



CITY OF SAN MATEO

City Hall
330 W. 20th Avenue
San Mateo CA 94403
www.cityofsanmateo.org

Administrative Report

Agenda Number: 9., Status: New Business

File ID: 2018-231

TO: City Council
FROM: Shawn M. Mason, City Attorney
PREPARED BY: City Attorney's Office
MEETING DATE: Monday, March 05, 2018

SUBJECT:
Urgency Ordinance Imposing a Moratorium on Rental Housing Projects

RECOMMENDATION

Adopt an Urgency Ordinance imposing a moratorium on specified rental housing development projects.

BACKGROUND

Introduction

In 1991, San Mateo voters enacted Measure H. This measure amended the city's general plan to include several policies and programs. Among these were a requirement for the city to adopt an inclusionary housing ordinance requiring that residential projects provide a specified percentage of below market rate (BMR) units. The policies and programs enacted in Measure H were extended in 2004 through the passage of Measure P.

With one limited exception, Measure P requires that projects provide the BMR units on-site. In addition, Measure P expressly prohibits the use of in lieu fees as a means of satisfying the BMR requirement.

In 2009, the Second Circuit of the California Court of Appeal issued an opinion (the *Palmer* decision) in which it concluded that inclusionary housing ordinances like the one established in Measure P were preempted by the Costa Hawkins Act. Late last year, the California Legislature adopted AB 1505 which sought to reaffirm the authority of cities and counties to adopt and impose inclusionary housing requirements.

While AB 1505 clearly enables inclusionary housing ordinances, the bill did add a requirement for such ordinances that creates some uncertainty and risk with regard to the ongoing viability of the inclusionary housing program established by Measure P.

Potential Conflict between AB 1505 and Measure P

California Government Code section 65850 lists the types of regulations that may be included in a zoning ordinance. AB 1505 added to this list a subdivision (g) which includes regulations establishing inclusionary housing requirements. However, the new subdivision provides that an inclusionary housing ordinance "shall provide alternative means of compliance that may include, but are not limited to, in-lieu fees, land dedication, off-site construction, or acquisition and rehabilitation of existing units."

Measure P dictates that BMR units be provided on-site and prohibits in-lieu fees as a means of satisfying the BMR requirement. While the measure authorizes off-site construction of units when the provision of units on-site is "infeasible," it is conceivable that a developer might argue, and a court agree, that this provision does not satisfy the requirement that inclusionary ordinances provide the "alternative means of compliance" AB 1505 now requires. If this were to occur, the city's ability to continue to impose its BMR requirement would be

threatened.

Why a moratorium?

The city council is not able to simply amend the city's inclusionary housing ordinance to address the potential conflict with AB 1505. The features of the city's inclusionary housing requirement are dictated by the provisions of Measure P, a voter adopted initiative. As such, amendments to the provisions of the ordinance may be proposed by the city council, but must be approved by the voters. In addition, before the city council could submit a measure to the voters at an election, the city must conduct appropriate environmental analysis of the proposal under the California Environmental Quality Act (CEQA).

Developing proposed amendments and preparing the appropriate environmental analysis requires time. The concern is that while this process is underway, a developer might propose a project and challenge the city's ability to impose its BMR requirement. There are several residential projects on the horizon that are just about to enter the formal review stage, and the city would like to insure it has the ability to impose its longstanding BMR requirement on the projects to the extent it is legally able.

The moratorium ordinance submitted with this report would provide the city council with the time it needs to develop and present for voter approval a measure to address the potential conflict with AB 1505. The ordinance contains legislative findings describing the problem and explains how the potential legal challenge to the city's BMR program adversely affects the public health, safety, and general welfare. It should also be noted that the proposed ordinance would not stop all residential development. It would exclude and allow for the review and approval of projects that receive city funding (typically, lower income housing projects), as well as those projects that agree to accept a condition that they will comply with the city's current BMR requirement.

Procedure

City law and state law both contain provisions for the enactment of moratorium ordinances on urgency basis to protect the public health, safety, and general welfare. City law expressly provides that the provisions of the city's charter and zoning code apply, and that the provisions of state law do not. In an abundance of caution, it is recommended at this point to comply with both sets of rules.

Under the city's laws, the council may enact an urgency moratorium which goes into effect immediately; however, such an ordinance will only remain in effect for 90 days, unless extended. In addition, no ordinance may extend the moratorium beyond 2 years after the date the moratorium was originally adopted.

Under state law, the city council may adopt an urgency moratorium that is valid for 45 days. The city council could then adopt an extension that could remain in effect for 10 months and 15 days.

BUDGET IMPACT

The adoption of the moratorium ordinance will have no effect on the city budget.

ENVIRONMENTAL DETERMINATION

For the reasons stated in the ordinance, the adoption of the moratorium ordinance is exempt from CEQA.

NOTICE PROVIDED

All meeting noticing requirements have been satisfied.

ATTACHMENTS

Att 1 - Proposed Urgency Ordinance

STAFF CONTACT Shawn M. Mason, City Attorney
smason@cityofsanmateo.org

(650)522-7020