

RESOLUTION NO.

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AMENDING THE JOINT CITY/REDEVELOPMENT AGENCY INCLUSIONARY HOUSING POLICY TO PROVIDE 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**

**WHEREAS**, California Health and Safety Code Section 33413 requires that a certain percentage of dwelling units developed in redevelopment project areas adopted after January 1, 1976 be available at affordable housing costs to persons and families of low or moderate incomes (“Inclusionary Housing Requirement”); and

**WHEREAS**, on October 4, 1988, the City Council by Resolution No. 60918, and on October 20, 1988, the Agency Board by Resolution No. 2873, adopted the City of San Jose Policy (“Policy”) regarding implementation of the Inclusionary Housing Requirement to insure that private developers are constructing the required number of affordable units or paying the appropriate in-lieu fee; and

**WHEREAS**, the Agency and the City entered into that certain Agreement dated September 28, 1990 in which the Agency delegated to the City authority to administer the 20% Housing Funds and monitor the affordable housing projects in Project Areas; and

**WHEREAS**, the Community Redevelopment Law Reform Act of 1993 amended Section 33413, enabling, but not requiring, the Agency to allow alternative methods of complying with the Inclusionary Housing Requirement; and

**WHEREAS**, on December 15, 1994, the Agency Board adopted Resolution No. 3918 to reaffirm its Policy and provide certain exceptions to the Policy permitted by the 1993 legislation; and

**WHEREAS**, on June 27, 1995, the Agency Board adopted Resolution No. 4005, and the City Council adopted Resolution No. 66120, to amend their Policy to provide developers with more flexibility while assuring against the potential risks for the City and Agency; and

**WHEREAS**, on June 25, 1996, the City Council adopted Resolution No. 66796 to amend its Policy to further provide developers with more flexibility while assuring against the potential risks for the City and Agency; and

**WHEREAS**, on March 4, 1997, the Agency Board adopted Resolution No. 4211 and the City Council adopted Resolution No. 67183 to amend their Policy to allow for subordination of the inclusionary requirements to a federal or state agency; and

**WHEREAS**, on October 28, 1997, the Agency Board adopted Resolution No. 4328 and the City Council adopted Resolution No. 67719 to amend the Policy to further provide developers with more flexibility in complying with the inclusionary requirements; and

**WHEREAS**, on September 18, 2001, the Agency Board adopted Resolution No. 5204 and the City Council adopted Resolution No. 70618, making findings that the aggregation of inclusionary housing units among all Redevelopment Project Areas would not cause or exacerbate segregation, and making certain administrative changes; and

**WHEREAS**, on August 27, 2002, the Agency Board adopted Resolution No. 5337 and the City Council adopted Resolution No. 71181 to provide that City or Agency assistance be used to satisfy the Inclusionary Housing Requirement in housing developments in which at least 50% of the units will be made affordable through City or Agency financing; and

**WHEREAS**, on September 30, 2003, the Agency Board adopted Resolution No. 5437 and the City Council adopted Resolution No. 71775 to amend the Policy to reduce barriers to for-sale projects and small infill projects, which were expected to be prevalent in the newly-created Strong Neighborhoods Initiative Project Area; and

**WHEREAS**, on January 11, 2005, the Agency Board adopted Resolution No. 5572 and the City Council adopted Resolution No. 72484 to clarify that if a developer of a project with 11 to 20 units chooses to pay the in-lieu fee, the in-lieu fee will be paid based on 20% of the total number of dwelling units; and

**WHEREAS**, on June 21, 2005, the Agency Board adopted Resolution No. 5628 and the City Council adopted Resolution No. 72770 to allow an exception for development agreements provided the development agreement includes an affordable housing plan which provides at least the same number of affordable units as required under the Policy and provides greater affordability for those units; and

**WHEREAS**, on May 15, 2007, the Agency Board adopted Resolution No. 5745 and the City Council adopted Resolution No. 73764 to allow a developer to dedicate land to the City for the construction of affordable housing in lieu of that developer providing the required inclusionary units in the developer's housing project; and

**WHEREAS**, on June 19, 2007, the City Council adopted Resolution No. 73881 to amend the Schedule of Fees and Charges to modify the Inclusionary fees; and

