Atascadero City Council
Staff Report – City Attorney

Interim Urgency Ordinance Establishing a Moratorium on Conversion of Residential Units to Condominiums

RECOMMENDATION:
Council adopt the attached Draft Interim Urgency Ordinance establishing a moratorium on conversions of residential units to condominiums. This action extends the moratorium for 12 months.

DISCUSSION:
Background: On March 28, 2006, the City Council adopted an urgency ordinance that established a moratorium on conversions of residential units to condominium for 45 days. On May 9, 2006, the Council extended the urgency ordinance for 10 months and 15 days (to March 27, 2007). This urgency ordinance would extend the moratorium for 12 months, which is the maximum time that Council may extend the moratorium. The Council could extend the time for a shorter period of time.

Staff has held two meetings to discuss and review the condominium conversion ordinance, those being on June 14, 2006 and February 20, 2007. At the last meeting Council gave direction to Goldfarb & Lipman, consultants the City has retained on this matter to prepare a draft ordinance for consideration of the Council. It is anticipated that the revised ordinance will be enacted before the expiration of the moratorium period. Staff has also attached a written report on the progress being made to alleviate those conditions that lead to the adoption of the moratorium.

The moratorium was enacted because the City of Atascadero has received an increasing number of applications and inquiries from apartment owners interested in converting their rental units into for-sale condominiums. The issue was presented to the Council on September 9, 2005 and on March 14, 2006, and the Council expressed interest in exploring ways to control the rate of condominium conversions and to preserve the City’s affordable housing stock.
Prior History

Over the years, typically during times when housing prices have been disproportional to rental levels, there has been an interest by individual property owners in converting existing rental units to ownership housing. Many communities have responded to the concerns with regard to these conversions—typically rental housing and tenant protection issues—through the adoption of condominium conversion regulations. The City of Atascadero did this in 2000, with the adoption of Chapter 11-12 of the City’s Code. Chapter 11-12 regulates the process for the conversion of apartments to condominiums including the application process, tenant provisions, hearing requirements, and property improvement standards. The Chapter does not address controlling the rate of conversions and the preservation of affordable housing stock in the City.

In 2002, the City Council adopted a General Plan for the City, and the Housing Element provides:

“Goal HOS 3: Ensure that an adequate amount of rental housing exists.”
“Policy 3.1: Ensure that the proportion of low and moderate housing is not significantly reduced.”

The City retained the firm of Goldfarb Lipman LLP to review the condominium ordinance. In particular, staff and Goldfarb Lipman LLP is to study and give options to the Council on reducing the rate of condominium conversions, including requirements for retention existing affordable housing units and any additional protections for tenants. The review will also evaluate the development standards and whether CC&Rs should be required on future condominium conversions. The purpose of the review is to ensure, as required by the City’s General Plan, that the proportion of low and moderate housing in the City is not significantly reduced. The City Council completed the study and review with Goldfarb Lipman at a special meeting held by the Council on February 20, 2007.

The City Council may, pending a study of a contemplated zoning proposal, adopt a temporary interim ordinance, as an emergency measure. Interim ordinances enacting moratoria and other growth management measures are lawful exercises of the police power and do not amount to a temporary taking under First English Evangelical Church v. County of Los Angeles (1987) 482 U.S. 304, 320 so long as they do not “go too far.”

In California an interim moratorium ordinance must be adopted pursuant to Government Code section 65858, which prohibits approval of new development plans so that a City can re-evaluate its land use policies. The ordinance is lawful provided the period of delay is reasonable and there are valid governmental reasons justifying its adoption. (Tahoe-Sierra Preservation Council v. Tahoe Reg’l Planning Agency (2002) 535 U.S. 302, 353; First English Evangelical Church v. County of Los Angeles, supra at 320.)

The moratorium may be extended for a period of 12 months. This is the absolute maximum time permitted for a moratorium. The extension requires notice and a hearing by the Council. The ordinance must contain legislative findings that there is a
current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building permits, or other applicable uses which is required in order to comply with a zoning ordinance would result in a threat to public health, safety, or welfare. Ten days prior to the expiration of the interim ordinance or any extension, the City Council must issue a written report describing the measures that have been taken to alleviate the condition which led to the adoption of the ordinance.

FISCAL IMPACT:

None.

ALTERNATIVES:

- Adopt the attached Ordinance;
- Modify and adopt the attached Ordinance;
- Do not extend the moratorium and therefore, do not adopt the attached Ordinance;
- Provide direction to Staff.

