URGENCY

NUMBER:

TITLE: AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS ENACTED PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858 ADOPTING A MORATORIUM ON THE ISSUANCE OF DEMOLITION PERMITS FOR STRUCTURES PROVIDING AFFORDABLE HOUSING UNITS

HISTORY: This Ordinance was introduced and adopted by the City Council at its meeting of __________, 2017, upon motion by ________. Said Ordinance was duly passed and published in accordance with the law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: APPROVED:

_________________________ ____________________________
Mary Lavelle, City Clerk Rich Tran, Mayor

APPROVED AS TO FORM:

_________________________
Christopher J. Diaz, City Attorney
RECITALS:

WHEREAS, the ongoing availability of affordable housing is of critical importance to the City of Milpitas and its residents; and

WHEREAS, in 2013, a survey of residential rental rates showed that, while the maximum affordable rent was estimated at $608/month for extremely low income households, $1,138 for very low income households, and $1,935 for low income households, the average rent in the City of Milpitas for a 2-bedroom, 2 bathroom rental unit was some $1,986;¹ and

WHEREAS, the U.S. Department of Housing and Urban Development (‘HUD’) has revised its income limits for 2017. In Santa Clara County, home to the City of Milpitas, the HUD median income is now set at $113,300, an increase of some $6,200, over the comparable 2016 figure. HUD income limits for a family of four in Santa Clara County are currently set at $84,750 (low income), $59,700 (very low income), and $35,800 (extremely low income);² and

WHEREAS, “households are considered ‘cost burdened’ if housing costs exceed 30 percent of household income and are considered severely cost burdened if housing costs exceed 50 percent of household income;” and in Milpitas, some 44% of renter households had housing costs that exceed this affordability threshold (for the period 2006-2010, the last period for which data is currently available);³ and

WHEREAS, while the population of the City of Milpitas was some 66,790 as of the 2010 census, and was estimated to have grown to 77,528 by July 2016,⁴ a recent survey of deed-restricted affordable units within the City showed there were only 1,248 such units to serve the entire population;⁵ and

WHEREAS, the Housing Element of the City of Milpitas, as updated in 2015, identifies as one of its six major goals “[m]aintain and preserve housing resources. Maintain high-quality residential neighborhoods and preserve existing housing resources, including units affordable to extremely low, very low, low, and moderate-income households and market rate units,”⁶ and

WHEREAS, the 2014-2020 Regional Housing Needs Allocation for the City of Milpitas identifies the need for 570 new Low Income units and 1,004 Very Low Income units within the City of Milpitas in addition to those already in existence within the City;⁷ and

WHEREAS, the Housing Element likewise calls for the City to “[m]aintain the existing stock of housing affordable to extremely low, very low, low, and moderate income households that is provided through the private market and provide tenant protections for apartment units at risk of condominium conversion;”⁸ and

¹ Milpitas Housing Element, Table 3.17, p. 30
² U.S. Department of Housing and Urban Development, FY 2017 Income Limits, effective 04/14/2017
³ Milpitas Housing Element, p. 30
⁴ U.S. Census Bureau, Census 2010 Population and 2016 Population Estimate (as of July 1, 2016)
⁵ Milpitas Housing Element, Table 3.18, p. 33
⁶ Milpitas Housing Element, Housing Goal B, p. 93
⁷ City of Milpitas Housing Element Update 2015-2013 (adopted April 28, 2015) (hereafter, “Milpitas Housing Element”), Table 4.1, p. 51
⁸ Milpitas Housing Element, Housing Policy B.5, p. 97
WHEREAS, in order to facilitate the production of new affordable housing, in 2015, the City Council, by adoption of Resolution 841, adopted a requirement that 5% of units in new for-sale residential projects initiated in the City after June 2015 be sold at prices affordable to low and very low income households, or the developer could make an in-lieu payment at 5% of the building permit valuation. Resolution 841 does not incentivize the creation of new rental housing, however; and

WHEREAS, Resolution 841 was adopted by the City Council as an interim measure, with further evaluation and analysis of affordable housing measures being necessary; and

