



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Joseph Horwedel
Leslye Corsiglia

SUBJECT: SEE BELOW

DATE: February 13, 2012

Approved

Date

2-14-12

COUNCIL DISTRICT: 3 and 4

**SUBJECT: REALLOCATION OF AFFORDABLE HOUSING UNITS UNDER THE
NORTH SAN JOSE AREA DEVELOPMENT POLICY**

RECOMMENDATION

Adopt a resolution amending the North San José Area Development Policy to:

- 1) Allow reallocation of up to 450 of the remaining affordable housing units in Phase 1 as market-rate housing units to enable a shovel-ready market-rate housing project to proceed in Phase 1 if such project developer ensures by written agreement with the City a substantial benefit to the City towards the provision of new affordable housing to balance the reduction of affordable housing allocation in Phase 1; and
- 2) Shift the number of reallocated affordable housing units originally reserved for Phase 1 to Phase 2, and correspondingly decrease the number of market-rate housing units in Phase 2, to ensure the vision of a mixed-income community.

OUTCOME

Affordable units will continue to be built in North San Jose, but in a later phase. Four hundred and fifty units now reserved for affordable housing in Phase 1 of the North San Jose Area Development Policy will be allocated to Phase 2. These changes will enable a shovel-ready market-rate housing development meeting certain criteria to proceed this year in Phase 1, creating much-needed jobs and providing funding that will enable pipeline affordable housing projects that need subsidy to proceed.

BACKGROUND

On November 29, 2011, the Council accepted a staff report on the status of housing development in North San José. As a part of this action, the Council approved the staff recommendation to return to Council with an amendment to the North San José Area Development Policy that would allow reallocation of up to 600 units of the remaining affordable housing unit reservation to market-rate housing units in Phase 1 for use by market-rate housing developers who desired to enter into an agreement with the City to convert the affordable units to market-rate units and make a substantial contribution toward the provision of affordable housing in exchange, enabling the developer to move forward with a market-rate development in Phase 1 rather than wait for Phase 2.

In the November 29th action, staff advised the Council it would return with a request to reallocate up to 600 unreserved affordable housing units for projects that (a) best implement the North San José Area Development Policy criteria, (b) result in the best results for the affordable housing program, (c) broaden the diversity of residential unit mix, and (d) are shovel-ready projects that would begin construction within 18 months.

In May 2011, the Council approved a “loan” of up to 220 affordable housing units from Phase 1 to be used as market-rate housing units for the first phase of the Century Court Towers project. The “loaned” units were assumed to be returned to the affordable unit pool when the development permits for other market-rate units expired in North San José. Similarly, the Council approved a “loan” of up to 275 affordable units from Phase 1 for the first phase of the market-rate Fox Markovits property. To date, very few units have become available from projects no longer being pursued by the parties who had worked on the entitlements--none in the past year.

ANALYSIS

Rationale for Policy Change

The proposed policy change would allow the City to enter into an agreement with a developer that meets the four criteria specified in the November 2011 action.

The City staff has discussed the proposal with several developers interested in proceeding with a Phase 1 market-rate project and asked those developers to submit a proposal to the City for consideration. By the end of January, the City had received one written response from Irvine Apartment Communities for its 450-unit Crescent 6 market rate residential project. Irvine’s proposal offers a payment of \$8.8 million to be used for the construction of affordable housing—an amount in excess of the usual fee that would be received in lieu of a 20% affordable housing requirement. Irvine’s proposed terms also include the payment of fees in 2012, the start of construction by 2013, and completion by fall 2014.

HONORABLE MAYOR AND CITY COUNCIL

February 13, 2012

Subject: Approval of a Reallocation of Affordable Housing Units under the North San José Area Development Policy

Page 3 of 5

Irvine has a proven track record of performance in San José, with its existing Crescent Park development phases proceeding well ahead of schedule. Its proposed project also meets the four criteria established in the November 2011 action.

