, p. 9.) According to the City's 2009 Housing Element, 96% of very low income renters and 53% of low income renters pay over 30% of their gross income toward rent. (City of San Mateo, *Housing Element*, 2009, pp. 20, 24.) 40% of all renters in the City of San Mateo are cost-burdened in that they pay more than 35% of their incomes toward rent. Spending a high proportion of income on rent or mortgage means fewer resources for food, heating, transportation, health care, and child care. The amount of land available in the City for residential rental housing is limited, because the City is built out and there is limited infill property available. San Mateo relies primarily on the redevelopment of existing sites for future residential development. The Housing Element's adequate sites inventory lists sites that, in aggregate, can potentially produce 4484 units. (City of San Mateo, *Housing Element*, 2009, Appendix A, pp. 152-165.) Most of these sites are small, meaning that the median development potential of the sites on the list is 43 units, which potentially would produce 4-6 units on each site through the inclusionary program. There are only thirteen sites on the list that are large enough to accommodate over 100 units, six of which already have planning approvals for future developments. Therefore, large sites for future residential development are limited. Currently, projects consisting of a total of 382 rental units are anticipated to process applications before the end of this year, which represents a potential of 57 affordable units that could be built through the inclusionary program if not for the *Palmer* decision. This is a significant loss of affordable units if these sites are developed without affordable units.

- d. The consumption of this remaining land for residential rental development without providing affordable units will impede the City's goal of providing adequate affordable housing in the City. Persons from low and very low income families who work in the City will be unable to find affordable rental housing and will be forced into longer commutes resulting in increased traffic and air and noise pollution, or into overcrowded and unsafe homes. Additionally, approving applications for rental housing projects under

existing circumstances would threaten public health, safety, and welfare in that there is a high risk of litigation by either project applicants or affordable housing advocates and defending litigation will divert City resources from other municipal purposes. Therefore, to implement the General Plan and the Housing Element, to carry out the policies of the state, to ensure the benefits of economic diversity in the City, and to provide safe and healthy living conditions for all segments of the City's population, it is imperative that there be a moratorium on specified residential rental development pending the voters' consideration of an amendment to Measure P.

**Section 2. Multifamily Housing Findings.** In accordance with Government Code section 65858(c), with regard to extension of the interim ordinance, the City Council makes the following findings based on evidence presented at the public hearing and referenced in the Administrative Report and its exhibits accompanying this Ordinance. In addition, the Recitals set forth above and the Findings set forth in Section 1 above are incorporated as Multi-family Housing Findings in this Section 2.

- a. The existing condition affecting public health and safety is overcrowding in rental units. (City of San Mateo; *Housing and Land Use Study Report*, 2008, p. i.) In the City of San Mateo, 2980 of all renters live in overcrowded conditions, which means that 17% of all rental units are overcrowded. (U. S. Census Bureau, *Census 2000*.) The United States 2000 Census reported overcrowded living conditions for 1,322 below poverty level renter households. (U.S. Census Bureau, *Census 2000*.) Per the Housing Element, overcrowding is also a housing problem for 30% of all low-income renters. (City of San Mateo, *Housing Element*, 2009, p. 24.) Code enforcement staff believes that this number is under-reported, because code enforcement staff frequently encounter living situations where people sleep 2-3 persons per room as well as in garages, sheds, basements, and campers. (City of San Mateo, *Housing Element*, 2009, pp. 20-21.)
- b. The public health and safety impacts of overcrowding include risks for infectious disease, and negative impacts on childhood development. (City & County of San Francisco Department of Health, *The Case for Housing Impacts Assessment: The Human Health and Social Impacts of Inadequate Housing and Their Consideration in CEQA Policy and Practice*, May 2004.)
- c. Absent the City's moratorium, anticipated residential rental projects totaling 382 units will be processed without meeting the standards of Measure P and the City's BMR Program. This means that fifteen percent of those units (57) will not be affordable. This will exacerbate overcrowding conditions in residential rental households in the City of San Mateo.
- d. Extension of the moratorium is necessary for the City to develop a method by which to continue to insure the provision of adequate affordable rental housing in light of the *Palmer* decision and avoid the specific, adverse impacts outlined in subsections (a-c) above.
- e. There is no feasible alternative to satisfactorily mitigate or avoid the specific, adverse impacts identified in subsections (a-c) above as well or better, with a less burdensome or restrictive effect, than the adoption of the proposed interim ordinance.