WHEREAS, at its February 2, 2016, meeting, the City Council considered information gathered by the Santa Clara County Housing Task Force, and resolved, through the unanimous adoption of Resolution 8523, to consider the adoption of various measures to advance affordable housing in the City, potentially including inclusionary zoning, an affordable housing impact fee, the prioritization of City-owned land for use for affordable housing purposes, zoning actions to facilitate the development of affordable housing, and/or the adoption of a Community Plan to End Homelessness; and

WHEREAS, the preservation of affordable housing of all types within the City of Milpitas is a matter of critical concern, as housing costs continue to rise and the City’s population continues to grow; and

WHEREAS, the City Council of the City of Milpitas has directed staff to research and bring back for Council’s consideration draft measures to preserve existing and produce more affordable housing in the City; and

WHEREAS, the loss of existing affordable housing during the period in which staff is undertaking such work would exacerbate an already tight affordable housing market; and

WHEREAS, the ongoing availability of housing affordable to individuals of all income levels within the City serves the public health, safety, and welfare; and

WHEREAS, this Ordinance is adopted pursuant to the City's police powers, afforded by the state constitution and state law to protect the health, safety, and welfare of the public.

NOW THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. INCORPORATION OF RECITALS

The City Council hereby finds that all of the foregoing recitals and the staff report presented herewith are true and correct and are hereby incorporated and adopted as findings of the City Council as if fully set forth herein.

SECTION 2. FINDINGS

The City Council hereby finds, determines and declares that this Urgency Ordinance adopted pursuant to California Government Code Section 65858 is necessary because:

A. The affordable housing need within the City of Milpitas has outpaced the production of affordable housing, making existing affordable housing a precious resource desperately sought and needed by many community members.
B. For the immediate preservation of the public health, safety, and welfare, the City Council finds that it is necessary to adopt a moratorium on the issuance of demolition permits for any structure that currently provides affordable housing, as defined herein.

C. Without the imposition of this urgency ordinance, the City’s minimal stock of existing affordable housing could be further depleted, if such units are lost to demolition, as the City researches and considers the most appropriate means of comprehensively addressing the affordable housing shortage.

D. There is a current and immediate threat to the public health, safety, and welfare of the City and its community, thereby necessitating the immediate enactment of this urgency ordinance in order to ensure that existing affordable housing resources are not lost to the demolition without rules and regulations in place that would assist in replacing the lost units.

SECTION 3. URGENT NEED

Based on the foregoing recitals and findings, all of which are deemed true and correct, this interim ordinance is urgently needed for the immediate preservation of the public health, safety, and welfare. This Interim Urgency Ordinance shall take effect immediately upon adoption and shall be of no further force and effect forty-five (45) days following the date of its adoption unless extended in accordance with the provisions set forth in Government Code Section 65858.

SECTION 4. MORATORIUM

Except as set forth in Sections 6 and 7 below, the City of Milpitas hereby declares a moratorium on the issuance of demolition permits for all structures providing affordable housing units in existence as of the passage date of this urgency ordinance until such time as the earlier of either (a) the City concludes the review described above, or (b) the expiration of this urgency ordinance, as it may be extended. During the term of this urgency ordinance, an applicant may submit a demolition permit application, and said application may be processed by City staff, but no such permit shall be issued until either the moratorium has concluded, applicant has secured an exception through the process set forth in Section 6 below, or applicant has otherwise sought and been granted relief from the moratorium through the process set forth in Section 7 below.

SECTION 5. DEFINITIONS

For purposes of this ordinance, the following definitions shall apply:

A. “Affordable housing unit” shall mean any residential dwelling with a rental rate (1) restricted by a document recorded in the Official Records of the County of Santa Clara to levels affordable to extremely low, very low, lower, or moderate income households, as defined by California Health & Safety Code §§ 50105, 50106, 50079.5, and 50093, or (2) subsidized by the state or federal government, including the U.S. Department of Housing and Urban Development.

