

ORDINANCE NO. _____

An Ordinance of the City of Half Moon Bay Amending Chapter 18.04 of the Half Moon Bay Municipal Code, "Residential Growth Limitations;" repealing Chapter 17.06 of the Half Moon Bay Municipal Code, "Residential Dwelling Unit Building Permit Allocation System;" and Amending Chapter 18.11 of the Half Moon Bay Municipal Code, "Open Space Reserve and Urban Reserve Land Use."

The City Council of the City of Half Moon Bay does ordain as follows:

Section 1. Background. The People of Half Moon Bay adopted Measure A, "The Half Moon Bay Residential Growth Initiative" in 1991. Pursuant to Section 5 of that Measure, the City Council adopted Ordinance 3-94, adding Chapter 17.06 to the Half Moon Municipal Code, establishing a "Residential Dwelling Unit Building Permit Allocation System." The Coastal Commission later certified both Measure A and Ordinance 3-94, and thus both are a part of the City's Certified LCP.

In 1999, the People of Half Moon Bay adopted Measure D, amending and further restricting Half Moon Bay's Annual Dwelling Unit Allocations. Pursuant to Measure D, the City of Half Moon Bay will, upon certification of Measure D by the California Coastal Commission, restrict residential growth to that number of new dwelling units that will result in a population growth of no more than one percent annually. The Measure also permits the amount of annually permitted dwelling units to increase by fifty percent in the "Downtown Area." The "Downtown Area" is that area approved as a redevelopment survey area by the City in November 1998.

Measure D instructs the City to allocate annual growth in accordance with the provisions of Ordinance 3-94, "to the extent feasible", "or a subsequently modified system." The initiative as thus specifically allows the City Council to enact amendments to the LCP and Zoning Code that are consistent with and supportive of the requirements of Measure D.

Due to a sewer moratorium that continued until 1999, the City of Half Moon Bay has experienced less residential growth than allowed under either Measure A or ordinance 3-94. However, beginning with the ending of the sewer moratorium and continuing, the City has experienced increased demands from property owners seeking permission to build pursuant to the restrictions of Measure A and ordinance 3-94. The City has determined through experience that the provisions of ordinance 3-94 are cumbersome, time consuming and difficult to understand, and as such they do not serve the City's best interest in the implementation of Measure A. The City also wants to implement Measure D in a manner that is consistent with Coastal Act policies for concentrating urban development and with residential buildout priorities established in the Measure A process. In particular, the implementing ordinance for Measure A in section 17.06.065 specified that "residential infill projects...shall have a higher priority than new residential projects." That policy is continued in this ordinance. Based on the experience of the

City relying upon the provisions of ordinance 3-94, the City Council has determined that it would be infeasible for the City to use the allocation system set forth in that ordinance to implement Measure D. The City Council seeks by the adoption of this ordinance to provide an understandable, fair and workable allocation system. The City's recent analysis in reviewing and updating other provisions of the LCP has confirmed and provided further evidence in support of both the findings made in Measure D, and for the metering of growth that Measure D requires.

Section 2. Rescission of Chapter 17.06. Chapter 17.06 of the Half Moon Bay Municipal Code is hereby repealed.

Section 3. Amendment of Chapter 18.04. Chapter 18.04 is hereby amended to read as follows:

18.04.010 Background.

The People of Half Moon Bay adopted Measure A, "The Half Moon Bay Residential Growth Initiative" in 1991. Pursuant to Section 5 of that Measure, the City Council adopted Ordinance 3-94, adding Chapter 17.06 to the Half Moon Municipal Code, establishing a "Residential Dwelling Unit Building Permit Allocation System." The Coastal Commission later certified both Measure A and Ordinance 3-94, and thus both are a part of the City's Certified LCP.