ATTACHMENTS:

1. Urgency Ordinance
2. Written Report
DRAFT ORDINANCE

AN URGENCY ORDINANCE OF THE CITY OF ATASCADERO
EXTENDING THE MORATORIUM ON CONDOMINIUM
CONVERSIONS, AND DECLARING THE URGENCY THEREOF

The City Council of the City of Atascadero DOES ORDAIN AS FOLLOWS:

Section 1. Findings

A. The City’s Housing Element to its General Plan provides as one of its goals that there be an adequate amount of rental housing in the City. Policy 3.1 of the Housing Element requires that the Council “ensure that the proportion of low and moderate housing is not significantly reduced.”

B. In the last 18 months, the City has seen a significant increase in the number of applicants with multi-family projects requesting a condominium conversion.

C. The City has received applications for the conversion of 60 rentals to condominiums; inquiries have been made about the conversion of an additional 200 rental units.

D. If all of these rental units were converted to condominiums, it would represent the loss of over 12 percent of the 2,100 rental units in the City.

E. The City Council has retained Goldfarb Lipman LLP to review and study the City’s condominium conversion ordinance regarding the preservation, acquisition of the City’s multifamily rental units, and to examine the need for inclusionary housing and/or fees for the loss of low and moderate income housing.

F. The temporary condominium conversion moratorium was for 45-days, and the Council did not have the opportunity to consider or enact any appropriate regulations, amendments, and/or clarifications to the City’s Condominium Conversion Ordinance within that short timeline.

G. On May 9, 2006, the City Council adopted Urgency Ordinance No. 495 extending the temporary condominium conversion moratorium for an additional 10 months and 15 days regarding the review and/or approval of condominium conversions for buildings. The Council found that this extension was necessary in order to permit the City the time to conduct research and consider appropriate regulations, amendments and/or clarifications to protect the public health, safety, welfare and economic prosperity of the City.

H. A final report from Goldfarb Lipman, LLP has not been received; however, the consultant and the City Council have preliminarily concluded that the conversion of a significant number of multifamily units to condominiums in the City will produce economic inequities which may be exacerbated by a lack of rental units. Additionally, City Staff has conducted research to ascertain how surrounding jurisdictions address condominium conversions.

I. Consequently, at a City Council meeting on February, 20, 2007, the Council directed City Staff to draft an ordinance amending the City’s Zoning Code and
applicable Subdivision Ordinances to reflect appropriate changes addressing condominium conversions.

J. However, since the final study has not been completed, the City needs additional time to continue to study the extent to which the conversion of rental units to condominiums are affecting the affordability of rental units and the impacts of increasing rental prices on very low- and moderate-income residents in the City. In the meantime, if a temporary moratorium on condominium conversions is not extended for an additional one year, as permitted by State law, substantial rent increases are likely to occur. Such increases would defeat the intent and purpose of the City’s General Plan policy of protecting the proportion of low and moderate housing in the City.

Section 2. Imposition of Moratorium

The City Council hereby declares that a temporary condominium conversion moratorium on the review and/or approval of the condominium conversions for buildings is necessary in order to permit the City the time to conduct research and consider appropriate regulations, amendments and/or clarifications to protect the public health, safety, welfare and economic prosperity of the City.

Section 3.

While this Ordinance remains in effect, no permit, other applicable entitlement, which entails in whole or in part the conversion of any existing rental housing or on residential structures to residential condominiums or community apartment projects within the City shall be issued, except as specified in Section 13 below.

Section 4.

While this Ordinance remains in effect, no person, firm, partnership, association, corporation, company or organization of any kind shall convert, in whole or in part, or attempt to convert, in whole or in part, any existing rental housing to residential condominium within the City, except as specified in Section 13 below.

Section 5.

