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Memorandum

**TO: HONORABLE MAYOR
AND CITY COUNCIL**

FROM: Nadine Nader

SUBJECT: Early Council Packet

DATE: September 15, 2009

Approved

Date

9/15/09

EARLY DISTRIBUTION COUNCIL PACKET FOR SEPTEMBER 29, 2009

Please find attached the Early Distribution Council Packet for the September 29, 2009 Council Meeting.

3.x Amend Retiree Healthcare Agreement with the City Association of Management Personnel.

Recommendation: Adopt a resolution amending the terms of the current retiree healthcare agreement with the City Association of Management Personnel (CAMP), which would extend the reopener to commence meeting and conferring on retiree healthcare benefits for future employees and a medical reimbursement program for future retirees from January 2010 to January 2011. CEQA: Not a Project. (City Manager's Office)

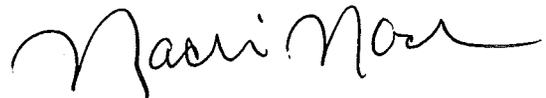
4.x Report on Bids and Award of Contract for Couplet Conversion – Julian Street and St. James Street Project.

Recommendation: Report on bids and award of contract for the SNI 13S01d: Couplet Conversion – Julian Street and St. James Street Project to the low bidder, Joséph J. Albanese, Inc., to include the base bid and Add Alternate No. 2, in the amount of \$3,535,968.85, and approval of a contingency in the amount of \$176,800. CEQA: Negative Declaration and addenda thereto, File Nos. PP02-05-115 and PP08-126. Council District 3. SNI: 13th Street. (Public Works)

9.x Policy on Implementation of the Inclusionary Housing.

Recommendation: Adopt resolutions by the City Council and the Redevelopment Agency Board amending the "City of San José Policy on Implementation of the Inclusionary Housing Requirement of Health & Safety Code Section 33413(b)(2)" for redevelopment project areas by providing a waiver of the requirement for a very low-, low- or moderate-income restriction on a for-sale unit when the affordable housing price is within five percent (5%) of the unrestricted market value of the unit. CEQA: Not a project. (Redevelopment Agency/City Manager's Office)

These items will also be included in the Council Agenda Packet with an item numbers.



NADINE NADER
Assistant to the City Manager



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Alex Gurza

SUBJECT: SEE BELOW

DATE: September 11, 2009

Approved

Deanna Sarkis

Date

9/14/09

**SUBJECT: AMENDING THE TERMS OF THE RETIREE HEALTHCARE
AGREEMENT WITH THE CITY ASSOCIATION OF MANAGEMENT
PERSONNEL (CAMP)**

COUNCIL DISTRICT: N/A
SNI AREA: N/A

RECOMMENDATION

Adoption of a resolution amending the terms of the current retiree healthcare agreement with the City Association of Management Personnel (CAMP), which would extend the reopener to commence meeting and conferring on retiree healthcare benefits for future employees and a medical reimbursement program for future retirees from January 2010 to January 2011.

OUTCOME

Adoption of the resolution would authorize the City Manager to execute the amended agreement to extend the retiree healthcare reopener from January 2010 to January 2011.

BACKGROUND

The City of San Jose has a labor agreement with the bargaining unit, CAMP. CAMP represents approximately 410 full time positions, including Senior Analysts and Program Managers.

On June 3, 2009, CAMP membership voted to forego the 1.5% general wage increase that was scheduled for Fiscal Year 2009-2010. This means that CAMP members have a true wage freeze for Fiscal Year 2009-2010 since they do not have automatic step increases. CAMP was the first bargaining unit with a scheduled 1.5% general wage increase to agree to a true wage freeze.

In March of 2009, the City and CAMP reached an agreement on retiree healthcare funding, which included a reopener to commence meeting and conferring on retiree healthcare benefits for future employees and a medical reimbursement program for future retirees in January 2010.

A similar reopener was negotiated with six other bargaining units and an extension was granted to the other unions who have agreed to a true wage freeze for Fiscal Year 2009-2010.

