

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Debra Figone
Harry S. Mavrogenes

SUBJECT: SEE BELOW

DATE: October 25, 2007

COUNCIL DISTRICT: Citywide
SNI AREA: All

SUBJECT: AMENDMENT TO THE INCLUSIONARY HOUSING POLICY TO CLARIFY LAND DEDICATION AND LAND VALUATION REQUIREMENTS IN LIEU OF PROVIDING AFFORDABLE HOUSING UNITS

RECOMMENDATION

It is recommended that the City Council adopt a resolution amending the joint City/Redevelopment Agency Inclusionary Housing Policy ("Policy") to clarify land dedication/valuation requirements in lieu of providing affordable housing units.

OUTCOME

Approval of the recommended change will clarify the conditions by which the City can accept a combination of an inclusionary housing in-lieu fee and land dedication in order to provide developers of market-rate housing in redevelopment project areas with an alternative method of meeting the inclusionary housing requirement.

BACKGROUND

The joint City/Redevelopment Agency Inclusionary Housing Policy, as originally adopted in the 1980s, ensures that affordable housing needs are met in Redevelopment Project Areas throughout the City. The Policy has historically required that developers build a requisite number of affordable housing units within a particular project.

On May 15, 2007, the City Council amended the Policy in order to allow land dedications to the City in lieu of constructing affordable units. Additional changes to the policy effective July 1, 2007 provided developers with even greater flexibility in satisfying the Inclusionary requirements. One new option is that developers may now provide a fee in lieu of constructing affordable units. The adopted Policy's section concerning land dedication was also amended to sunset on December 31, 2007.

The City Council's May 15, 2007, amendments to the Policy established the conditions under which transactions involving land dedications could proceed, as follows:

1. The dedicated site is transferred to the City prior to commencement of construction of the private housing development or is subject to an agreement between the developer and the City that sets forth a date certain for transfer of the dedicated site and such agreement is in the best interests of the City.
2. The value of the dedicated site at the date of dedication or the date such agreement to dedicate is executed, as applicable, is greater than the in-lieu fee in effect at the date of dedication or the date such agreement to dedicate is executed, as applicable, multiplied by the number of otherwise required affordable units within the private housing development.
3. The dedicated site could accommodate at least the number of otherwise required affordable units within the private housing development.
4. The dedicated site is adjacent to the private housing development.

In the event of a future land dedication, the agreement between the City and the developer regarding the future dedication would, at minimum, include the following additional conditions:

1. The dedicated site shall be transferred by the developer to the City at a date certain acceptable to the City;
2. The developer shall, prior to commencement of construction of the private housing development, pay to the City a substantial percentage (as determined by the City Council) of the in-lieu fee in effect at the date such agreement to dedicate is executed multiplied by the number of otherwise required affordable units within the private housing development, and
3. In the event that, upon transfer of the dedicated site, the value of the dedicated site is not at least equal to the future value of the in-lieu fee remaining payable, the developer shall immediately pay the shortfall in cash.

ANALYSIS

The intent of the May 15, 2007 policy amendments that established the land donation alternative was to identify a set of parameters by which future land dedications could occur that would enhance the City's ability to meet its affordable housing needs by allowing developers greater flexibility and an alternative vehicle to simply paying fees or building units in order to meet their inclusionary housing requirements. The future value concept was included in the Policy as a way of safeguarding the City's interests by ensuring that the value of the land would not decrease to a level below the developers' inclusionary obligation prior to receipt by the City of title to the land.

However, staff believes that the requirement to future value the developer's obligation is not necessary in every instance because it has the potential to substantially over-value transactions since the policy required the combination of a substantial up-front fee payment in connection with a future dedication of land to the City. The following proposed amendment to subsection 3 above would establish that the future value concept would not apply in the event that the combined value of the dedicated site and the up-front fee payment is substantially higher than the total amount of the in-lieu fee payable:

3. In the event that, upon transfer of the dedicated site, the value of the dedicated site is not at least equal to the future value of the in-lieu fee remaining to be paid, the developer shall immediately pay the shortfall in cash. If, at the time that the agreement to dedicate is executed, the combined value of the dedicated site and the substantial percentage of the in-lieu fee (as determined in subsection 2 above), is 35% or more than the in-lieu fee obligation of developer in effect at the date such agreement to dedicate is executed, then the above calculation of the remaining in-lieu fee obligation described in the first sentence of this Section shall not utilize the concept of "future value". However, if at the time of the land dedication, the value of the dedicated site is not sufficient to pay the remaining in-lieu obligation, then the developer shall pay the difference between the value of the dedicated site and the amount of the in-lieu fee remaining to be paid.

It is important to note that the amendment of the above-referenced section of the Inclusionary Housing Policy will not negatively impact the City's ability to meet its affordable housing goals. Rather, it will make the likelihood of land transfer greater, which provides another avenue for the City to meet its affordable housing goals.

EVALUATION AND FOLLOW-UP

The land dedication section of the Inclusionary Housing Policy sunsets on December 31, 2007.

POLICY ALTERNATIVES

Alternative #1: *Do not amend the future land value calculation clause in the Inclusionary Housing Policy.*

Pros: This alternative will allow the City to establish the future value of parcels proposed for dedication in order to guarantee that affordable housing needs are met and that the City's asset or payment would increase over time.

Cons: This alternative may create undue burdens on developers in that the value of their consideration can greatly exceed what would be required under the straight payment of an in-lieu housing fee.

Reason for not recommending: The recommended action has the potential to be beneficial to the City's affordable housing program in supporting the option of land dedication to the City and offers developers greater flexibility in meeting their inclusionary housing requirement.

PUBLIC OUTREACH/INTEREST

HONORABLE MAYOR AND CITY COUNCIL

Due Date: October 25, 2007

Subject: Amendment to Inclusionary Housing Policy to Clarify Land Dedication and Land Valuation Requirements

Page 4 of 4

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

The proposed amendment to the Inclusionary Housing Policy does not meet any of the above criteria. Nonetheless, this report will be posted on the City Council Agenda Website for the meeting of November 6.

COORDINATION

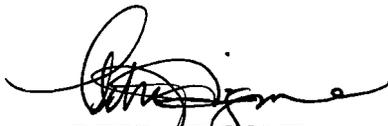
Preparation of this memorandum was coordinated between the City Attorney's Office, Housing Department, Redevelopment Agency/General Counsel, and the Office of Economic Development.

FISCAL/POLICY ALIGNMENT

The proposed amendment to the Inclusionary Housing Policy is consistent with the City's affordable housing program goals and will result in additional funding for the City's housing and homeless efforts, as well as land dedication that will benefit low-income residents of San José.

CEQA

CEQA: Not a project.


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For questions please contact Nanci Klein, Manager of Corporate Outreach, at 408-535-8184.