In 1999, the People of Half Moon Bay adopted Measure D, amending and further restricting Half Moon Bay's Annual Dwelling Unit Allocations. Pursuant to Measure D, the City of Half Moon Bay will, upon certification of Measure D by the California Coastal Commission, restrict residential growth to that number of new dwelling units that will result in a population growth of no more than one percent annually. The Measure also permits the amount of annually permitted dwelling units to be increased for units in the "Downtown Area," as defined in this Chapter.

Subject to compliance with its specific requirements, Measure D instructs the City to allocate annual growth in accordance with the provisions of the existing allocation Ordinance 3-94 "or a subsequently modified allocation system." The City Council seeks by the adoption of this ordinance to provide an understandable and workable allocation system, one that will reduce litigation against the City and provide property owners with greater certainty as to when they can anticipate obtaining the right to seek other required residential development approvals, and one that will both support and be supported by other provisions of the City's LCP.

18.04.020 Definitions.

As used in this Chapter 18.04, the following terms have the following meanings.

A. "Below Market Rate Dwelling Unit" is defined in Section 18.35.015A as "a unit which is affordable, either by rental or purchase to very low, low, or moderate income households," as those terms are defined in Section 18.35.015 B, C and D.

B. "Affordable Housing Project" means a residential development where at least XX percent of the dwellings are Below Market Rate Dwelling Units.

C. "Measure D Allocation" means that number of Measure D Certificates that the City Council has authorized the City to issue for a given calendar year in accordance with the procedures and methodology established pursuant to section 18.04.070. The Measure D Allocation for any calendar year is the sum of the Base Allocation and Downtown Allocation authorized for that year.

D. "Measure D Certificate" or "Certificate" means a certificate issued by the Planning Director and signed by the Mayor. Each Certificate awards the subject property the temporary right to proceed with applications for permits for development of one dwelling unit on the property, subject to the limitations and requirements of this Chapter, and the Half Moon Bay Local Coastal Program. As further explained in Section 18.04.030, a Measure D Certificate is not an entitlement granting any authority to construct or develop.

E. "Downtown", as specifically defined in Measure D and Section 18.04.040 below, means "the area designated as the Downtown Half Moon Bay Redevelopment Survey Area in City Resolution No. C-91-98, November 3, 1998."

F. "Non Downtown" means land outside of the Downtown.

G. "Residential Infill Area" means that area designated as such on the Residential Infill Map, which is attached as Exhibit A and certified as part of the LCP. The Residential Infill Map will be updated by means of an LCP amendment as needed. The central features of the "Residential Infill Area" are described in narrative form in Land Use Policy [Insert No].

H. "Expansion Area" means all areas outside the Residential Infill Area. The central features of the "Expansion Area" are described in narrative form in Land Use Policy [Insert No].

I. "Base Allocation" means the number of Certificates that the City Council may authorize, at its discretion, for a given calendar year up to, but not exceeding, that number which would result in a growth rate of one percent (1%) of the City's population as of January 1 of that calendar year, as set forth in Section 18.04.40A below.

J. "Downtown Allocation" means the number of supplemental Certificates that the City Council may authorize, at its discretion, in the Downtown Area up to, but not exceeding, fifty percent (50%) of the Base Allocation, consistent with Section 18.04.040B below.

18.04.030 Coastal Development Permit Required, Measure D Certificate Not An Entitlement or Vested Right to Develop.

No Coastal Development Permit Application for construction of a new residential dwelling shall be accepted and no person shall construct a new residential dwelling unit in the City of Half Moon Bay without having obtained a Measure D Certificate pursuant to the provisions of this Chapter. Measure D Certificates shall remain with the parcels to which the Certificates are awarded and shall only be valid for the time specified in 18.04.100. A Measure D Certificate does not create an entitlement or vested right to develop. Property owners must still obtain all other necessary local, state and federal approvals following an award of a Measure D Certificate.