In recognition of CAMP agreeing to a "true wage freeze," the retiree healthcare agreement between the City and CAMP regarding retiree healthcare dated March 4, 2009, shall be modified so that the reopener to commence meeting and conferring on retiree healthcare benefits for future employees and a medical reimbursement program for future retirees would be extended from January 2010 to January 2011. Specifically, the meet and confer process would commence between January 1, 2011 and January 19, 2011.

All other provisions of the retiree healthcare agreement would remain in effect and unchanged.

ANALYSIS

The Tentative Agreement amending the retiree healthcare agreement is attached.

In recognition of CAMP agreeing to a "true wage freeze," the retiree healthcare agreement between the City and CAMP regarding retiree healthcare dated March 4, 2009, shall be modified so that the reopener to commence meeting and conferring on retiree healthcare benefits for future employees and a medical reimbursement program for future retirees would be extended from January 2010 to January 2011. Specifically, the meet and confer process would commence between January 1, 2011 and January 19, 2011.

All other provisions of the retiree healthcare agreement would remain in effect and unchanged.

EVALUATION AND FOLLOW-UP

The Tentative Agreement includes a provision that the City and CAMP have agreed to commence meeting and conferring between January 1, 2011 and January 19, 2011, on retiree healthcare benefits for future employees and a medical reimbursement program for future retirees. Any changes to retiree healthcare benefits for future employees and/or a medical reimbursement program for future retirees, would be brought forward to City Council for approval.

PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 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)**

- Criteria 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)**

This item meets Criterion 2. This memorandum will be posted on the City's website for the September 29, 2009 Council Agenda.

COORDINATION

This memorandum was coordinated with the City Attorney's Office.

COST IMPLICATIONS

None.



Alex Gurza
Director of Employee Relations

For questions please contact Alex Gurza, Director of Employee Relations, at (408) 535-8150.

**CITY OF SAN JOSE AND CITY ASSOCIATION OF MANAGEMENT PERSONNEL
TENTATIVE AGREEMENT**

RETIREE HEALTHCARE FUNDING

The City and the Employee Organization agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to pre-funding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization). Amortization of changes in the unfunded retiree healthcare liability other than the initial retiree healthcare liability (e.g. gains, losses, changes in actuarial assumptions, etc.) shall be determined by the Plan's actuary. The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San Jose Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of eight-to-three. When determining the contribution rates for the Plan, the Plan actuary shall continue to use the Entry Age Normal (EAN) actuarial cost method and a discount rate consistent with the pre-funding policy for the Plan as outlined in this section.

The City and the Employee Organization further agree that the Municipal Code and/or applicable plan documents shall be amended in accordance with the above agreement and that the Employee Organization will support such amendments.

It is understood that in reaching this agreement, the parties have been informed by cost estimates prepared by the Federated City Employees' Retirement System Board's actuary and that the actual contribution rates to reach full pre-funding of retiree healthcare will differ. The phase-in to the ARC shall be divided into five steps (using a straight line method), each to be effective on the first pay period of the City's fiscal year in each succeeding year. The first increment of the phase-in shall be effective on June 28, 2009. It is understood that because of changes resulting from future actuarial valuations, the amount of each increase may vary upward or downward. The City and Employee Organization agree that the Plan member cash contribution rate shall not have an incremental increase of more than .75% of pensionable pay in each fiscal year and the City cash contribution rate shall not have an incremental increase of more than .75% of pensionable pay in each fiscal year. For example, if the members' contribution rate is 4% of pensionable pay, the subsequent fiscal year's contribution rate for retiree healthcare cannot exceed 4.75% of pensionable pay. Notwithstanding the limitations on the incremental increases, by the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San Jose Municipal Code.

The City will establish a qualified trust ("Trust") before June 27, 2010. Until such time as a Trust is established, the City and employee contributions under this agreement shall be made into the existing Medical Benefits Account for as long the contributions can be made into the Medical Benefits Account in accordance with IRS limitations. If the Trust is not established prior to reaching the IRS limitation, the parties agree to meet and discuss alternative funding vehicles.