B. “Demolition permit” shall mean the authorization to demolish a building in the City of Milpitas, as governed by Milpitas Municipal Code Title II (‘Building Regulations’), Chapter 2 (‘Moving and Demolition’), Section 11 (‘Demolition of Buildings’).

SECTION 6. EXCEPTIONS
A. The moratorium on the issuance of demolition permits to structures providing affordable housing units shall not pertain to any demolition permit associated with, required by, or necessary for a development project that was approved by the applicable approval authority on or before June 20, 2017.

B. During the term of this urgency ordinance, a demolition permit may be issued if the City determines that the structure to be demolished is unsafe or a public nuisance, per Milpitas Municipal Code Chapter V-500 (‘Neighborhood Beautification’) or V-1100 (‘Expanded Public Nuisance Abatement Procedure’).

C. During the term of this urgency ordinance, a demolition permit may be authorized by the City Council, on a case-by-case basis, if the applicant submits a written request for such approval to the Planning Director requesting the City Council grant relief from the terms of this urgency ordinance. The written request shall consist of the standard demolition permit application, plus all applicable fees, coupled with an explanation of how the issuance of a demolition permit for a structure containing an affordable housing unit (as defined herein) will not result in the loss of affordable housing units in the City of Milpitas.

SECTION 7. RELIEF FROM MORATORIUM

During the term of this urgency ordinance, any applicant who is unable to secure a demolition permit as a result thereof may petition the City Manager for relief. Such petition shall be made in the form of a written submission to the City Manager, detailing any and all contentions applicant may have that the urgency ordinance, as applied to applicant, would be unlawful under applicable local, state, or federal law or regulation. Within fifteen business days of receipt of the completed request for relief, the City Manager shall render a written decision as to whether or not to grant applicant’s request for relief from this urgency ordinance. Said determination shall be final and not appealable.

SECTION 8. AUTHORITY

This interim urgency ordinance is enacted pursuant to the authority conferred upon the City Council of the City of Milpitas by Government Code 65858, and therefore shall be in full force and effect immediately upon its adoption by a four-fifths (4/5) vote of the City Council. This interim urgency ordinance shall continue in effect for forty-five (45) days from the date of its adoption and shall thereafter be of no further force and effect unless, after notice pursuant to Government Code Section 65090 and a public hearing, the City Council extends this interim urgency ordinance for an additional period of time pursuant to Government Code 65858. Government Code 65858 further provides that such an urgency measure may be extended following compliance with that section for up to an additional twenty-two (22) months and fifteen (15) days beyond the original forty-five (45) day period.

SECTION 9. COUNCIL DIRECTION

During the period of this ordinance, and any extension thereof, the City Council directs staff to (1) continue researching measures to preserve and facilitate the production of affordable housing within the City of Milpitas for further Council action within a reasonable time, and (2) issue a written report describing the measures which the City has taken to address the conditions which led to the adoption of this ordinance with the City Council ten (10) days prior to the expiration of this interim urgency ordinance, or any extension thereof, and such report shall be made available to the public.
SECTION 10. CEQA

This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act (“CEQA”) Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The City Council further finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Ordinance is nonetheless exempt from the requirements of CEQA in that the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of Santa Clara in accordance with CEQA Guidelines.

SECTION 11. SEVERABILITY

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 12. ORDINANCE PREVAILS

To the extent that any other provision of local law is inconsistent with this Ordinance, the provisions of this Ordinance shall prevail. This Ordinance shall supersede all other previous City Council resolutions and ordinances that may conflict with, or be contrary to, this Ordinance.

SECTION 13. CODIFICATION

This Ordinance shall not be codified in the Milpitas Municipal Code.

SECTION 14. CUSTODIAN OF RECORDS

The documents and materials that constitute the record of proceedings on which this Ordinance is based are located at the City Clerk’s office located at 455 East Calaveras Blvd., Milpitas, CA 95305. The custodian of these records is the City Clerk.

SECTION 15. CERTIFICATION

The City Clerk shall certify as to the adoption of this Urgency Ordinance and shall cause it to be published within fifteen (15) days of the adoption and shall post a certified copy of this Urgency Ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with California Government Code Section 36933.