18.04.040 Maximum Number of New Dwellings. (Voter Approved).

A. The number of dwelling units which the City may authorize to be built each calendar year shall not exceed the number of units which would result in a growth of one percent (1%) in the City's population as of January 1 of that year. In determining the number of permissible units, the City shall use the most recent U.S. Census figures for Half Moon Bay to calculate the average number of persons per household.

B. The number of dwelling units authorized each year under subsection A may be increased by fifty percent (50%) for additional dwelling units in the Downtown Area.

C. Applications for new units from areas of the City outside the Downtown Area shall have priority for one-half of the units authorized under subsection A. If fewer applications are received, the remainder of these units may be authorized in the Downtown Area.

D. Subject to subsections B and C, the City shall allocate permissible dwelling units among applications on the basis of the existing

allocation system in the Municipal Code section 17.06 or a subsequently modified allocation system.

E. The “Downtown Area” is the area designated as the Downtown Half Moon Bay Redevelopment Survey Area in the City Resolution No. C-91-98, November 3, 1998.

18.04.050 Exempt developments (Voter Approved).

The limitations in Section 18.04.040 shall not apply to:

- A. Replacement of existing dwelling units on a one-for-one basis.
- B. Density bonuses for the provision of low and moderate income housing as required by State law.

18.04.060 Annual establishment of Measure D Allocation.

A. The City Council, by resolution adopted prior to September 30 of each year, shall establish the Measure D Allocation, which is the maximum number of Measure D Certificates that may be issued in the upcoming calendar year. The Measure D Allocation shall result in no more than an annual increase in population as set forth in section 18.04.040A and section 18.04.040.B.

- B. The Measure D Allocation resolution shall include the following:
 - 1. The U.S. Census figures and formula(s) used by the City to determine the maximum annual increase in population as set forth in section 18.04.040 A and B.
 - 2. The number of Measure D Certificates in the Base Allocation and the Downtown Allocation.
 - 3. That portion of the Measure D Allocation, if any, that will be awarded to dwelling units that the City must permit to be constructed as a result of a court order, state or federal law, litigation settlement, or previous approval or agreement.
 - 4. The specific procedures that shall be used to implement the requirements of section 18.04.100 for awarding Measure D Certificates.
 - 5. The Measure D application processing fee as set forth in Section 18.04.070.

C. When deemed appropriate by the City Council to carry out the goals and policies of the LCP, including the Housing Element, the City Council may, at its discretion, give partial or exclusive preference to Below Market Rate Dwelling Units and Affordable Housing Projects when it authorizes or awards the Downtown Allocation.

D. Parcels in the Expansion Area shall not be eligible for a Measure D Certificate until the LCP is amended consistent with Land Use Policy No. _____.

18.04.070 Application processing fee established.

The City Council, by resolution, shall establish a fee for filing and processing an application for a Measure D Certificate as provided in this chapter. The City Council may adjust the fee in conjunction with the adoption of the resolution establishing the Measure D Allocation for the upcoming year.

18.04.080 Application period, process and timing.

A. Applications for Measure D Certificates shall be submitted to the Planning Department during the period from January 1st through March 1st of each year.

B. One application will be accepted for each legal parcel.

C. The lawful owner of a legal parcel for which a Certificate is sought must submit the application.

D. Each application can request multiple Certificates, provided that: (1) the existing zoning of the site permits such use and density; and (2) no subdivision or lot line adjustment is required, except for lot consolidations.

E. Applications shall be submitted on an application form prepared by the Planning Department. Applications shall identify the number of dwelling units for which applicants are seeking Certificates, the fees required under this Chapter, and such information as is required by the City to insure compliance with subsection B above and the other provisions of this Chapter. The Planning Department may reject incomplete applications.

18.04.090 Eligible Applications, Award of Measure D Certificates.

The City Council shall endeavor to start and complete the process outlined in this section in the Spring of each year.