**CITY OF SAN JOSE AND CITY ASSOCIATION OF MANAGEMENT PERSONNEL
TENTATIVE AGREEMENT**

It is the objective of the parties that the Trust created pursuant to this agreement shall become the sole funding vehicle for Federated retiree healthcare benefits, subject to any legal restrictions under the current plan, or other applicable law.

HEALTHCARE COST MITIGATION

The parties agree to commence meeting and conferring between January 1, 2011, and January 19, 2011, on retiree healthcare benefits for future employees and a medical reimbursement program for future retirees.

The parties intend to engage in the foregoing negotiations in a coalition bargaining process with all other interested represented bargaining units, if any. However, negotiations between the City and Employee Organization shall commence no later than January 19, 2011 with or without participation of any other bargaining unit. The City and Employee Organization shall negotiate in good faith in an effort to reach a mutual agreement.

If no agreement is reached, the parties will follow the impasse procedures set forth in the City of San Jose's Employer-Employee Relations Resolution (#39367) and the Meyers-Milias-Brown Act. The parties understand that this means that the City will have the right to unilaterally implement in the event that no agreement is reached at the conclusion of negotiations and mandatory impasse procedures. The City agrees that a unilateral implementation of retiree healthcare benefits for future employees shall not be effective before July 1, 2011.

This agreement is still considered tentative and shall not be considered final or binding until approved by the City Council. This document sets forth the full agreements of the parties. Anything not included in this document is not part of this tentative agreement. The provisions set forth above shall be incorporated in any successor agreement.

FOR THE CITY:

FOR THE UNION:

Max Gura
Director of Employee Relations.
9-8-09

Gay Gale, CAMP President
September 2, 2009

Paul Lopez, Vice President
September 7, 2009

Luca
Deputy Director of Employee Relations
09/08/09
Oracely Rodriguez
Senior Executive Analyst
09/08/09

Behemmi
Senior Executive Analyst
9/10/09



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Katy Allen

SUBJECT: SNI 13S01d: COUPLET
CONVERSION – JULIAN STREET
AND ST. JAMES STREET PROJECT

DATE: 09-08-09

Approved

Date

9/10/09

COUNCIL DISTRICT: 3
SNI AREA: 13th Street

RECOMMENDATION

Report on bids and award of contract for the SNI 13S01d: Couplet Conversion – Julian Street and St. James Street Project to the low bidder, Joseph J. Albanese, Inc., to include the base bid and Add Alternate No. 2, in the amount of \$3,535,968.85, and approval of a contingency in the amount of \$176,800.

OUTCOME

Award of this construction contract to Joseph J. Albanese, Inc. will enable the SNI 13S01d: Couplet – Julian Street and St. James Street project to proceed. Approval of a five percent contingency will provide funding for any unanticipated work necessary for the proper completion or construction of this project.

BACKGROUND

The Julian Street and St. James Street one-way couplets serve as citywide arterials bringing commuting traffic through the neighborhood. In 2002, the City Council approved the Downtown Access and Circulation Study that included recommendations to modify seven one-way couplet street corridors in an effort to improve community livability in neighborhoods surrounding Downtown San José. Conversion of the Julian/St. James couplet corridor in the area between 4th Street and 19th Street was subsequently identified as a top priority in the 13th Street Strong Neighborhood Initiative (SNI) plan to improve community livability in this corridor.

09-08-09

Subject: SNI 13S01d: Couplet Conversion – Julian Street and St. James Street Project

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This project will convert Julian Street and St. James Street from one-way streets to two-way streets with one travel lane in each direction. These improvements are on Julian Street between 4th Street and 17th Street, on St. James Street between 4th Street and 19th Street, and on 4th Street from Julian Street to St. James Street. The base bid scope of work includes traffic signal modifications at eleven (11) intersections, civil work improvements at nineteen (19) non-signalized intersections along with other improvements including sidewalks, curb & gutter, wheelchair ramps, drainage improvements, roadway striping, signage, and replacement of seven (7) trees.

In addition to the base bid scope of work, there is one Add Alternate bid item.

