

ORDINANCE NO. 1900

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.

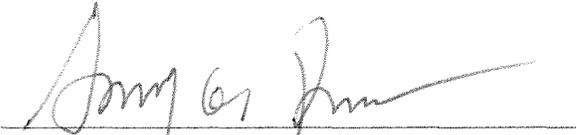
Pursuant to the pertinent provisions of Government Code section 65858, this interim urgency ordinance shall expire and shall be of no further force and effect after December 31, 2012.

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:

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| AYES: | Councilmembers: | Connolly, Heller, Levine, McCullough & Mayor Phillips |
| NOES: | Councilmembers: | None |
| ABSENT: | Councilmembers: | None |


ESTHER C. BEIRNE, City Clerk