



SAN FRANCISCO PLANNING DEPARTMENT

Memo to the Planning Commission

HEARING DATE: JULY 14, 2011

Date: July 7, 2011
Project Name: **INCLUSIONARY AFFORDABLE HOUSING PROGRAM:
ADMINISTRATIVE PROCEDURES**
Project Sponsor: Planning Department
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Recommendation: **Approve Department Policy**

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PLANNING DEPARTMENT POLICY

The Planning Department ("Department") is requesting that the Planning Commission ("Commission") review and approve new procedures regarding the Inclusionary Affordable Housing Program ("Program"). Specifically, the Department is requesting that the Commission delegate authority to the Zoning Administrator to administratively review and approve requests for the modification of Condition(s) of Approval for entitled projects that need to modify the method of compliance with the Program.

BACKGROUND

In late 2009, the Second District Court of Appeals published its decision in *Palmer/Sixth Street Properties vs. City of Los Angeles*, which held that the California Costa-Hawkins Rental Housing Act¹ preempts a Los Angeles requirement mandating, as a condition of development, that a portion of newly constructed dwelling units be rented at low-income rents. As a result of this case, the City amended some aspects of its Inclusionary Housing Program needed to be amended.

On December 7, 2010, the Board of Supervisors approved Ordinance No. 312-10 making modifications to the 'Inclusionary Affordable Housing Program'.² All projects subject to Section 415 must pay an Affordable Housing Fee that is equivalent to the applicable percentage of the number of units in the principal project, which is 20% or the applicable percentage if subject to different controls or requirements.

There are only limited ways that a project can be eligible to provide on- or off-site affordable units. First, a project may be eligible if the developer chooses to commit to sell the new residential units rather than

¹ California Civil Code Section 1954.50-1954.535.

² Planning Code Section 415 et. all.

offer them as rental units, then the developer may build the affordable units on or off-site. Second, the project may be eligible for an alternative to the Affordable Housing Fee requirement if (a) it has demonstrated to the Department that the affordable units are not subject to the Costa Hawkins Rental Housing Act³. All projects that can demonstrate that they are eligible for an alternative to the Affordable Housing Fee must provide the necessary documentation to the Planning Department and the Mayor's Office of Housing. Additional material may be required to determine if a project is eligible to fulfill the Program's requirements through an alternative.

The revised Program went into effect on January 24, 2011.

The Way It Is Now:

All projects that involve five or more new dwelling units must participate in the Program and meet the requirements of Section 415 of the Planning Code. The Code allows for affordable housing requirements to be fulfilled in three ways: 1) by paying the Affordable Housing Fee; 2) qualifying for an on-site alternative; or 3) qualifying for an off-site alternative.

Before the Commission and/or Department can approve a project, the Project Sponsor must indicate how they will meet the requirements of the Program and fill out the *Affidavit of Compliance with the Inclusionary Affordable Housing Program*. The method of compliance is included as a Condition of Approval and recorded against the property.

Planning Code Sections 415.5(g) (3) allows modifications for compliance with the Program at a Department level (see text highlighted below):

415.5(3): The Planning Commission or the Department may not require a project sponsor to select a specific Alternative. If a project sponsor elects to meet the Program requirements through one of the Alternatives described in (1), they must choose it and demonstrate that they qualify prior to any project approvals from the Planning Commission or Department. The Alternative will be a condition of project approval and recorded against the property in an NSR. Notwithstanding the foregoing, if a project sponsor qualifies for an Alternative described in (1) and elects to construct the affordable units on- or off-site, they must submit the 'Affidavit to Establish Eligibility for an Alternative to Affordable Housing Fee' based on the fact that the units will be sold as ownership units. **The project sponsor who has elected to construct affordable ownership units on- or off-site may only elect to pay the Affordable Housing Fee up to the issuance of the first construction document if the project sponsor submits a new Affidavit establishing that the units will not be sold as ownership units.** If a project sponsor fails to choose an Alternative before project approval by the Planning Commission or Planning Department or if a project becomes ineligible for an Alternative, the provisions of Section 415.5 shall apply.

Under this Code Section, the Commission and Department cannot require that affordable units be provided on- or off-site. Projects entitled after the effective date of this Section may modify the form of

³ California Civil Code Section 1954.54(b).

compliance from an on- or off-site alternative to the Affordable Housing Fee prior to the issuance of the first construction document. In order to modify the means of compliance with the Program, the Project Sponsor must sign an Affidavit stating that the Project is comprised of rental units. Projects that were entitled prior to the effective date of this Section (January 24, 2011) cannot modify the method of compliance without a hearing at the Commission to formally modify the Conditions of Approval.