Add Alternate No. 1: Pavement Improvement (Julian Street) DELETED*

Add Alternate No. 2: Pavement Improvement (St. James Street)

- * Add Alternate No. 1 was deleted from the bid package on July 15, 2009. The Engineer's Estimate for this pavement work is estimated at \$321,842. As part of the American Recovery and Reinvestment Act (ARRA) of 2009 funding, Department of Transportation's Infrastructure and Maintenance (IM) Division will resurface Julian Street from Market Street to 21st Street following the completion of the Julian Street Couplet conversion construction. The amount of \$321,842 will be transferred to the IM Division to supplement the pavement resurfacing project.

The San José Redevelopment Agency (SJRA) has provided funding for the design of the Julian/St. James Couplet Conversion project. In 2008, the project was approved to receive grant funding from the Santa Clara Valley Transportation Authority (VTA) for project construction in the amount of \$5,076,000 from their Local Streets and County Roads program. The funding agreement between VTA and the City was approved by City Council on June 9, 2009. Since the construction phase of the project is estimated at \$5,799,534; the balance of \$729,534 will be funded by SJRA. On August 4, 2009, the City Council approved the Project Services Memorandum (PSM) to transfer a total of \$1,742,590 to the Department of Transportation (DOT). Of the \$1,742,590 funding from SJRA, \$647,669 will be used for the Julian/St. James Couplet Conversion Project and \$321,842 will be used for the ARRA project.

Construction is scheduled to begin in November 2009 with completion in June 2011.

ANALYSIS

Bids were opened on August 20, 2009 with the following results:

<u>Contractor</u>	<u>Base Bid</u>	<u>Add Alt No.</u> <u>2</u>	<u>Total Bid</u>	<u>Variance</u> <u>Amount</u>	<u>Over/</u> <u>(Under)</u> <u>Percent</u>
Engineer's Estimate	\$4,346,509.25	\$159,990.75	\$4,506,500.00	---	---
Tennyson Electric, Inc. (Livermore)	\$4,242,774.00	\$112,551.93	\$4,355,325.93	(\$151,174.07)	(3)
O'Grady Paving, Inc. (Mountain View)	3,875,285.90	77,934.63	3,953,220.53	(553,279.47)	(12)
Golden Bay Construction, Inc. (Hayward)	3,616,373.55	59,191.07	3,675,564.62	(830,935.38)	(18)
Joseph J. Albanese, Inc. (Santa Clara)	3,470,976.00	64,992.85	3,535,968.85	(970,531.15)	(22)

<u>Contractor</u>	<u>Add Alternate No. 2</u>
Tennyson Electric, Inc. (Livermore)	\$112,551.93
O'Grady Paving, Inc. (Mountain View)	\$77,934.63
Joseph J. Albanese, Inc. (Santa Clara)	\$64,992.85
Golden Bay Construction, Inc. (Hayward)	\$59,191.07

The low bid submitted by Joseph J. Albanese, Inc., is 22% below the Engineer's Estimate. With the current competitive bidding environment between suppliers, subcontractors and general contractors, the bids received were lower than anticipated. Therefore, the bid is considered acceptable for the work involved in the project. Add Alternate No. 2 is also recommended for award because the project budget is sufficient to accommodate this addition to the project.

Council Policy provides for a standard contingency of five percent on public works projects involving traffic related systems. The standard contingency is appropriate for this project.

EVALUATION AND FOLLOW-UP

This project is currently within budget and on schedule. No additional follow up action with the Council is expected at this time.

PUBLIC OUTREACH/INTEREST

- 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)**

This item meets Criterion 1: Requires Council action on the use of public funds equal to \$1 million or greater. Various neighborhood and community meetings were held to gather input. Additionally, to solicit contractors, this project was listed on the City's Internet Bid Line and advertised in the *San José Post Record*. Bid packages for all Department of Public Works construction projects are provided to various contractor organizations and builder's exchanges. In addition, this memorandum will be posted on the City's website for the September 29, 2009, Council Agenda.

Public outreach for this project was coordinated with Council District 3, the 13th Street Strong Neighborhoods Initiative Area, and residents immediately adjacent to the intersections. A community meeting was held on July 20, 2009 to present the various projects and schedules to the residents.