A. **Eligible Applications.** The Planning Director shall inform the City Clerk, the City Council, and all the applicants of the applications that have been determined to satisfy the requirements of this Chapter and which are eligible to be considered for Measure D Certificates. Before the City Clerk shall undertake the selection process, the City Council shall consider the written appeal of any person who disagrees with the eligibility determination, the category into which the application has been placed (Downtown Allocation, non-Downtown Residential Infill Area, Downtown Residential Infill), and any other determination of the Planning Director relating to the application. Such an appeal must be filed in writing with the Planning Director within ten (10) days of the determination on a form prepared by the Planning Department. In acting on any such appeal, the City Council shall overturn the decision of the Planning Director as to any specific application if it finds that in making the determination the Planning Director has misinterpreted the provisions of this Chapter or the requirements of the Measure D Allocation resolution. The City Council's decision on any such appeal shall establish the applications which are eligible to be considered for a Measure D Certificate, and the category in which each application included in the selection process.

B. **Award of Measure D Certificates.** The City Council will select the applications that will receive Measure D Certificates as provided in this subsection. Three eligibility lists will be created: one for the Downtown Allocation, one for the Base Allocation in the Downtown Residential Infill Area, and one for the Base Allocation in the non-Downtown Residential Infill Area.

Step One: Downtown Allocation

All eligible applications for the Downtown Allocation will receive Measure D Certificates, unless there are fewer Certificates than requested allocations, in which case eligible applications will be randomly selected for Certificates by the City Clerk at a City Council meeting.

In the event there are fewer Certificates than eligible applications, unless there are fewer Certificates than requested allocations, in which case eligible applications will be randomly selected for Certificates by the City Clerk at a City Council meeting. The City Clerk shall assign an application number to each requested dwelling unit as described in Step One above. Each application number will then be entered into a drawing, lottery or other randomized selection process for the award of the Measure D Certificates. All eligible applications will have an equal chance at obtaining a Measure D Certificate.

In using the term “landowner” in this Chapter, the City intends to prevent a person or entity from escaping the application on any limitations or regulations imposed on the basis of ownership by owning multiple properties in various ways. Therefore, whenever a person or entity owns any interest in parcel they shall be considered the owner of the parcel. For example, and without limitation, a person or entity shall be considered to be a landowner if they own any interest in a parcel as an individual, a trust, community property, a member of a partnership, a holder of more than 5% equity interest in a corporation. **[Refine further to reflect prior Measure A instructions regarding ownership]**

Step Two: Base Allocation for non-Downtown Residential Infill Area

All eligible applications for the non-Downtown Residential Infill Area will receive a Measure D Certificate, unless there are fewer Certificates than requested allocations, in which case eligible applications will be randomly selected for Certificates by the City Clerk at a City Council meeting.

If there are fewer eligible applications in Step Two than Certificates, the remaining Certificates shall be added to the total number of Certificates awarded under Step Three.

In the event there are fewer Certificates than eligible applications, unless there are fewer Certificates than requested allocations, in which case eligible applications will be randomly selected for Certificates by the City Clerk at a City Council meeting. The City Clerk shall assign an application number to each requested dwelling unit as described in Step One above. Each application number will then be entered into a drawing, lottery or other randomized selection process for the award of the Measure D Certificates. All eligible applications will have an equal chance at obtaining a Measure D Certificate.

Step Three: Base Allocation for Downtown Residential Infill Area

In Step Three, the total number of Certificates to be awarded will include the unawarded Certificates, if any, from Step Two above. All eligible applications for the Downtown Residential Infill Area will receive a Measure D Certificate, unless there are fewer Certificates than requested allocations, in which case eligible applications will be randomly selected for Certificates by the City Clerk at a City

Council meeting. The City Clerk shall assign an application number to each requested dwelling unit as described in Step One above. Each application number will then be entered into a drawing, lottery or other randomized selection process for the award of the Measure D Certificates. All eligible applications will have an equal chance at obtaining a Measure D Certificate.

If there are fewer eligible applications than Measure D Certificates, the unawarded Certificates shall be discarded.