Absent a moratorium on residential rental development without BMR units, the City will not be able to require that affordable rental housing be built on site and will lose the opportunity to obtain affordable rental housing units in connection with the approval of applications for 382 rental units anticipated to be considered for approval before the end of this year.

**Section 3. Moratorium.** In accordance with Government Code section 65858(a), this ordinance extends a moratorium on the development of residential rental units for ten months and 15 days, excepting the following:

- a. Projects in which the applicant receives financial assistance from the City; or
- b. Projects in which the applicant agrees to comply with the City's Below Market Rate Housing Program. These applications for residential rental projects will receive expedited processing in furtherance of the City's commitment to affordable housing, and consistent with Measures H and P.

**Section 4. Severability Clause.** The City Council of the City of San Mateo hereby declares that should any section, paragraph, sentence, phrase, term or word of this Ordinance, hereby adopted, be declared for any reason to be invalid, it is the intent of the City Council that it would have adopted all other portions of this ordinance irrespective of any such portioned declared invalid.

**Section 5. CEQA.** In accordance with CEQA Guidelines section 15378(a), adoption of this ordinance is not a "project" subject to CEQA, because the ordinance has no potential to result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Even if adoption of this ordinance did constitute a "project," it would be exempt from CEQA in accordance with CEQA Guidelines section 15061(b)(3), because it can be seen with certainty that there is no possibility that the activity in question may have a significant impact on the environment. The purpose of this urgency ordinance is to preserve the status quo while the City studies the issue raised by the *Palmer* decision, develops a means to fund affordable housing, considers a General Plan amendment to preserve the City's ability to provide affordable rental housing, and seeks voter approval of such a General Plan amendment as required by Measure P. Projects already in compliance with the City's existing BMR Program will not be affected and the urgency ordinance does not authorize any additional development activity.

**Section 6. Effective Date.** This Ordinance shall take effect immediately upon passage by a 4/5ths vote of the City Council.

**Section 7. Publication.** In accordance with City Charter Section 2.16, as soon as practicable after its passage, this Ordinance shall be published in summary in the official city newspaper.

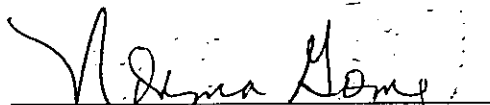
**Section 8. Issuance of Report.** In accordance with Government Code section 65858(d), the City Clerk is directed to issue the report attached as Exhibit A to this Ordinance describing the measures taken to date to alleviate the condition leading to the adoption of the urgency

ordinance. The report will be issued on May 23, 2011, which is ten days prior to the June 2<sup>nd</sup> expiration of the urgency ordinance.

PASSED AND ADOPTED by the City Council of the City of San Mateo, California at a regular City Council meeting held this 16th day of May, 2011 by the following vote:

AYES : Council Members LIM, LEE, GROTT, ROSS and MATTHEWS  
NOES : NONE  
ABSENT : NONE  
DISQUALIFY: NONE

ATTEST:



NORMA GOMEZ, CITY CLERK



JACK MATTHEWS, MAYOR



REPORT OF MEASURES TAKEN DURING INITIAL 45-DAY MORATORIUM

City Council  
May 16, 2011

During the initial 45-day moratorium period, the following actions have occurred:

The City Council has held a study session to discuss alternative methods by which the City can insure the provision of affordable rental units while complying with both its General Plan (as amended by Measure P) and the *Palmer* decision. Study session attendees included rental housing developers, affordable housing advocates, drafters of Measure P, and others interested parties.

Staff has begun to study methods of insuring the provision of affordable rental units in the City, including, but not limited to, a housing impact fee or a housing tax for the purposes of providing affordable rental housing.

Staff has conducted legal research regarding the requirements to adopt a housing impact fee or impose a housing tax.

Staff has contacted the County Elections Official to determine the schedule for placing a ballot measure amending the City's General Plan (implementing Measure P) on the November 2011 ballot.

In spite of the progress made by staff to date, additional time is needed for staff to conduct additional study sessions, work with interested parties, research legal issues raised by several of the proposed alternatives, and potentially prepare appropriate ballot measure language for the November 2011 election.

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Urgency Ordinance No. 2011-2 introduced and adopted on May 16, 2011  
by the City Council of the City of San Mateo, California, at a regular  
meeting held on May 16, 2011, by the following vote of the Council:

AYES: Council Members LIM, GROTE, LEE, ROSS  
and MATTHEWS

NOES: NONE

ABSENT: NONE

(SEAL) /s/ NORMA GOMEZ, City Clerk