COORDINATION

This project and memorandum have been coordinated with Departments of Transportation, Planning, Building and Code Enforcement, the City Manager's Budget Office, City Attorney's Office and the San José Redevelopment Agency.

FISCAL/POLICY ALIGNMENT

This project is consistent with the Council-approved Budget Strategy Economic Recovery section in that it will spur construction spending in our local economy.

COST SUMMARY/IMPLICATIONS

1. AMOUNT OF RECOMMENDATION/COST OF PROJECT: \$ 3,535,968.85

Project Construction Delivery	\$ 1,760,900 *
DOT Project Support	250,000
Construction	3,535,969
Contingency	<u>176,800</u>
TOTAL PROJECT COST	\$ 5,723,669

* Project delivery includes \$37,500 for Bid & Award Services and \$ 1,373,400 for Construction Management and Inspection Services.

2. COST ELEMENTS OF AGREEMENT/CONTRACT:

Asphalt and Concrete Work	\$ 787,393
Storm Water Pollution Plan & Clean up	107,500
Storm Drain Inlets & Drainage Work	810,812
Traffic Signal & Communication Work	1,694,152
Miscellaneous Items of Work	<u>136,112</u>
TOTAL CONTRACT AMOUNT	\$ 3,535,969

3. SOURCE OF FUNDING: 429 – Building and Construction Excise Tax Fund
450 – Services For Redevelopment Capital Projects Fund

4. OPERATING COSTS: The project will have minimal additional operating and maintenance costs upon completion since all of the traffic signals to be modified are currently operated and maintained by DOT.

BUDGET REFERENCE

The table below identifies the fund and appropriations proposed to fund the contract(s) recommended as part of this memo and remaining project costs, including project delivery, construction, and contingency costs.

09-08-09

Subject: SNI 13S01d: Couplet Conversion – Julian Street and St. James Street Project

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Fund #	Appn. #	Appn. Name	RC #	Total Appn.	Amt. for Contract	2009-2010 Proposed Capital Budget Page	Last Budget Action (Date, Ord. No.)
Remaining Project Costs					\$3,535,969		
429	7085	Julian/St. James Couplet Conversion Project	158925	\$5,076,000	\$3,535,968.85	V-777	06/23/09 Ord. No. 28593
450	7125	13 th St SNI Couplet Conversion and Pedestrian Improvement Project – Julian & St James	157815	\$1,742,590		N/A	08/04/09 Ord. No. 28611
Total Funding for Projects					\$6,818,590	\$3,535,969	

CEQA

CEQA: Negative Declaration and addenda thereto, File No. PP02-05-115 and PP08-126.

/S/

KATY ALLEN
Director, Public Works Department

For questions, please contact TIMM BORDEN, DEPUTY DIRECTOR, at (408) 535-8300.



Memorandum

TO: HONORABLE MAYOR, CITY
COUNCIL AND REDEVELOPMENT
AGENCY BOARD

FROM: Debra Figone
Harry S. Mavrogenes

SUBJECT: SEE BELOW

DATE: September 15, 2009

COUNCIL DISTRICT: Citywide
SNI AREA: All

**SUBJECT: AMENDMENT TO REDEVELOPMENT AREA INCLUSIONARY
HOUSING POLICY TO ALLOW FOR A WAIVER OF AFFORDABILITY
REQUIREMENTS FOR THE SALE OF OWNERSHIP UNITS**

RECOMMENDATION

It is recommended that the City Council and the Redevelopment Agency Board adopt resolutions amending the "City of San Jose Policy on Implementation of the Inclusionary Housing Requirement of Health & Safety Code Section 33413(b)(2)" for redevelopment project areas by providing a waiver of the requirement for a very low-, low- or moderate-income restriction on a for-sale unit when the affordable housing price is within 5% of the unrestricted market value of the unit.

OUTCOME

Approval of the recommended action will remove a potential impediment to selling units in for-sale developments located in redevelopment project areas.

BACKGROUND

State law requires that at least 15% of the housing developed in redevelopment project areas established since 1976 be affordable. To comply with this requirement, the City Council and Redevelopment Agency Board jointly adopted the "City of San Jose Policy on Implementation of the Inclusionary Housing Requirement of Health & Safety Code Section 33423(b)(2)" in the 1980s. The Policy was most recently amended on June 19, 2007.

