TO:        HONORABLE CITY COUNCIL
FROM:      CITY MANAGER
DEPARTMENT: PLANNING AND COMMUNITY ENVIRONMENT
DATE:    OCTOBER 10, 2006
CMR:389:06
SUBJECT: ADOPTION OF AN URGENCY ORDINANCE AMENDING SECTION 18.10.070 “SECOND DWELLING UNITS” OF THE PALO ALTO MUNICIPAL CODE TO PROHIBIT INDIVIDUAL SALE OF SECOND UNITS IN THE RMD AND R-2 ZONING DISTRICTS

RECOMMENDATION
The Planning and Transportation Commission (Commission) and staff recommend that the City Council adopt an Ordinance (Attachment A) on an urgency basis, prohibiting new airspace condominiums within existing buildings within the RMD and R-2 zone districts.

BACKGROUND
A recent approval of an application for airspace condominiums on a property zoned RMD at 610 California was appealed and heard by the Planning and Transportation Commission on September 27, 2006. The Commission voted 5-2 to recommend that the Council uphold the Director’s approval of the application. The Council will hear the appeal at its meeting on October 23, 2006. The project raised concerns that the approval would set precedent for other, similar applications for airspace condominiums which would conflict with the intent of the RMD and R-2 zone districts as well as Comprehensive Plan policies supporting the retention of rental housing in Palo Alto.

Comprehensive Plan
The Comprehensive Plan Housing Element includes a section on Housing Conservation with the stated goal (Goal H-2) of conservation and maintenance of Palo Alto’s existing housing stock and residential neighborhoods. The applicable Housing Element programs, excerpted as Attachment B, support the retention of rental units and the provision of a variety of housing types in Palo Alto, by encouraging the retention and rehabilitation of multi-family rental and smaller single family residences (Program H-26) and the continued restrictions on condominium conversions (Programs H-27 and H-29).
Purpose and Requirements of R-2 and RMD Zones
Palo Alto Municipal Code (PAMC) Section 18.10.010 (b) indicates the purpose of the R-2 zone is to allow a second dwelling unit under the same ownership as the initial dwelling unit on appropriate sites in areas designated for single-family use by the Palo Alto Comprehensive Plan, under regulations that preserve the essential character of single-family use. Section 18.10.010 (c) indicates that the purpose of the RMD zone is to allow a second dwelling unit under the same ownership as the initial dwelling unit on appropriate sites in areas designated for multiple-family use by the Palo Alto Comprehensive Plan, to minimize incentives to replace existing single-family dwellings, maintain existing neighborhood character and increase the variety of housing opportunities available within the community, with no more than 17 dwelling units per acre.

PAMC section 18.10.070 (a) states, “Second dwelling units are allowed on R-2 or RMD lots that meet lot size requirements in Table 2 to accommodate two units on a lot. For R-2 zoned lots of 6,000 square feet or greater, but less than 7,500 square feet, a second dwelling unit of 450 square feet or less is permitted, subject to all other regulations of the R-1 Chapter outlined in section 18.12.070.” This wording does not include a prohibition against airspace condominiums.

Definitions
A second dwelling unit is defined in the Palo Alto Municipal Code (PAMC) section 18.04.030 (46.5) as “a separate and complete dwelling unit, other than and subordinate to the main dwelling unit, whether a part of the same structure or detached, on the same residential lot.” A lot is defined in the PAMC section 18.04.030 (84) as “a parcel of land consisting of a single lot of record, used or intended for use under the regulations of this title as one site for a use or group of uses.” PAMC Chapter 18.04 does not include a definition for airspace condominium, which is the individual ownership of the space inside a structure on a site. Common ownership of the actual structures, other site improvements, and the parcel of land (or lot) underneath the structures and site improvements is governed by Convenants, Conditions and Restrictions (CC&R’s).

DISCUSSION
The existing RMD and R-2 zone regulations do not adequately protect single family structures and second dwelling units from potential subdivision and sale as airspace condominiums, which could impact the stock of rental housing in Palo Alto.

The proposed Urgency Ordinance would prohibit the separate sale of airspace rights to second units in the R-2 and RMD zones. Passage of the ordinance requires a four-fifths vote of the Council. The Urgency Ordinance would be in effect for forty-five days, after which it can be extended twice (for a total of up to two years). Council may adopt permanent restrictions or regulations prohibiting or limiting the sale of airspace rights for second units in the RMD and R-2 districts while the Urgency Ordinance is in effect. The Urgency Ordinance would be repealed when permanent regulations are adopted.

If Council adopts this Urgency Ordinance, it is unclear what effect the potential passage of Proposition 90 would have on the City’s ability to adopt permanent regulations. Proposition 90 may prohibit City action that imposes “limitations on the use of private airspace” without compensation for economic damages caused by such limitations. However, the text of the
initiative measure also states that Proposition 90 “shall not apply to any statute, charter provision, ordinance, resolution, law, rule or regulation in effect on the date of enactment . . .”

While staff believes that the continuation of the regulations adopted by this Urgency Ordinance would be considered exempt from Proposition 90 as a “regulation in effect on the date of enactment,” the vague language of the initiative measure makes it difficult to predict the impact passage of Proposition 90 would have on the proposed Urgency Ordinance. It is clear that passage of Proposition 90 may place significant limitations on the City’s ability restrict the sale of airspace units in the RMD zone without compensation to property owners.

BOARD/COMMISSION REVIEW AND RECOMMENDATIONS
At its September 27, 2006 meeting, the Planning and Transportation Commission (Commission) voted 7 – 0 to recommended approval of the draft Urgency Ordinance, with corrections suggested by the City Attorney and exempting 610 California Avenue from the provisions of the ordinance. After consideration of the draft ordinance, the Commission voted 5 – 2 to recommend the Council uphold the Director’s decision approving a preliminary parcel map at 610 California Avenue creating air space condominiums, which had been appealed by a neighbor. The draft has been revised as noted in the attached ordinance (Attachment A). Minutes of the Commission meeting are also attached (Attachment C).

RESOURCE IMPACTS
Staff will assess the economic and other resource impacts of the ordinance when a permanent ordinance is proposed.

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CITY MANAGER APPROVAL: ____________________________________________
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ATTACHMENTS:
A. Urgency Ordinance
B. Applicable Comprehensive Plan Programs
C. Planning Commission Minutes of September 27, 2006

COURTESY COPIES:
Interested parties