The Way It Would Be:

For projects entitled prior to January 24, 2011 & providing on-or off-site units:

The Department's proposed policy would enable the Zoning Administrator to administratively allow projects complying with the Program by providing affordable on- or off-site rental units that were entitled prior to January 24, 2011 to modify the method of compliance to payment of the Affordable Housing Fee. Modifications may occur until the issuance of first construction document without requiring Commission approval, provided that the Project Sponsor signs an Affidavit stating that the project will be rental housing. The modification will be recorded against the property as a Notice of Special Restrictions (NSR).

For projects entitled after January 24, 2011 and paying the Affordable Housing Fee:

The Department's proposed policy would enable the Zoning Administrator to administratively allow projects complying with the Program by paying the Affordable Housing Fee that were entitled after January 24, 2011 to modify the method of compliance by providing on-site affordable units (if they meet the qualifying requirements stated above). These modifications may occur until the issuance of first construction document without requiring Commission approval. The modification will be recorded against the property as a Notice of Special Restrictions (NSR).

While the Department is requesting that the Commission allow the Zoning Administrator to modify these conditions, both the Department and/or the Zoning Administrator will reserve the ability to determine that the modification of compliance with the Program cannot be performed administratively and must be reviewed by the Commission at a public hearing.

RECOMMENDATION

The Department recommends that the Commission *adopt* the proposed policy (see attached Draft Resolution).

BASIS FOR RECOMMENDATION

The Department believes that enabling the Zoning Administrator to make modifications to the methods of compliance with the Program in the two circumstances described above accomplishes two goals: 1) bringing the Program closer into compliance with state law; and 2) encouraging the construction of on- or off-site affordable housing units.

It is important to note that neither the fee requirements nor the percentages of on or off-site housing are being amended under this proposed policy. Delegating authority to the Zoning Administrator to modify Conditions of Approval is narrow in scope and limited to compliance with the Program. The Zoning Administrator's decision would also be appealable to the Board of Appeals. Authority would not be

delegated to the Zoning Administrator to modify other Conditions of Approval – any other modifications would continue to require Commission approval under Planning Code Section 303 (e).

For projects entitled prior to January 24, 2011:

The Department believes that enabling the Zoning Administrator to modify Conditions of Approval to allow projects complying with the Program by providing affordable on- or off-site rental units to modify the method of compliance to payment of the Affordable Housing Fee will bring the Program closer into conformance with state law. This policy will also streamline the review process and save time for all parties. Furthermore, the Code currently allows these modifications for projects that were entitled after the effective date of the revised Program. The Department believes that it is within the intent of the Program to allow projects entitled prior to January 24, 2011 to be modified administratively as well.

For projects entitled after January 24, 2011:

The Department believes that enabling the Zoning Administrator to modify Conditions of Approval for projects entitled after January 24, 2011 to allow for compliance by construction of on-site units will result in a larger amount of mixed income projects in San Francisco and will meet the City's larger policy goals of having buildings and neighborhoods of mixed-income residents by allowing for affordable units to be easily integrated into new projects.

In sum, the Department believes that the proposed policy to allow a limited delegation of the Commission's authority to modify Conditions of Approval for compliance with the Inclusionary Affordable Housing Program is in keeping with the intent of the Program and with the City's policies, and respectfully requests that the Commission adopt the policy.

ENVIRONMENTAL REVIEW

The proposed policy would result in no physical impact on the environment. The proposed amendment is exempt from environmental review under Section 15060(c) (2) of the CEQA Guidelines.

RECOMMENDATION: Adopt policy.

Attachments:

Exhibit A: Draft Planning Commission Resolution



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Draft Resolution HEARING DATE JULY 14, 2011

Date: July 7, 2011
Case No.: **Inclusionary Affordable Housing Program: Administrative Procedures**
Project Sponsor: Planning Department
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ADOPTING AN INCLUSIONARY AFFORDABLE HOUSING POLICY THAT AUTHORIZES THE ZONING ADMINISTRATOR TO ADMINISTRATIVELY ALLOW ENTITLED PROJECTS WITH AN AFFORDABLE HOUSING REQUIREMENT TO MODIFY THE METHOD OF COMPLIANCE FROM ON-OR OFF-SITE RENTAL UNITS TO PAYMENT OF THE AFFORDABLE HOUSING FEE AND FROM THE AFFORDABLE HOUSING FEE TO AN ON-SITE ALTERNATIVE; ADOPTING ENVIRONMENTAL FINDINGS AND FINDINGS OF CONSISTENCY WITH THE PRIORITY POLICIES OF PLANNING CODE SECTION 101.1 AND THE GENERAL PLAN.

WHEREAS, San Francisco's Inclusionary Affordable Housing Policy was first adopted by the Planning Commission in 1992, and in 2002 the City formally adopted this policy as a part of the Planning Code; and

WHEREAS in August 2006, the Board of Supervisors passed changes to the Planning Code that significantly amended the Inclusionary Affordable Housing Program (BOS File No. 05-1685), with trailing legislation passed in April 2007 (BOS File No. 06-1529), clarifying portions of the Program; and

WHEREAS, in late 2009 the Second District Court of Appeals published its decision in Palmer/Sixth Street Properties vs. City of Los Angeles, which held that the California Costa-Hawkins Rental Housing Act preempts a Los Angeles requirement mandating, as a condition of development, that a portion of newly constructed dwelling units be rented at low-income rents; and

WHEREAS, on March 25, 2010, Resolution 18056 was adopted by the Commission to respond to the *Palmer* case. The Affordable Housing Program was modified to a fee-based program and no longer contains any requirement to build affordable units; and

WHEREAS, on December 7, 2010, the Board of Supervisors approved Ordinance No. 312-10 amending the Residential Inclusionary Affordable Housing Program to respond to the Palmer case by: requiring all

project applicants pay the Affordable Housing Fee unless they are eligible for an alternative to construct units on- or off-site and making other amendments to the Program; and

WHEREAS, on January 24, 2011, the Inclusionary Affordable Housing Program became effective, and

WHEREAS, on July 14, 2011 the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed hearing to consider the proposed policy; and

WHEREAS, the proposed policy amendments have been determined to be categorically exempt from environmental review under the California Environmental Quality Act (CEQA) Section 15060 (c) 2; and

WHEREAS, all the pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, the Commission has reviewed the Program requirements and the policy proposed by the Department; and

MOVED, that the Commission hereby adopts the proposed policy and the attached Draft Resolution to that effect. Specifically, the new policy will:

1. Enable the Zoning Administrator to administratively allow projects complying with the Program by providing affordable on- or off-site rental units that were entitled prior to January 24, 2011 to modify the method of compliance to payment of the Affordable Housing Fee. Modifications may occur until the issuance of first construction document without requiring Commission approval, provided that the Project Sponsor signs an Affidavit stating that the project will be rental housing. The modification will be recorded against the property as a Notice of Special Restrictions (NSR).
2. Enable the Zoning Administrator to administratively allow projects complying with the Program by paying the Affordable Housing Fee that were entitled after January 24, 2011 to modify the method of compliance by providing on-site affordable units as ownership units. These modifications may occur until the issuance of first construction document without requiring Commission approval. The modification will be recorded against the property as a Notice of Special Restrictions (NSR).

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. Under the proposed policy the Zoning Administrator is enabled to modify Inclusionary Affordable Housing conditions of approval for projects entitled prior to January 24, 2011 to allow payment of the Affordable Housing Fee instead of renting affordable units, consistent with State law. Administratively handling these modifications at a Department level allows the Planning Commission to focus on larger policy issues at public hearings. Significant time is spent scheduling items before the Planning Commission and processing these limited cases administratively is efficient and saves the Project Sponsor time and associated fees. The current Code allows for this modification

for all projects entitled after January 24, 2011. Allowing these modifications for projects entitled prior to January 24, 2011 is not over or above the intent of the current Code.

2. Paying the Affordable Housing Fee satisfies the Inclusionary Affordable Housing Program requirement per Planning Code Section 415. The payment of an Affordable Housing Fee by developers of market rate housing is justified and has identifiable benefits to the City. The Affordable Housing Fee will be used to help subsidize development costs and provide administrative support for programs and other affordable housing development activities administered by the City and County. Without these funds, the City and County would be less able to meet its affordable housing needs and the Regional Housing Needs goals established by the State of California for the City and County for 2007-2014.
3. By enabling the Zoning Administrator to modify Inclusionary Affordable Housing conditions of approval for projects entitled after January 24, 2011 to allow compliance through an on-site alternative instead of payment of the Affordable Housing Fee results in a larger amount of mixed income projects in San Francisco. The development of affordable housing on the same site as market-rate housing also increases social and economic integration vis-a-vis housing in the City and has corresponding social and economic benefits to the City. Inclusionary housing provides a healthy job and housing balance. Inclusionary housing provides more affordable housing close to employment centers which in turn may have a positive economic impact by reducing such costs as commuting and labor costs.
4. The Planning Department and specifically the Zoning Administrator reserve the ability to bring individual cases to Planning Commission.
5. It is important to note that neither the fee requirements nor the percentages of on or off-site housing are being amended with this legislation.
6. Delegating authority to the Zoning Administrator to modify the Inclusionary Affordable Housing conditions of approval is narrow in scope. Authority would **not** be delegated to the Zoning Administrator to modify other conditions of approval. Other modifications would continue to require Planning Commission approval under Planning Code Section 303 (e).
7. The Commission has been working closely with the Mayor's Office of Housing to ensure that there are no adverse impacts to Section 415, the ability for affordable housing continue to be constructed in San Francisco, or in the Mayor's Office of Housing's ability to run the program.
8. Therefore, the Commission and recommends approval of the proposed policy.
9. **General Plan Compliance.** The proposed Ordinance is, on balance, consistent with the following Objectives and Policies of the General Plan:

HOUSING ELEMENT

Objectives and Policies

HOUSING ELEMENT INTRODUCTION:

THE OBJECTIVES AND POLICIES DETAILED BELOW ADDRESS THE STATE'S, THE REGION'S AND THE CITY'S GOALS OF ACHIEVING DECENT, SUITABLE, AND AFFORDABLE HOUSING FOR CURRENT AND FUTURE SAN FRANCISCANS. INCREASING THE CITY'S HOUSING STOCK, PROTECTING AND CONSERVING EXISTING UNITS, AND ENCOURAGING HOUSING CHOICE ARE OBJECTIVES PREDICATED ON AFFORDABILITY

OBJECTIVE 5:

INCREASE THE EFFECTIVENESS AND EFFICIENCY OF THE CITY'S AFFORDABLE HOUSING PRODUCTION SYSTEM.

Policy 5.1:

Prioritize affordable housing projects in the planning review and approval processes, and work with the development community to devise methods of streamlining housing projects.

Policy 5.2:

Support efforts of for-profit and non-profit organizations and other community-based groups and expand their capacity to produce and manage permanently affordable housing.

Policy 5.3:

Create greater public awareness about the quality and character of affordable housing projects and generate community-wide support for new affordable housing.

Policy 5.4:

Coordinate governmental activities related to affordable housing.

The proposed Inclusionary Affordable Housing Policy delegates authority to the Zoning Administrator to modify the Inclusionary Affordable Housing conditions of approval. The Commission has been working closely with the Mayor's Office of Housing to ensure that there are no adverse impacts from the proposed policy including impacts on the ability for affordable housing to continue to be constructed in San Francisco, or on the Mayor's Office of Housing's ability to run the program and strongly supports the proposed Ordinance.

10. **Priority Policies of the General Plan.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

a. The existing neighborhood-serving retail uses will be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses will be enhanced:

The proposed policy will not impact existing neighborhood-serving retail uses or opportunities for employment in or ownership of such businesses.

b. The existing housing and neighborhood character will be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods:

The proposed policy will have no impact to neighborhood character.

- c. The City's supply of affordable housing will be preserved and enhanced:

The proposed policy will have no adverse effects on the City's supply of affordable housing.

- d. The commuter traffic will not impede MUNI transit service or overburden our streets or neighborhood parking:

The proposed policy will not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.

- e. A diverse economic base will be maintained by protecting our industrial and service sectors from displacement due to commercial office development. And future opportunities for resident employment and ownership in these sectors will be enhanced:

The proposed policy would not adversely affect the industrial or service sectors or future opportunities for resident employment or ownership in these sectors.

- f. The City will achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

Preparedness against injury and loss of life in an earthquake is unaffected by the proposed policy.

- g. That landmark and historic buildings will be preserved:

Landmarks and historic buildings would be unaffected by the proposed policy.

- h. Parks and open space and their access to sunlight and vistas will be protected from development:

The City's parks and open space and their access to sunlight and vistas would be unaffected by the proposed policy.

NOW THEREFORE BE IT RESOLVED, that the Planning Commission adopts the Inclusionary Affordable Housing policy,

I hereby certify that the Planning Commission **ADOPTED** the foregoing Resolution on July 14, 2011.

Linda Avery
Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED: July 14, 2011