In general, the current Policy requires that developers of housing in redevelopment project areas make a portion of the units in their projects affordable without any financial assistance from the City or the Redevelopment Agency. The Policy provides a number of means for alternatively

complying with the requirement to provide the inclusionary units within the developer's project, including, among others, payment of an in-lieu fee, construction of the inclusionary units off-site, dedication of land, or some combination of the alternative compliance methods.

In for-sale projects, when the developer elects to include the inclusionary units within the project, the requirement is that either 20% of the units must be affordable to low- or moderate-income households or a combination of 9% affordable to low- or moderate-income households and 6% affordable to very low-income households.

ANALYSIS

In for-sale developments, the inclusionary policy requires that the restricted units be priced at an "affordable housing price" for the specified income level and that the restricted units be marketed and sold to households at or below the specified affordable income level. Historically, this has required for-sale developers to price the inclusionary units below the prevailing market-rate price for a similar unit in the same development, the difference being the "developer discount." The City records an affordability restriction on the price-discounted unit as well as a deed of trust securing the amount of the developer discount. That discount forms the basis for an equity share provision under which the homeowner owes the City a share of increased equity should the home be sold to a non-income-qualified buyer prior to the 45-year term of the affordability restriction.

In depressed housing market conditions like those prevailing at the present time, developers are forced to bring housing prices down for all units in order to attract buyers, even to the point that market-rate home prices can approach or even equal the affordable price for such units. As a result, the market is providing affordable for-sale housing units without an affordability restriction being imposed on the developers. This means that:

- Affordable homebuyers can legitimately afford both restricted and unrestricted units.
- The public purpose of requiring for-sale housing affordable to this income level is being satisfied by the unregulated marketplace.
- Affordable buyers are reluctant to purchase homes that are accompanied by an affordability restriction containing an equity share provision if they are eligible to buy the same product without such restrictions. Even though the ultimate effect of these restrictions will be negligible or non-existent depending on the size of the actual developer discount, which is the basis for a future equity-share being owed to the City, these buyers would naturally prefer to buy a similarly priced unrestricted unit with no affordability restriction.
- Consequently, developers are facing difficulties selling the restricted units.
- Even if developers are able to sell these units with affordability restrictions and City deeds of trust, the City will likely expend more money monitoring these units and releasing the restrictions upon resale than will be realized with the negligible or non-existent equity-share payout.

September 15, 2009

Amendment to Inclusionary Housing Policy

Page 3

For these reasons, staff agrees with for-sale housing developers that it is appropriate to provide a "pressure-relief valve" to impose less strenuous inclusionary requirements during adverse conditions in the housing market. Therefore, staff is recommending that the pressure-relief valve be added to the existing Inclusionary Housing Policy applicable in redevelopment project areas.

The pressure-relief valve would become operative whenever a developer can demonstrate to the satisfaction of the City Manager and the Executive Director that the Affordable Price of a designated affordable unit is within 5% of the unrestricted market value of such unit. The following provisions shall apply to any waiver of the Inclusionary requirements:

1. The designated affordable unit may be sold at or below the Affordable Price with no requirement that it be sold to a person or family of low or moderate income (as defined in the California Health and Safety Code) ("Affordable Household").
2. The designated affordable unit must be initially occupied by the purchaser.
3. There will be no requirement that any affordability restrictions (or an equity share) be recorded against the designated affordable unit or the project.
4. The waiver shall be valid for six months from the date the application for waiver is approved. If the designated affordable unit is not sold within such six month period, the developer may request an extension of such waiver provided that the developer can demonstrate to the satisfaction of the Executive Director and the City Manager that the applicable unit continues to qualify for the waiver.

In this context, "Affordable Price" is defined as the purchase price to be paid by an Affordable Household to acquire a designated affordable unit as determined under the provisions of the California Health and Safety Code and the City's Inclusionary Policy and the regulations adopted to implement the Policy. A developer may use any reasonable means of demonstrating the market value of a unit, including, but not limited to, an appraisal, comparable sales within the developer's project, or comparable sales of other similar projects located in close proximity to the developer's project.