**WHEREAS**, on June 19, 2007, the Agency Board adopted Resolution No. 5761 and the City Council adopted Resolution No. 73880 to make changes to the Policy, effective July 1, 2007, that: (i) required 8% very low-income units and 12% low-income units at 60% of area median income in rental projects, (ii) offered developers options to meet their inclusionary housing obligations, including providing the affordable units within their project, working jointly with other developers to build a 100% affordable stand alone project on an adjacent or nearby site, or paying in-lieu fees to the City, and (iii) provided that the section added to the Policy on May 15, 2007 related to land dedication sunset on December 31, 2007; and

**WHEREAS**, the June 19, 2007 action also established: (1) a short term in-lieu fee for a period of ninety (90) days to encourage certain construction ready projects to commence construction. The interim in lieu fee is only available to certain construction ready projects which have not already satisfied or complied with the Policy by execution and recordation of an affordability agreement or payment of in lieu fees and that have received either a site development or planned development permit on or before June 1, 2007 and have not received a foundation or building permit prior to July 1, 2007; and (2) an amnesty program for a period of ninety (90) days, which program would provide an incentive to Developers who have obtained building permits and commenced construction but have not already satisfied or complied with the Policy by execution of an affordability agreement or payment of in lieu fees to satisfy the Policy (“Amnesty Program”); and

**WHEREAS**, on September 25, 2007, the Agency Board adopted Resolution No. 5782 and the City Council adopted Resolution No. 74023 so that projects that have a written

Compliance Plan approved in writing by Agency staff and an active discretionary permit application on file with Planning would be defined as a “pipeline” project solely for purposes of the Policy change that went into effect on July 1, 2007, if the Compliance Plan was approved in writing by the Agency prior to July 1, 2007 so that a developer would have the option to comply with the Policy in effect prior to July 1, 2007 or to comply with requirements of the new Policy effective July 1, 2007; and

**WHEREAS**, the September 25, 2007 action also clarified the Policy to incorporate the following: “The in-lieu fee payment shall be calculated based on the highest percentage level of affordable units that could be required per the then current Policy for that given project type as of the date of the Project’s first approved Site Development or PD permit by the City” and extended the Amnesty Program an additional thirty (30) days to allow adequate time for the payment of an Amnesty Program in-lieu fee; and

**WHEREAS**, on June 19, 2007, the Agency Board adopted Resolution No. 5761 and the City Council adopted Resolution No. 73880 to amend the Policy to: (i) require 8% very low-income units and 12% low-income units at 60% of area median income in rental projects; (ii) provide housing developers with other options to satisfy the Agency/City inclusionary housing requirements; (iii) establish an incentive program for construction ready projects; and (iv) establish an amnesty program for developers who are not in compliance with the Policy; and

**WHEREAS**, in depressed housing market conditions, developers of for-sale projects 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, meaning that: (i) affordable home buyers can legitimately afford both restricted and unrestricted units; (ii) the public purpose of requiring for-sale housing affordable to this income level is being satisfied by the unregulated marketplace; (iii)

affordable buyers are reluctant to purchase restricted homes if they are eligible to buy the same product without restrictions; (iv) developers are facing difficulties selling the restricted units; and (v) even if developers are able to sell the restricted units, the City will likely expend more money monitoring the units than will be realized with the equity-share payout; and

**WHEREAS**, the proposed amendment to the Policy, as set forth in Attachment A, attached hereto and incorporated herein, would provide a pressure-relief valve that would become operative whenever a developer can demonstrate to the satisfaction of the City Manager and Executive Director that the purchase price to be paid by an affordable household to acquire a designated affordable unit, as determined under the Health and Safety Code and the Policy, is within 5% of the unrestricted market value of such unit.

**NOW, THEREFORE**, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

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The joint City/Redevelopment Agency Inclusionary Housing Policy is amended, as described in the joint memorandum from the Executive Director and City Manager dated September 15, 2009, to provide 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.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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CHUCK REED  
Mayor

ATTEST:

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LEE PRICE, MMC  
City Clerk

**ATTACHMENT A**  
**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.