



*San Rafael*

Agenda Item No: 4a.

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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**FOR CITY CLERK ONLY**

File No.: \_\_\_\_\_

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Disposition: \_\_\_\_\_

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

# 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