This purpose of the recommended action is to amend the North San José Area Development Policy to allow a project meeting the established criteria to proceed. If this action is approved, staff anticipates that a Development Agreement with Irvine will be brought before the Planning Commission and the Council in March. Additionally, the Developer will be required to pay a parkland in-lieu fee per the requirements of the parkland dedication and impact ordinances. The allocation of the parkland in-lieu fee to a specific project will be brought forward as a future Council action. When this is brought forward in the future, a high priority for use of the parkland in-lieu fee will likely be the acquisition and development of parkland adjacent to the Essex Property Trust project site.

Use of Funds

At the Council meeting of February 7, 2012, during the discussion of incentives for North San José industrial development, Councilmember Oliverio asked if any of the funding from an agreement such as this one could be used for other purposes such as funding traffic infrastructure. Staff responded that because the contribution was not a City development impact fee or service fee and was a negotiated amount between the City and Developer contained in a Development Agreement, the Council had discretion in allocating the expenditure of the moneys.

Staff recommends that any funds derived from this change in policy be used for affordable housing, as the funds would help to offset the negative impact from the reallocation of affordable units from Phase 1 to Phase 2. Further, the use of funds for affordable housing is warranted given the extensive history of affordable housing demand in North San José, and the many amendments made that have resulted in developers being allowed to pay fees rather than build affordable units. Use of subsidy funds for restricted affordable housing is required in order to achieve the City's vision of mixed-income communities. In addition, due to the elimination of redevelopment agencies in February 2012, \$40 million in tax increment that was required to be used for affordable housing each year in San José is no longer available. Therefore, funds and funding sources to subsidize any of the more than 1,100 affordable housing units that have been waiting for funding for the past three years are extremely limited.

Assuming the reallocation is approved and the entire amount of reallocated units is utilized, there would remain 174 affordable units available for reservation for an affordable housing development in Phase 1. The 994 units reallocated from Phase 1 would move to Phase 2 and displace an equal number of market-rate units, resulting in Phase 2 having 5,406 market-rate units instead of 6,400 and 2,594 affordable units instead of 1,600.

EVALUATION AND FOLLOW-UP

If this action is approved, staff anticipates that a Development Agreement with Irvine would be brought before the Planning Commission and the Council in March.

POLICY ALTERNATIVES

Alternative # 1: Do not amend the North San José Area Development Policy as proposed.

Pros: No additional affordable housing units from Phase 1 would be lost in the near-term, reinforcing the statement that the City supports the creation of mixed-income communities.

Cons: There are currently insufficient funds to subsidize restricted affordable housing units in San José, so those projects cannot go forward at this time. There would still remain 174 units of affordable housing in the Phase 1 allocation for a future project. The proposed change preserves in the long-term the area's overall affordability requirements, generates income that can be used to subsidize future affordable housing, and recognizes that near-term, feasible, market-rate residential developments should be allowed to go forward in order to support our local economy.

Reasons for not Recommending: The benefits of this proposal outweigh the drawbacks; the recommendation should be approved.

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)**

The proposed amendments meet Criterion 2 and have been posted on the City's website and emailed to interested parties.

HONORABLE MAYOR AND CITY COUNCIL

February 13, 2012

Subject: Approval of a Reallocation of Affordable Housing Units under the North San José Area Development Policy

Page 5 of 5

COORDINATION

The preparation of this Memorandum was coordinated with the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

This action is consistent with applicable General Plan policies and City Council-approved direction to amend the North San José Area Development Policy. This action is also consistent with the City's *2007-2012 Five-Year Housing Investment Plan*, adopted by Council on June 12, 2007, to increase the City's supply of affordable housing and with the City's *Consolidated Plan 2010-2015* to provide housing units for very low- and extremely low-income residents.

CEQA

CEQA: Resolution No.72768, Addendum to the North San José Policy Update EIR.

/s/
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Planning, Building and Code Enforcement

/s/
LESLYE CORSIGLIA
Director of Housing

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