Pursuant to the provisions of California Government Code section 65858, this Ordinance is adopted as an urgency interim zoning ordinance and shall take effect immediately. The facts demonstrating the urgency that forms the basis for this ordinance are as follows:

A. According to the City’s General Plan adopted in 2002, in 2001 there were approximately 9,663 total housing units in the City. Of this total, there were approximately, 3,062 units in multi-family structures (31.7% of all City housing) and 3,282 renters. According to the 2000 Census data, there were approximately 9,531 households, 3,282 or 34% of which were renters;

B. The City has most recently experienced an unprecedented increase in applications seeking to convert existing rental housing to residential condominiums;

C. The approval or adoption of additional such condominium conversions within the City of Atascadero would result in a threat to public health, safety and welfare in that they could alter, in a radical and fundamental manner, the current way of life for the City’s residents. By their unique characteristics and requirements, conversion projects tend to magnify the effects associated with higher urban densities to the point where public health, safety, welfare, and economic prosperity of the City are significantly affected. Such projects may conflict with the City’s policy, set forth in the General Plan, to provide a reasonable balance of rental and ownership housing within the City, to provide a variety of individual choices of tenure, type, price and location of housing and to maintain the supply of rental housing for low and moderate income persons and families. It is thus necessary to establish a temporary moratorium to allow for: (1) research and study to determine how to address this use, the type of
regulation that may be imposed on this use, and the potential impact this use may have on the City’s neighborhoods; and (2) the preparation and presentation of any proposed ordinance, amendments or regulations to address this use.

D. It is necessary that this Ordinance go into effect immediately in order to maintain the City’s environment pending the outcome of the above-referenced research, study, and analysis, which may dictate the need to further regulate such condominium conversions and which, in turn, will help the City Council better understand the detrimental effects, if any, should such condominium conversions be allowed to proceed at a pace which, based on past experience, conversions will continue to occur but for the adoption of this interim ordinance;

E. It is necessary that this interim Ordinance remain in effect until the afore-referenced research, study and analysis have been completed and the recommendations of Planning Department staff and the Planning Commission can be received and considered by the City Council and the City Council, in turn, can consider amendment of the City’s Condominium Conversions Ordinance or otherwise regulate future conversions.

Section 6.

The City Council therefore finds that there is a current and immediate threat to the public health, welfare, and that the approval of additional condominium conversions through the issuance of permits authorizing such activities would result in a threat to, or breach of, that public health and welfare.

Section 7.

The City Council hereby finds that adoption of this Ordinance will not have the effect of denying approvals needed for the development of projects with a significant component of multifamily housing.

Section 8.

Pursuant to Government Code Section 36937(b), this interim urgency Ordinance shall take effect immediately upon its passage and adoption.

Section 9.

Pursuant to Government Code Section 65858, this Ordinance shall expire on a date one year following the date of its passage and adoption, or at such earlier time as the City Council acts to repeal this Ordinance and replace it with a successor Ordinance.

Section 10.

At least ten days prior to the expiration period provided for in Section 9, the City Council shall issue a written report describing any measures taken to alleviate those conditions herein referenced which lead to the adoption of this Ordinance.

Section 11.

This Ordinance or a comprehensive summary thereof shall be published once in a newspaper of general circulation in the City of Atascadero within 15 days after its adoption.

Section 12.

The adoption of this interim ordinance is exempt from the California Environmental Quality Act (“CEQA”) pursuant to sections 1506l(b)(3), 15262 and 15306 of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that such adoption may have significant effect on the environment; such adoption involves only feasibility and planning studies for possible future adoption of an ordinance that has not yet been prepared or adopted. In addition, the adoption of this interim ordinance is partially exempt from CEQA pursuant to Section 15303 of the CEQA Guidelines in that it primarily pertains to the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure.

Section 13.
This Ordinance shall continue to apply to all applications filed on or after March 1, 2006.

Section 14.

This Ordinance shall be liberally construed to accomplish its intended purposes. Nothing contained in this Ordinance is intended to limit the continuation of lawful nonconforming uses or structures.

Section 15.

Severability. The City Council hereby declares that should any section, paragraph, sentence, phrase, term, or word of this Ordinance hereby adopted be declared for any reason to be invalid, it is the intent of the City Council that it would have adopted all other portions of this Ordinance irrespective of any such portion declared invalid.

INTRODUCED, PASSED and ADOPTED at a regular meeting by the City Council of the City of Atascadero, State of California, on March 13, 2007 by the following roll call vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST: ________________________________

CITY OF ATASCADERO

Marcia McClure Torgerson, C.M.C.,
City Clerk

Dr. George Luna, Mayor

APPROVED AS TO FORM:

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Patrick L. Enright, City Attorney
Since the adoption of the moratorium on the approval of condominiums conversion on March 28, 2006, staff has been in the process of researching and analyzing the issue. The City has held numerous public meetings and study session to discuss the issue. Staff expects to have a report ready for Council consideration in Summer 2007.