

RESOLUTION NO. 73880

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AMENDING THE “CITY OF SAN JOSE POLICY ON IMPLEMENTATION OF THE INCLUSIONARY HOUSING REQUIREMENT OF HEALTH & SAFETY CODE SECTION 33413(B)(2)” THAT APPLIES TO MOST REDEVELOPMENT PROJECT AREAS, ESTABLISHING A SHORT TERM IN-LIEU FEE FOR A PERIOD OF NINETY (90) DAYS TO ENCOURAGE CERTAIN CONSTRUCTION READY PROJECTS, AND ESTABLISHING AN AMNESTY PROGRAM FOR A PERIOD OF NINETY (90) DAYS TO ENCOURAGE COMPLIANCE WITH THE PROPOSED NEW POLICY

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, the proposed amendments to the Policy, a copy of which is attached hereto ("Proposed New Policy"), would (i) require 8% very low-income units and 12% low-

income units at 60% of area median income in rental projects, (ii) offer 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) would provide that the section added to the Policy on May 15, 2007 related to land dedication sunset on December 31, 2007; and

WHEREAS, the Proposed New Policy would be effective on July 1, 2007 except as otherwise provided below; and

WHEREAS, staff also recommends that developers choose the method to satisfy the Proposed New Policy prior to obtaining the first foundation or building permit for a project. Therefore, prior to obtaining a foundation or building permit, a developer would be required to satisfy one of the following: (i) pay the appropriate in lieu fee; (ii) elect to provide the affordable units in the project and execute and record against the property the Agency/City's standard form affordability agreement to evidence such election, (iii) enter into an agreement with the Agency/City regarding the construction of a stand alone affordable project, which agreement provides (a) a timeline for completion of the stand alone project and (b) adequate security to the Agency/City by such developers (i.e. such as a bond or letter of credit) to ensure that the stand alone project will be completed or provides for transfer of the land for the stand alone project to an affordable housing developer with the Agency/City's standard form affordability agreement recorded against such land, or (iv) enter into an agreement with the Agency/City which provides for a combination of the above; and

WHEREAS, staff also recommends that the City Council establish 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 would only be 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 the effective date of the Proposed New Policy; and

WHEREAS, staff also recommends that the City Council establish 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.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT EFFECTIVE AS OF JULY 1, 2007:

1. The "City of San Jose Policy on Implementation of the Inclusionary Housing Requirement of Health & Safety Code Section 33413(b)(2)" that applies to most redevelopment project areas as more particularly set forth in the Proposed New Policy attached hereto is amended;

2. A short term in-lieu fee is established for a period of ninety (90) days to encourage certain construction ready projects to commence construction, as set forth in the supplemental memorandum from the City Manager and Executive Director to the Mayor, City Council and Agency Board, dated June 14, 2007; and

//

//

//

3. An amnesty program is established for a period of ninety (90) days to encourage compliance with the Proposed New Policy as set forth in the supplemental memorandum from the City Manager and Executive Director to the Mayor, City Council and Agency Board, dated June 14, 2007, and adopts the following Inclusionary fee structure effective through September 28, 2007 for the amnesty program:

(a) Rental Alternative Restricted Unit to be developed within a project area	\$71,400 per unit
(b) Ownership Alternative Restricted Unit to be developed within a redevelopment project area	\$65,000 per unit

ADOPTED this 19th day of June, 2007, by the following vote:

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

NOES: NONE

ABSENT: CORTESE

DISQUALIFIED: NONE

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk