

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

ORDINANCE INTRODUCED: July 18, 2011 J
ORDINANCE ADOPTION TO BE CONSIDERED AT 7 P.M. August 15, 2011

**CITY OF SAN MATEO
ORDINANCE NO. 2011- 7**

**AMENDING THE CITY’S GENERAL PLAN AND MUNICIPAL CODE TO
PROVIDE ALTERNATIVE METHODS OF INSURING AFFORDABLE
RENTAL HOUSING AVAILABILITY
(November 8, 2011 Ballot Measure)**

WHEREAS, the City of San Mateo’s General Plan currently requires that for development projects of eleven or more units in the City of San Mateo, at least ten percent of all housing units be affordable; and

WHEREAS, *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles*, 175 Cal.App.4th 1396 (2009) (the “Palmer decision”), has called into question the City’s ability to impose this requirement on residential rental projects; and

WHEREAS, the City wishes to amend its General Plan to provide for alternative methods of providing for affordable rental units; and

WHEREAS, the City wishes to impose a rental housing impact fee on the development of rental housing, which will fund the provision of affordable rental housing; and

WHEREAS, the City seeks to establish as an alternative to payment of the rental housing impact fee, the reimbursement of the fee as a “direct financial contribution” referenced in the *Palmer* decision and state Costa-Hawkins Act at Civil Code section 1954.52, subd. (b) to those residential rental project developers who agree in writing to provide affordable housing units in their projects; and

WHEREAS, the “direct financial contribution” will be available to developers who agree by written contract to build on site the number of affordable rental units to be determined by the City Council as part of the City’s Below Market Rate Housing Program; and

WHEREAS, the “direct financial contribution” will consist of a refund of the City’s rental housing impact fee; and

WHEREAS, the *Palmer* decision may be nullified by future litigation or legislation; and

WHEREAS, in the event that the *Palmer* decision is nullified by future litigation or legislation, the City wishes to retain the General Plan policies and programs existing prior to the November 8, 2011, election;

WHEREAS, this ballot measure provides that it will be of no further force and effect in the event that the *Palmer* decision is nullified by future legislation or litigation;

NOW, THEREFORE, THE SAN MATEO CITY COUNCIL DOES ORDAIN as follows:

Section 1. A new section H 2.4.5 is added to the City's General Plan to read:

"H 2.4.5: Private Development of Affordable Rental Housing While *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles*, 175 Cal.App.4th 1396 (2009) (the "*Palmer* decision"), Remains Valid.

This Policy H 2.4.5 is intended to address only the provision of affordable rental housing and only as long as the *Palmer* decision is valid law. With regard to ownership units, the City's the provisions at Policy H 2.4 and Program H 2.4 remain in effect. If the *Palmer* decision is nullified by either litigation or legislation, this Section 2.4.5 will cease to be of further force and effect and Section H 2.4 and Program H 2.4 will address the provision of both affordable rental and affordable ownership units.

Policy H 2.4.5: Private Development of Affordable Rental Housing. Encourage the provision of affordable rental housing by the private sector through:

1. Adopting a rental housing impact fee to fund either development of affordable rental units in the City of San Mateo or rent subsidies to render market-rate rental units affordable.
2. As a "direct financial contribution" of the kind discussed in the *Palmer* decision and the Costa-Hawkins Act at Civil Code section 1954.52, subd. (b), refund the City's rental housing impact fee if developers agree by contract to build the required number of affordable rental units on-site.
3. Requiring either payment of the rental housing impact fee or the construction of affordable rental units as a condition of project approval.
4. Providing density bonuses and priority processing for projects which qualify for density bonuses under State law.

Program H 2.4.5: Private Development of Affordable Rental Housing.

1. With regard to rental units only, amend the City's Below Market Rate Housing Program Guidelines and City of San Mateo Municipal Code, as necessary, to implement Policy H 2.4.5 as follows:
 - a. At a minimum, require all projects which include more than five residential rental units, including mixed-use projects, to pay the City's rental housing impact fee.
 - b. As the "direct financial contribution" referenced in the *Palmer* decision and the state Costa-Hawkins Act at Civil Code section 1954.52, subd. (b), refund the City's rental

housing impact fee if a developer agrees by contract to build the required number of affordable rental units on-site. With respect to construction of affordable units, the following requirements apply:

- 1) At least ten percent of the units shall be affordable. The income level to which units must be affordable to qualify for the refund of the housing impact fee shall be established by the City Council when the amount of the fee is established.
- 2) The affordable units shall be built on-site. Off-site building shall be allowed only if the proponent demonstrates that on-site construction is infeasible and any off-site units must be built in the City of San Mateo.
- 3) The affordable units shall be as similar in exterior design and appearance as possible to the remaining units in the project.
- 4) Affordable rental units shall carry deed restrictions which guarantee their affordability.”

Section 2. San Mateo Municipal Code section 27.16.050, “Affordable Housing,” is amended to read as follows:

“To implement the affordable housing goals and policies in the General Plan, the City Council adopted the Below Market Rate (BMR) Program. Specific requirements for the development of affordable units are regulated by resolution adopted by the City Council.”

Section 3. AMENDMENT OR REPEAL. Should the City Council determine that it is impossible to comply with the requirements of state law without amending the General Plan in a manner inconsistent with the purposes, intent, or operative provisions of this initiative ordinance, it shall first seek voter approval of any proposed inconsistent amendments. Failing this, it shall then seek appropriate judicial relief.

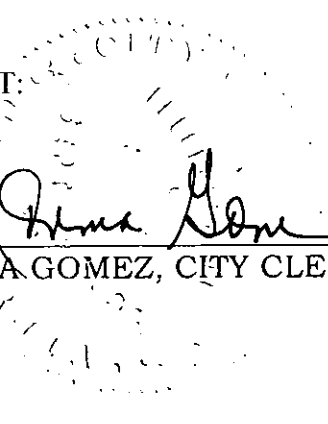
Section 4. SEVERABILITY. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

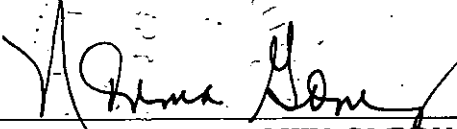
Section 5. EFFECTIVE DATE. This Ordinance shall take effect immediately thirty days after its adoption, but it shall not become operative until approved by a majority of the voters voting at the general municipal election to be held November 8, 2011.

Section 6. CEQA. In accordance with California Environmental Quality Act (CEQA) Guidelines section 15378(a), placing this measure on the ballot is not a project subject to CEQA, because it addresses solely the provision of affordable rental units and is not an action that has the potential to result in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. To the extent that the ballot measure addresses adoption of a rental housing fee, that action is exempt in accordance with CEQA Guidelines section 15378(b)(4) as the creation of a government funding mechanism which does not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment. In addition, placing this measure on the ballot is exempt in accordance with CEQA Guidelines section 15378(b)(5) as an organizational or administrative government activity that will not result in direct or indirect physical changes in the environment.


Section 7. PUBLICATION. This Ordinance shall be published in summary in the Examiner-Peninsula Edition, posted in the City Clerk's Office, and posted on the City's website, all in accord with Section 2.15 of the Charter.

ATTEST:





NORMA GOMEZ, CITY CLERK



JACK MATTHEWS, MAYOR

Ordinance No. 2011-7 introduced on July 18, 2011 and adopted on August 15, 2011 by the City Council of the City of San Mateo, California, at a regular meeting held on August 15, 2011, by the following vote of the Council:

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

NOES: NONE

ABSENT: NONE

(SEAL) /s/ NORMA GOMEZ, City Clerk