In the event there are fewer Certificates than eligible applications, in any of the three Steps above, the maximum number of Certificates that may be awarded to a single landowner shall be as follows:

- 3 Certificates for Single-Family Dwellings
- Unlimited Certificates for Multi-Family Dwellings in the Downtown Area
- 6 Certificates for Multi-Family Dwellings in the Non-Downtown

18.04.100 Timing of building permits issued pursuant to this title.

A. A Measure D Certificate awarded pursuant to the provisions of this chapter shall expire upon the occurrence of any of the following: (1) a complete application for a coastal development permit for the project on the parcel has not been submitted to the planning department within five (5) years of the date the allocation has been awarded; or (2) no building permit application has been filed for the project within six (6) years of the date the allocation was awarded.

B. The actual date that a Measure D Certificate expires pursuant to subsection A above shall be the date ten (10) days after the day the City sends the applicant notice by U.S. mail to the address indicated on the application for the Measure A Certificate informing the applicant that the permit will expire unless the applicant requests a hearing before the Planning Director within 10 days after receipt of the expiration notice. Requested hearings shall be scheduled by the Planning Director within 60 days. At the hearing, the Planning Director shall determine based on the record and any information provided by the applicant whether good cause exists to extend the Certificate. "Good cause" shall mean that the applicant made a good faith effort to secure the required approvals from all applicable agencies, and diligently pursued such approvals without any unreasonable or unnecessary delays. The applicant shall bear the costs of City staff and attorney time for the hearing.

C. Upon expiration of any Measure D Certificate pursuant to the provisions of subsections A and B, the City may add the unused allocation to the Measure D Allocation for the next calendar year.

18.04.120 Decisions under this Chapter are based on the record established in the application.

All decisions of the City Council under this chapter shall be made based upon the information contained in and at the time the application for the Measure D Certificate is submitted to the City. It is the responsibility of the applicant to present accurate and complete information to the City. The City Council may declare invalid any Measure D Certificate that is obtained based upon material information submitted by the applicant that is incorrect, incomplete, or misleading.

Section 4. Downtown Survey and Residential Infill Area Maps. Chapter 18.04 is further amended to include the Downtown Survey Area Map and Residential Infill Area Map, which are attached hereto and incorporated herein.

Section 5. Open Space Reserve Preservation.

A. Section 18.11.020 2b of the Municipal Code is hereby amended to read as follows:

2b. Single-Family. On lands in the Open Space Reserve Districts (as demarcated on the City's Land Use Plan Map on May 15, 1999), one dwelling is permitted on each 50 acres of land, subject to the approval of a Use Permit in each case. North of Highway 92, and south of Highway 92, above the one hundred and thirty (130) foot elevation line, two or more dwellings on a parcel or contiguous parcels in common ownership on May 15, 1999, shall be clustered on contiguous lots or parcels, not to exceed one acre each, as near as possible to existing developments, to minimize harmful impact on natural and visual resources.

B. The numbers in the Table B, Section 18.11.025 of the Municipal Code shall be changed to comply with Section 18.11.020 2b as amended by this Section.

C. Section 18.11.035 of the Municipal Code is amended by adding at the end:

Provided further, Open Space Reserve lands (as demarcated on the City's Land Use Plan Map on May 15, 1999) north of Highway 92, and south of Highway 92 above the one hundred and thirty (130) foot elevation line, may not be approved for development, except as authorized by Section 18.11.020 2b, as amended by this Section, or as "allowed by Zoning"

without a use permit under Section 18.11.015 (Table A) on May 15, 1999, or except to the extent approved by the voters of Half Moon Bay at a regularly scheduled election.

