



Memorandum

TO: COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE

FROM: Leslye Corsiglia
Joseph Horwedel

**SUBJECT: NOTICE OF TENURE CHANGES
FOR HOUSING DEVELOPMENTS**

DATE: May 3, 2011

Approved

Kim Walsh

Date

May 12, 2011

COUNCIL DISTRICT: City-Wide
SNI AREA: All

RECOMMENDATION

Accept the status report and provide direction to the City Manager and City Attorney regarding a proposed ordinance to require post entitlement notice for tenure changes.

BACKGROUND

On August 23, 2010, the Committee directed the City Attorney's Office to discuss the feasibility of an ordinance with the Housing and Planning Departments that would require developers of residential projects to provide public notices for post entitlement changes in tenure, from for-sale to rental and vice-versa, and the Housing Department to present alternatives to provide additional disclosure regarding tenure during the development review process. Any ordinance or policy must be consistent with state and federal fair housing laws as previously explained in the City Attorney's memorandum dated September 22, 2009 entitled *Outreach Requirement for Market Rate Project Conversion to Affordable Housing*. Both a proposed ordinance and additional disclosure during the development review process present several practical challenges that should be considered before providing direction to the City Manager and City Attorney.

ANALYSIS

The proposed ordinance would require developers to provide an initial statement of tenure and to send a "courtesy notice" to property owners and occupants surrounding a residential development that proposed to change tenure. Both the Committee and staff expressed concern that such a notice could cause community members to believe, inconsistent with state and federal law, that they would be entitled to prevent such a change at a public hearing. Thus, staff determined that the notice should be described as a "courtesy notice" because it is only intended

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to provide information. The proposed ordinance would require a residential developer to provide a courtesy notice to neighbors within 500 feet of the subject site some minimum period of time (e.g., 90 days) before offering any unit for sale or rent if inconsistent with the original tenure statement.

The Housing Department and PBCE believe adoption of a proposed ordinance present several practical challenges that should be considered including: (1) necessity to consider this ordinance in the context of other workplan items, (2) impact to the development review process, and (3) compliance constraints. This memorandum closes with two suggestions for alternative approaches to meeting the intent of the proposed ordinance.

Context of Other Workplan Items

The proposed ordinance was not included in either Council's February 2011 Prioritization Exercise, or the list of potential ordinances considered by the Committee in March. The work that has been done on this ordinance to date has impacted the same PBCE staff (upper management) that have absorbed unfunded work such as Medical Marijuana, Habitat Conservation Plan, and Historic Landmarks Commission. If the Committee directs staff to continue work on the ordinance, the Committee needs to acknowledge the trade off with future workplan items such as the delay of minor streamlining to the Zoning Code to facilitate economic development and the next phase of the Sign Code Update.

Specifically, staff has begun to identify a work plan for the ordinance, including the amount of time and resources necessary to draft an ordinance with the City Attorney's Office, make appropriate supporting findings, complete public outreach, conduct environmental clearance, etc. At least two public meetings with stakeholders are needed to explain the proposed ordinance, receive feedback, and address concerns in the proposed ordinance. Staff estimates the entire process would take six months for Planning and Housing Department staff and a Deputy City Attorney to complete the ordinance. Estimated total staff costs equal approximately \$26,000 based on 170 hours at \$154 per hour.

Impacts to the Development Review Process

The City's development review process involves assessment of a proposed development for consistency with adopted policies and ordinances, environmental review, community meetings, and public hearings. Almost every infill residential development project requires a community meeting, Planning Commission hearing, and City Council hearing. Time is of the essence for developers, both for-sale and rental, who must complete the development review process while negotiating financing and business commitments.

The evaluation of proposed development is currently tenure-neutral and focuses on the physical characteristics of the proposal and its fit with the neighborhood fabric. This approach is consistent with the City's General Plan that provides housing for all incomes and encourages the dispersal of affordable housing throughout the city.

The proposed ordinance would require a housing developer to identify the proposed tenure upfront, distracting the community from the issues that are decided during the entitlement

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process such as the proposed physical dimensions, placement, and appearance of the project. Noticing tenure upfront would send a signal to the community that they could somehow influence tenure when they have no legal ability to do so. It would result in the project Planners spending time answering questions and responding to community input on tenure, in addition to the typical planning and land use issues of a project, thus affecting the timely completion of project processing. This issue may also result in public testimony at the Planning Commission and City Council regarding tenure, resulting in frustration by the community when neither body could affect tenure.

Compliance Constraints

Staff believes requiring developers of residential projects to provide public notices for post entitlement changes in tenure, from for-sale to rental and vice-versa, establishes a requirement that would not be complied with, especially if the neighborhood is not concerned about the change in tenure. For example, concern from the 13th Street NAC and Viridian Townhomes raised an issue with the change in tenure from for-sale to affordable rental in the Cornerstone@ Japantown Family Townhomes located at the southwest corner of 10th and Hedding Streets. Conversely, tenure conversions from for-sale to rental at The Globe Apartments at 25 S. 3rd Street, and Three Sixty Apartments at 360 S. Market Street, raised no neighborhood concerns to warrant such notice.

Unless a neighbor contacts the City with a concern, the City would probably only know about the tenure conversion in a situation like the Cornerstone project in which the Housing Department proposed to provide public funding for the project. Staff believes complaint based remedies would result in inconsistent compliance with the ordinance. Also, a situation like Cornerstone would not likely occur again in the near future because the Housing Department does not anticipate funding availability for new affordable multifamily rental development and the Department already has an extensive pipeline of identified sites.

It is unknown how tenure changes would be tracked unless such changes were brought to the attention of the City. Also, it is unknown who would ensure proper notices are sent for changes in tenure. Should the proposed ordinance require the City to monitor compliance or track tenure, the ordinance would also need to acknowledge this as a cost recovery activity, necessitating a fee to be established by the Council and payable by the developers of residential housing of all tenures. Staff costs and funding sources could only be determined after the enforcement mechanism was devised.

The proposed ordinance would allow the City to issue an administrative citation to developers who fail to mail courtesy notices before offering individual units for rent or for-sale if inconsistent with the statement of tenure. If the fine for an administrative citation were less than or equal to the cost of noticing, many developers would probably elect to pay the administrative citation because it would have no bearing on the development and cause less complications.

Ordinance Alternatives

One alternative to the proposed ordinance is not to pursue an ordinance regarding noticing, but consider another formal mechanisms. For instance, a formal mechanism might be a City Council

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Policy on Tenure Change for Residential Developments that would encourage noticing/communication with adjacent property owners and tenants. The Policy would need to explain that the developers have the right to change tenure in their developments.

A second option is not to pursue an ordinance, but document informal mechanisms that the Council could suggest to developers. For example, an informal mechanism that has been employed to date is a developer voluntarily conducting a community meeting when they are in the process of a tenure change. To the extent resources are available and the Housing Department might be considering funding for the proposed project, Housing staff could attend such a community meeting and explain the City's role in the proposal.

COORDINATION

The Housing Department and Planning coordinated preparation of this memorandum with the City Attorney's and City Manager's Offices.

/s/

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/s/

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