



Agenda Item No: _____

Meeting Date: December 5, 2011

SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: City Attorney

Prepared by: Robert F. Epstein, City Attorney
Lisa A. Goldfien, Dep. City Atty. II *RF*

City Manager Approval: *J. Machli*

SUBJECT:

- A. Status Report Regarding Temporary Moratorium on the Establishment and Operation within the City of San Rafael of Certain Large Group Homes that are Transitory in Nature
- B. Consideration of an Ordinance of the City Council of the City of San Rafael Adopted as an Urgency Measure Making Findings and Further Extending a Temporary Moratorium on the Establishment and Operation Within the City of San Rafael of Certain Large Group Homes that are Transitory in Nature, and Declaring the Urgency Thereof.

RECOMMENDATION:

Accept report and adopt the urgency ordinance.

BACKGROUND:

At its regular meeting on March 7, 2011, the City Council adopted Ordinance No. 1893, an urgency ordinance temporarily prohibiting the opening and operation of any “unlicensed large group home” in any zoning district within the City zoned for residential use. An unlicensed large group home is defined in the ordinance as “a residential use of real property in a residential zoning district of the City operated, on either a for-profit or not for-profit business basis, as a group home, not licensed by the State of California, for the housing of seven (7) or more unrelated adults, not including onsite managers or operators, on a month-to-month or similar transitory basis.” By its terms, the moratorium does not apply to homes that were already open and occupied on or before March 7, 2011.

Although the City Attorney has opined that the specified group home use is not permitted under the City’s current zoning ordinance, he recommended adoption of the moratorium as a precautionary measure in the

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event the City is challenged on this point. The purpose of the moratorium is to allow City planning and legal staff a measured period of time in which to conduct a thorough review of the impacts of unlicensed large group homes in various residential zones, the extensive federal and state case law governing the regulation of this use, the applicability of the City's existing zoning regulations to the use, the regulatory schemes of other California cities, and the need for any additional zoning ordinance amendments. Although the temporary moratorium is limited to unlicensed large group homes, it does not legalize any other use that is currently prohibited by the City's zoning ordinance. All issues relating to group homes of any size and nature are being studied.

The moratorium was initially set to expire on April 21, 2011. On April 4, 2011, pursuant to Government Code section 65858, the City Council adopted Ordinance No. 1894, extending the moratorium through December 31, 2011. Government Code section 65858 authorizes the City Council to adopt one more extension of the moratorium, for a period not to exceed one year.

ANALYSIS:

A. Status Report Regarding Moratorium:

Staff has spent many hours researching this complex area of law, reading and analyzing dozens of published cases from all parts of the country that have considered issues relating to group homes in order to develop an understanding of how local regulation of this use is impacted by both federal law (the Fair Housing Act, Americans with Disabilities Act, and federal constitution) and by state law. On July 27, 2011, staff from the Community Development Department and City Attorney's office, with the help of outside counsel Barbara Kautz of the Goldfarb & Lipman law firm, held a community meeting for the purpose of educating the public about the law governing the regulation of group homes and options for such regulation. Staff has also met with staff from Fair Housing of Marin and the County of Marin. Staff's research is ongoing, but substantially complete, and Staff has begun to consider several regulatory options for possible amendments to the City's zoning ordinance.

B. Extension of Moratorium Ordinance:

Community Development Department and City Attorney staff have devoted substantial time to studying the issues related to regulation of group homes; however additional time is required for drafting of possible Code amendments and the public process required for their formal consideration. Staff plans to meet with the Council subcommittee at an early date to review the issues and receive the subcommittee's comments, prior to developing options and language for amendments to the City's code. Thereafter, staff intends to convene another community meeting and to circulate possible amendments to interested parties before bringing a recommendation to the Planning Commission and City Council. Staff anticipates that public consideration of any new regulations in this area will require many more months. Therefore, it is recommended that the Council extend the moratorium for a final period of one year, through December 31, 2012.