The pressure-relief valve was originally developed in conjunction with the draft Citywide Inclusionary Housing Ordinance at the suggestion of housing developers. Since consideration of the draft Ordinance has been delayed, due to two recent legal cases involving other cities related to inclusionary housing, staff is proposing the subject amendment to the existing redevelopment-area inclusionary housing policy in order to implement the idea immediately.

Attached is the proposed new language that will be added to the Policy should the action recommended in this memorandum be approved.

EVALUATION AND FOLLOW-UP

Units exempted under the waiver recommended in this memorandum will be included in the Homebuyer Program Summary Statistics section of the quarterly "Report on Activities Undertaken by the Director of Housing and the Director of Finance Under the City Council's Delegation of Authority."

POLICY ALTERNATIVES

To arrive at the recommended proposal, staff also considered the following option:

Alternative #1: *Do not amend the Inclusionary Housing Policy to include a pressure-relief valve.*

Pros: The strict application of the Inclusionary Housing Policy would result in the City obtaining equity-share notes for all inclusionary ownership units within redevelopment project areas.

Cons: Income-qualified buyers are reluctant to purchase restricted units when they qualify to buy unrestricted units, so developers have difficulty selling inclusionary units that are accompanied by an equity-share note when similarly priced units are unencumbered.

**Reason for Not
Recommending:** Adoption of the pressure-relief valve will remove a barrier to improved new home sales in redevelopment project areas, thereby improving the economic vitality of the City.

PUBLIC OUTREACH/INTEREST

- 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, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach.

Electronic copies of this memorandum will be: (1) e-mailed to a wide spectrum of market-rate developers, affordable housing advocates and others interested in the inclusionary housing issue; and (2) posted on the City Council Agenda website for the September 29, 2009, meeting.

COORDINATION

Preparation of this memorandum was coordinated with the Housing Department, City Attorney's Office and the General Counsel's Office.

FISCAL/POLICY ALIGNMENT

The proposed amendment to the Inclusionary Housing Policy is consistent with the City's overall housing production objectives and affordable housing program goals.

CEQA

Not a project



DEBRA FIGONE
City Manager



HARRY S. MAVROGENES
Executive Director

Attachment

For questions, please contact Jacky Morales-Ferrand, Assistant Director of Housing,
at 408-535-3855.

New Section VII of the City/Agency Inclusionary Policy

VII Waiver of Inclusionary Requirements.

Notwithstanding anything to the contrary contained herein, the developer of a project containing for-sale units may apply for a waiver of the Inclusionary Requirements contained herein if the developer can demonstrate to the satisfaction of the City Manager and the Executive Director that the Affordable Price (as defined below) of a designated affordable unit is within five percent (5%) of the unrestricted market value of such unit. The following provisions shall apply to any waiver of the Inclusionary Requirements granted hereunder and any developer obtaining a waiver shall comply with such requirements:

1. The designated affordable unit may be sold at or below the Affordable Price with no requirement that it be sold to a person or family of low or moderate income (as defined in the California Health and Safety Code) ("Affordable Household").
2. The designated affordable unit must be initially occupied by the purchaser.
3. There will be no requirement that any affordability restrictions (or an equity share) be recorded against the designated affordable unit or the project.
4. The waiver shall be valid for six (6) months from the date the application for waiver is approved. If the designated affordable unit is not sold within such six (6) month period, the developer may request an extension of such waiver provided that the developer can demonstrate to the satisfaction of the Executive Director and the City Manager that the applicable unit continues to qualify for the waiver in accordance with the requirements of this Section.

For purposes of this section, "Affordable Price" shall be defined as the purchase price to be paid by an Affordable Household to acquire a designated affordable unit as determined under the provisions of the California Health and Safety Code and this Policy and the regulations adopted to implement the Policy. A developer may use any reasonable means of demonstrating the market value of a unit, including, but not limited to, an appraisal, comparable sales within the developer's project, or comparable sales of other similar projects located in close proximity to the developer's project.