



COUNCIL AGENDA: 9-30-08  
ITEM: 9.1

# Memorandum

**TO:** HONORABLE MAYOR, CITY  
COUNCIL AND REDEVELOPMENT  
AGENCY BOARD

**FROM:** Debra Figone  
Harry S. Mavrogenes

**SUBJECT:** SEE BELOW

**DATE:** September 9, 2008

**COUNCIL DISTRICT:** 3  
**SNI AREA:** Washington

**SUBJECT:** INTERIM RENTAL AFFORDABILITY AGREEMENT WITH SKYLINE  
AT TAMIEN LOCATED AT ALMA AND LICK AVENUES

## **RECOMMENDATION**

It is recommended that the City Council and Redevelopment Agency Board adopt resolutions authorizing the Director of Housing to execute an Interim Affordability Restriction with Barry Swenson Builder to allow for the temporary rental of the for-sale affordable residential condominiums at Skyline at Tamien, located at Alma and Lick Avenues.

## **OUTCOME**

Approval of the proposed amendment will allow Barry Swenson Builder (“BSB” or “the Developer”) to temporarily rent 24 affordable residential units at its Skyline at Tamien project (“Project”) for an initial period of up to five years. Upon the improvement of the for-sale housing market, BSB can elect to sell the units, at which time the proposed Interim Affordability Agreement would be cancelled and the existing recorded Affordability Agreement would apply.

## **BACKGROUND**

### **Inclusionary Housing Policy Immediately Prior to July 1, 2007**

State Redevelopment Law requires that 15% of residential units developed within Redevelopment Project Areas be legally restricted to be affordable for households at certain income levels. The City’s Inclusionary Housing Policy (“the Policy”) in effect prior to July 1, 2007—to which BSB is subject for its Skyline at Tamien project—required developers of projects in Redevelopment Project Areas to integrate new affordable units into their new residential projects.

**Affordability Restriction for Skyline**

For Developer for-sale projects, the Policy's requirement prior to July 1, 2007 was to provide either 20% of units as affordable to low- or moderate-income households or to provide a combination of 9% of units as affordable to low- or moderate-income households and 6% affordable to very low-income households.

BSB's Project and Its Compliance with Inclusionary Policy

The Project is located at the corner of Lick and Alma Avenues East of State Highway 87. The entire project consists of two eleven-story high-rise towers and six townhomes, totaling 242 units. The construction on Phase I of this project, comprised of 115 one- and two-bedroom condominiums and six townhomes, was substantially completed in April 2008. Construction on Phase II, the second high-rise, has not yet begun.

In August 2004, the Developer signed an Affordability Restriction obligating it to fulfill its inclusionary requirement; selecting the option to provide 20% of units to moderate-income households at its Skyline at Tamien project. The City's pre-July 2007 Policy required on-site inclusion of the affordable units.

In addition to the subsidy provided by the Developer, the City also recently committed additional funds to help potential new homebuyers in this development. Up to \$1.2 million in funds from the State's Building Equity and Growth in Neighborhoods (BEGIN) Program was made available to the Skyline at Tamien project for down payment assistance loans to low- and moderate income homebuyers. In addition, in April 2008, the developer applied for and received a forward commitment of up to \$1 million in second mortgage funds for qualified first-time homebuyers through the City's Second Mortgage Notice of Funding Availability (NOFA).

ANALYSIS

The current for-sale housing market recently has been challenging, given the tightening of credit and lending standards and buyer concerns about the timing of entering the market. BSB began marketing the project for sale in March 2008, but by June 2008 it had closed its sales office and ceased marketing and advertising efforts due to an inability to attract buyers. The developer now desires to temporarily rent both the market rate and affordable units at Skyline in order to postpone a new sales push until the for-sale housing market is stronger.

The Housing Department recommends approval of the Developer's request to temporarily rent the units for several reasons. Most importantly, there is little advantage in forcing BSB to bring additional for-sale housing stock into the current market, which is now over-supplied. The units could take years to sell, resulting in exorbitant costs to the Developer with little benefit to the community of a largely-empty project.

**Affordability Restriction for Skyline**

Approving this request would enable the Developer to temporarily satisfy its Inclusionary Housing obligation in a way that still meets the City's requirement for provision of affordable units. This proposal is consistent with the stated objectives of the updated Inclusionary Housing Policy that took effect July 1, 2007, which deepens the affordability of new affordable rental units to low- and very-low income households. Further, this request is consistent with the temporary conversion from for-sale to rental of The Globe project located at Second and Santa Clara Streets, which the City Council approved on June 24, 2008.