Section 6. Submission to California Coastal Commission for Certification. The foregoing amendments to Chapters 18.04 and 18.11 constitute an amendment to the City of Half Moon Bay's Local Coastal Program. The City Clerk is hereby directed to transmit a copy of this ordinance to the California Coastal Commission for certification. The City Council of the City of Half Moon Bay hereby certifies that the Local Coastal Program, as amended, is intended to be carried out in a manner fully in conformity with the California Coastal Act.

Section 7. Effective Date. This ordinance shall take effect 30 days after the date of its final passage, except that the Local Coastal Program amendment set forth in Section 2 and Section 3 of this ordinance shall not take effect until it has been certified by the California Coastal Commission. In the event that the Coastal Commission certifies the amendment subject to certain modifications, the amendment shall not be effective until the modifications have been approved by this Council and confirmed by the executive director of the California Coastal Commission.

Section 8. Severability.

A. If any provision or application of this resolution is declared invalid, unconstitutional or otherwise violative of law (collectively, "*invalid*"), the invalidation shall not affect the validity, or application, of any other provision of this resolution. The City Council expressly declares that this resolution and each section, sentence, clause, and phrase contained within it would have been prepared, adopted, and approved irrespective of the fact that one or more other sections, sentences, clauses or phrases is declared invalid.

B. Furthermore, the City's rescission of Chapter 17.06 in section 2 of this ordinance is not severable from the provisions of this Ordinance or Measure D which establish the maximum number of dwelling units that may be authorized to be built in the City each calendar year. Should any judicial act or proceeding invalidate any provision of this ordinance, or Measure D which establish the maximum number of dwelling units that may be authorized and built in the City each calendar year, (i) the City would request and express its intent that Section 2 of this ordinance also be invalidated so as to reactivate, without further action by the City, Chapter 17.06; and that (b) in such event, the City hereby finds and declares, by adoption of this ordinance, that:

- (1) An emergency situation exists under Section 17.06.025 of the Half Moon Bay Municipal Code with regard to specific traffic, water supply, and municipal service conditions;
- (2) These conditions directly impact the health and safety of the residents of the community; and
- (3) To lessen the threat to the public's health and safety created by these conditions, it is necessary, reasonable and prudent for the

City to establish the following limitation on the authorization of new dwellings:

The number of dwelling units which the City may authorize during each year of the Infill Phase may not exceed the number of units which would result in a growth of one percent (1%) in the City's population as of January 1 of that year. This limitation does not apply to the replacement of existing dwelling units on a one-to-one basis, or density bonuses granted for the provision of low and moderate-income housing as required by State law.

i. The City finds that the traffic, water supply and municipal service conditions which necessitate the City's enactment of the residential building permit limitation described in (3) are as follows:

1. Traffic/roadway capacity. State Highways 1 and 92, which serve as the major transportation routes to and from the City, experience prolonged gridlock for several hours a day. City residents who must drive these roads to work, school, and other destinations endure the worst level of traffic service possible, "F," according to a 1997 traffic study performed by the San Mateo City and County Association of Governments. No highway capacity improvements are currently planned by Caltrans so the problems of highway gridlock and traffic safety are anticipated to grow in severity as new development occurs.

2. Water supply. The City does not have a guaranteed supply of water to serve all future residents during times of water shortage. The City's future water supply depends on the City's ability to obtain water from the Crystal Springs Pipeline, but dependence on this source is precarious because the City of San Francisco has the right to limit the City's use of this water during times of shortage.

3. Residential services. Because property taxes generated by residential development do not cover the cost of the City providing basic services to residential properties, and because the availability of City resources for such services is limited, unchecked residential growth rates will create a public health and safety crisis by jeopardizing the City's ability to provide adequate services and facilities to meet the needs of its residents.

INTRODUCED this ____ day of _____, 2005.

PASSED AND ADOPTED this ____ day of _____ 2005 by the following vote:

AYES, and in favor thereof,
Councilmembers:

NOES, Councilmembers:

ABSTAIN, Councilmembers:

ABSENT, Councilmembers:

James Grady, Mayor

ATTEST:

City Clerk