FISCAL IMPACT:

There will be no direct fiscal impact of the Council's extension of the moratorium ordinance, other than the commitment of City Attorney and Planning staff time.

OPTIONS:

1. Adopt the urgency ordinance as proposed to extend the moratorium through December 31, 2012.
2. Adopt the urgency ordinance with a modified expiration date.
3. Do not adopt the urgency ordinance, allowing the moratorium to expire on December 31, 2011.

ACTION REQUIRED:

1. Accept status report.
2. Adopt ordinance by at least a four-fifths (4/5) vote.

ATTACHMENTS:

- A. Ordinance
- B. Proof of Publication of Public Hearing Notice

ORDINANCE NO. _____

CONSIDERATION OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL ADOPTED AS AN URGENCY MEASURE MAKING FINDINGS AND FURTHER EXTENDING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT AND OPERATION WITHIN THE CITY OF SAN RAFAEL OF CERTAIN LARGE GROUP HOMES THAT ARE TRANSITORY IN NATURE, AND DECLARING THE URGENCY THEREOF.

THE CITY COUNCIL OF THE CITY OF SAN RAFAEL, DOES ORDAIN AS FOLLOWS:

WHEREAS, the City Council has broad discretion pursuant to Article III, Sections 16 and 59 of the City Charter; California Constitution Article XI, Section 5; and the general law of the state, including but not limited to the California Planning and Zoning Law (Gov. Code §§65000 et seq.), to legislate for public purposes and for the general welfare, including but not limited to matters of public health and safety; and

WHEREAS, the City currently regulates the permitted uses of real property within the City pursuant to the provisions of its zoning ordinance, codified in San Rafael Municipal Code Title 14; and

WHEREAS, the City's zoning ordinance contains a variety of definitions that concern and/or define the residential use of real property, some of which relate to the residential use of real property operated as a single facility for the purpose of housing and/or caring for groups of unrelated adult persons with common needs and/or interests (hereinafter referred to generically as "group homes"). For example, San Rafael Municipal Code Section 14.03.030 includes the following definitions related to residential uses and/or group homes: "Bed and Breakfast Inn," "Boarding House," "Club," "Day Care Facility," "Dwelling Unit," "Residential Care Facility, large," "Residential Care Facility, small," "Household," and "Handicapped;" and

WHEREAS, the City recently has been made aware of two independent business entities that are planning to use residential property in the City in a manner not currently allowed under the City's zoning ordinance, specifically, for the operation, on either a for-profit or not for-profit business basis, of an existing single-family home in a residential zoning district of the City as a group home, not licensed by the State of California, for the housing of seven (7) or more unrelated adults, not including onsite managers or operators, on a month-to-month or similar transitory basis (hereinafter "unlicensed large group homes"); and

WHEREAS, the City Council recognizes that numerous federal and state laws govern the City's ability to regulate various kinds of group homes, whether they are serving disabled or able-bodied persons, and the Council wishes to study these laws to determine whether additional zoning regulations should and lawfully may be enacted; and

WHEREAS, pursuant to Government Code section 65858, in order to protect the public health, safety or welfare, the City Council may, by at least a four-fifths (4/5) vote and without following the procedures otherwise required prior to the adoption of a zoning ordinance, adopt an interim urgency ordinance to prohibit uses that may be in conflict with a contemplated general plan or zoning proposal that the City is studying or intends to study within a reasonable time; and

WHEREAS, the potential operation of unlicensed large group homes in residential neighborhoods of the City creates a current and immediate threat to the public safety, health, and welfare, in that such operations reasonably threaten to cause adverse impacts to surrounding neighbors, including impacts on or related to available parking, traffic, noise, outdoor lighting, sanitation, litter, outdoor gatherings, and property values; and

WHEREAS, the potential operation of unlicensed large group homes in residential neighborhoods of the City creates an additional current and immediate threat to the public safety, health, and welfare, in that such operations reasonably threaten to undermine the overall goals and purposes of the City's zoning ordinance with respect to the character of residential neighborhoods and the fostering of harmonious and workable relationships among land uses to mitigate or eliminate negative impacts caused by incompatible locations and uses; and

WHEREAS, for the reasons stated above, on March 7, 2011, the San Rafael City Council adopted Ordinance No. 1893, a 45-day moratorium on the establishment and operation of unlicensed large group homes within the residential zones of the City. The purpose of the temporary moratorium is to allow the City to (1) review and analyze the various definitions of uses of property in the City's zoning ordinance, including those enumerated in the recitals above; (2) consider potential amendments to those definitions and to the land use regulations related thereto; and (3) research, draft, and adopt appropriate definitions, land use regulations, and any other regulations, including, but not limited to business licensing regulations, governing unlicensed large group homes or other group homes; and

WHEREAS, following a public hearing on April 4, 2011, the City Council adopted Ordinance No. 1894, extending the temporary moratorium adopted in Ordinance No. 1893 through December 31, 2011; and

WHEREAS, the City Council finds that additional time is required for City staff to complete the drafting of appropriate amendments to the City's Municipal Code and to hold required meetings and public hearings for adoption of any such amendments, and that therefore the temporary moratorium adopted in Ordinance No. 1893 should be further extended; and

WHEREAS, as required pursuant to Government Code section 65858, the City Council has received and accepted a report from City staff on the measures taken to alleviate the condition which led to the adoption of the ordinance; and

WHEREAS, the City Council hereby finds that it can be seen with certainty that there is no possibility that the extension of the temporary moratorium ordinance may have a significant effect on the environment, since this ordinance does not authorize construction or installation of any facilities and, in fact, imposes greater restrictions on such construction and installation in

order to protect the public health, safety and general welfare. This ordinance is therefore exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations.

NOW, THEREFORE, the City Council of the City of San Rafael does hereby ordain as follows:

DIVISION 1. -- FINDINGS.

Pursuant to the provisions of Government code section 65858, the City Council of the City of San Rafael hereby finds as follows:

1. The above recitals are true and correct and incorporated herein by reference.
2. Based on the recitals above, the City Council hereby finds and determines that the establishment or commencement of operation of unlicensed large group homes in zoning districts zoned for residential use in the City prior to the City completing a study of the existing and potential impacts and regulation of such use would pose a current and immediate threat to the public peace, health, safety, and welfare, and that a temporary moratorium on the establishment of such use is therefore necessary.
3. This ordinance is necessary as an urgency measure to preserve the public peace, health or safety.

DIVISION 2. -- EXTENSION OF MORATORIUM.

1. The temporary moratorium adopted by City of San Rafael Ordinance No. 1893 and extended by Ordinance No. 1894 is hereby further extended to and including December 31, 2012.
2. During the term of this temporary moratorium, no unlicensed large group home, as defined in this ordinance shall be opened and/or operated in any zoning district within the City that is zoned for residential use; provided that this moratorium shall not apply to any such business that was open and occupied by seven (7) or more unrelated adult tenants/clients (not including onsite managers or operators) on or before March 7, 2011, as demonstrated by a notarized declaration under penalty of perjury certifying to such occupancy and submitted to the City upon written demand.
3. City staff is directed forthwith to (a) continue to review and analyze the applicable law concerning regulation of unlicensed large group homes; (b) consider and draft appropriate definitions, land use regulations, and any other regulations, including, but not limited to business licensing regulations, governing unlicensed large group homes or other group homes; and (c) begin the review of its recommendations through the required public process.

4. For purposes of this temporary moratorium, the following terms shall have the following meanings:

A. "Group home" shall mean a residential use of real property operated as a single facility for the purpose of housing and/or caring for a group of unrelated adult persons with common needs and/or interests.

B. "Unlicensed large group home" shall mean a residential use of real property operated, on either a for-profit or not for-profit business basis, as a group home, not licensed by the State of California, for the housing of seven (7) or more unrelated adults, not including onsite managers or operators, on a month-to-month or similar transitory basis.

5. Violations of this temporary moratorium may be charged as infractions or misdemeanors as set forth in Section 1.16.060 of the San Rafael Municipal Code or may be deemed a public nuisance and may be enforced by an action for injunction or civil penalties as provided in Section 1.42.020, or any other remedy authorized by law.

6. The San Rafael City Manager is hereby authorized to direct all City Departments, including the Code Enforcement Division of the Community Development Department and the City Attorney to facilitate compliance with the purpose and intent of this temporary moratorium using the enforcement powers described in the preceding paragraph.

DIVISION 3. – EXPIRATION DATE.

Pursuant to the pertinent provisions of Government Code section 65858, this interim urgency ordinance shall expire and shall be of no further force and effect after December 31, 2012.

DIVISION 4. – SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted the ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases are declared invalid.

DIVISION 5. URGENCY.

This ordinance is hereby declared to be an urgency measure and shall become effective immediately upon adoption by at least a four-fifths (4/5) vote of the City Council pursuant to Government Code section 65858. The City Clerk is directed to publish forthwith a copy of this Ordinance, together with the names of those Councilmembers voting for or against same, in a

newspaper of general circulation published and circulated in the City of San Rafael, County of Marin, State of California.

GARY O. PHILLIPS, Mayor

ATTEST:

ESTHER C. BEIRNE, City Clerk

I, ESTHER C. BEIRNE, City Clerk of the City of San Rafael, certify that the foregoing Ordinance was passed by the City Council of the City of San Rafael, California, by a vote of at least four-fifths (4/5) of the members thereof, at a regular meeting held on Monday, the 5th day of December, 2011, by the following vote, to wit:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ESTHER C. BEIRNE, City Clerk

Marin Independent Journal

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PROOF OF PUBLICATION (2015.5 C.C.P.)

STATE OF CALIFORNIA
County of Marin

FILE NO. 0004249214

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above matter. I am the principal clerk of the printer of the MARIN INDEPENDENT JOURNAL, a newspaper of general circulation, printed and published daily in the County of Marin, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Marin, State of California, under date of FEBRUARY 7, 1955, CASE NUMBER 25566; that the notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

11/25/2011

I certify (or declare) under the penalty of perjury that the foregoing is true and correct.

Dated this 25th day of November, 2011.



Signature

PROOF OF PUBLICATION

Legal No. 0004249214

CITY OF SAN RAFAEL

NOTICE OF PUBLIC HEARING

The City Council of the City of San Rafael will hold a public hearing concerning:

An Ordinance of the City Council of the City of San Rafael Adopted as an Urgency Measure Making Findings and Further Extending a Temporary Moratorium on the Establishment and Operation within the City of San Rafael of Certain Large Group Homes that are Transitory in Nature, and Declaring the Urgency Thereof

DATE/TIME: Monday, December 5, 2011, at 8:00 p.m.

LOCATION: City Hall Council Chambers
1400 Fifth Avenue San Rafael

PURPOSE: Public Hearing to receive public comments and to consider adoption of the proposed ordinance.

IF YOU CANNOT ATTEND: You may send a letter with your comments regarding the proposed ordinance to Esther C. Beirne, City Clerk, City of San Rafael, P.O. Box 151560, San Rafael, CA 94915-1560. You may also hand deliver a letter to the City Clerk prior to the meeting on December 5, 2011.

FOR MORE INFORMATION: You may contact Paul Jensen, Community Development Director, at (415) 485-3085. Office hours are Monday through Friday, 8:30 a.m. to 5:00 p.m.

SAN RAFAEL CITY COUNCIL
/s/ ESTHER C. BEIRNE
ESTHER C. BEIRNE, City Clerk

NO. 1882 November 25, 2011