In addition, the project offers large units located near transit and would be beneficial for families in need of affordable rental units. Upon conversion back to for-sale housing, BSB would still sell the units in accordance with its existing Affordability Restriction. Finally, the total years of affordability would increase by the term of the rental period, resulting in a longer affordability period than would otherwise be obtained.

Approving the request to allow for the temporary rental of affordable for-sale housing units requires the use of an Interim Affordability Agreement. The Housing Department will record a new rental restriction and subordinate the existing underlying moderate-income for-sale affordability restriction. Key provisions of the proposed Interim Affordability Restriction would include:

- Rental of the 24 designated affordable units would be allowed for a period of up to five years. The Director of Housing would have the authority to extend this term for up to an additional five years, if desired. The underlying 45-year for-sale restriction would take effect upon the expiration or termination of the interim rental restriction;
- Fourteen of the designated affordable units would be rented to lower-income households, with rents capped at 60% (\$1,181 - \$1,330) of Area Median Income (AMI), and ten of the designated units would be rented to very low-income households with rents capped at 50% (\$976-\$1,099) of AMI;
- The Developer may terminate the Interim Rental Restriction at any time during the term provided that the owner (1) give a minimum of 90 days' advance notice to the tenants of the affordable units prior to the commencement of the marketing of those units for sale, and (2) does not violate or prematurely terminate any lease agreement between the owner and tenant of an occupied designated affordable unit;
- The Developer agrees to take any actions necessary to legally avoid or minimize legal Relocation obligations, but in the event there are resulting obligations, the Developer shall be responsible for them.

Impact on the Project's Second Mortgage Funding

If staff's recommendation is approved, the project's existing funding commitments for mortgage assistance would be reallocated to homebuyers in other for-sale housing developments with high demand, such as KB Homes' Monte Vista development, in accordance with the NOFA's approval by City Council in March 2008.

**EVALUATION AND FOLLOW-UP**

The Housing Department regularly posts Housing Production reports on the status of inclusionary and subsidized projects to its website, [www.sjhousing.org](http://www.sjhousing.org). If approved, an Interim Affordability Agreement will be signed and the Housing Production report will be updated to reflect the change in tenure.

**POLICY ALTERNATIVES**

To arrive at this proposal, Staff considered the following options:

***Alternative #1: Do not approve an Interim Rental Affordability Restriction and require the developer to market and sell the designated affordable units.***

**Pros:** New, affordable for-sale housing units would become available to moderate-income homebuyers in the Washington SNI Area.

**Cons:** It is unlikely that new for-sale housing units in San José will be rapidly purchased by new buyers, leaving the project largely empty and potentially destabilizing the neighborhood. In addition, the Developer would be required to absorb costs of unpaid HOA fees for each unsold unit, costing the owner approximately \$1 million in fees over a two-year sales process, as well as interest carrying costs for the project's large construction loan.

**Reason for not recommending:** The proposed Interim Affordability Agreement will immediately bring new affordable rental units into the tight current rental market and provide much needed relief for lower-income households, while still preserving affordable homeownership opportunities for moderate-income homebuyers in future years.

**PUBLIC OUTREACH/INTEREST**

Although this action item does not meet any of the criteria below, this memo will be posted to the City Council Agenda for September 30th via the City's website.

**Affordability Restriction for Skyline**

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater.
- 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.
- Criterion 3:** Consideration of proposed changes to service delivery, programs, or staffing that may have impacts to community services and have been identified by staff, the Board or Council, or a community group that requires special outreach.

**COORDINATION**

This report has been coordinated with the Housing Department and the Office of the City Attorney.

**FISCAL/POLICY ALIGNMENT**

This recommended action is consistent with the City's Current Inclusionary Housing Policy that requires new rental projects to provide 8% of the units to very low-income households and 12% of the units to lower-income households.

**COST SUMMARY/IMPLICATIONS**

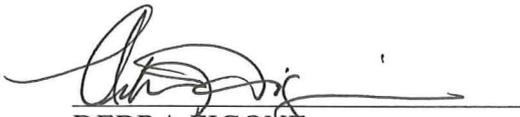
Not Applicable. There are no costs associated with this action.

**BUDGET REFERENCE**

Not Applicable.

**CEQA**

CEQA: Resolution No. 26993, PDC02-072.

  
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