

RESOLUTION NO. 73764

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AMENDING THE JOINT CITY-REDEVELOPMENT AGENCY INCLUSIONARY HOUSING POLICY 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

WHEREAS, the Redevelopment Agency of the City of San Jose ("Agency") is presently engaged in redevelopment activities in various redevelopment project areas; and

WHEREAS, California Redevelopment Law Section 33413 requires that inclusionary housing requirements be met for all new housing projects located within a redevelopment project area adopted after January 1, 1976 ("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 amend the Policy 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 in the project rather than 15% 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 amend the Policy to allow an exception for development agreements provided that 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, the proposed amendment to the Policy would allow a developer, in lieu of providing the affordable units within the context of the project, to dedicate a site to the City adjacent to the project, and the City could subsequently build affordable housing on the site or dispose of the site and use the proceeds to construct affordable units elsewhere;

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

The joint City-Redevelopment Agency Inclusionary Housing Policy is amended to add a new Article VIII entitled "Dedication of Land in Lieu of Construction of Affordable Units", as set forth in Attachment A to this resolution, which allows 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.

ADOPTED this 15th day of May, 2007, by the following vote:

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AYES: CAMPOS, CHIRCO, CONSTANT, CORTESE, LICCARDO, NGUYEN, OLIVERIO, PYLE, WILLIAMS REED

NOES: NONE

ABSENT: NONE

DISQUALIFIED: NONE

VACANT: DISTRICT 4

CHUCK REED
Mayor

ATTEST:
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LEE PRICE, MMC
City Clerk

ATTACHMENT A

VIII. Dedication of Land in Lieu of Construction of Affordable Units.

Notwithstanding the general requirements set forth above, a developer of a private housing development may dedicate land in lieu of constructing restricted affordable units within the private housing development if the City Council determines that all of the following criteria have been met:

- A. The dedicated site is transferred to the City prior to commencement of construction of the private housing development or is subject to an agreement between the developer and the City that sets forth a date certain for transfer of the dedicated site and such agreement is in the best interests of the City.
- B. The value of the dedicated site at the date of dedication or the date such agreement to dedicate is executed, as applicable, is greater than the in-lieu fee in effect at the date of dedication or the date such agreement to dedicate is executed, as applicable, multiplied by the number of otherwise required affordable units within the private housing development.
- C. The dedicated site could accommodate at least the number of otherwise required affordable units within the private housing development.
- D. The dedicated site is adjacent to the private housing development.

If the dedicated site is not to be transferred to the City prior to commencement of construction of the private housing development subject to the inclusionary requirement, the agreement between the developer and the City shall provide, among other things, that:

1. The dedicated site shall be transferred by the developer to the City at a date certain acceptable to the City;
2. The developer shall, prior to commencement of construction of the private housing development, pay to the City a substantial percentage (as determined by the City Council) of the in-lieu fee in effect at the date such agreement to dedicate is executed multiplied by the number of otherwise required affordable units within the private housing development, and
3. In the event that, upon transfer of the dedicated site, the value of the dedicated site is not at least equal to the future value of the in-lieu fee remaining payable, the developer shall immediately pay the shortfall in cash.

Notwithstanding the above, the City shall not be required to construct restricted affordable units on the dedicated site, but may sell, transfer, lease or otherwise dispose of the dedicated site as necessary in furtherance of its inclusionary affordable housing goals.