

RESOLUTION NO. 75458

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AMENDING THE JOINT CITY/REDEVELOPMENT AGENCY INCLUSIONARY HOUSING POLICY TO TEMPORARILY SUSPEND INCLUSIONARY HOUSING REQUIREMENTS RELATED TO NEWLY CONSTRUCTED RENTAL UNITS UNTIL THE EARLIER OF: JANUARY 1, 2013, OR THE EFFECTIVE DATE OF THE CITY'S INCLUSIONARY HOUSING ORDINANCE AND OTHER CHANGES

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, on September 29, 2009, the Agency Board adopted Resolution No. 5931 and the City Council adopted Resolution No. 75114 to amend the Policy to provide a waiver of the requirement for a very low-, low- or moderate-income restriction on a for-sale unit 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; and

WHEREAS, on January 12, 2010, the City Council adopted Ordinance No. 28689 approving a new City-wide Inclusionary Housing Ordinance, the provisions of which will become effective at a future date upon the satisfaction of conditions more particularly set forth therein; and

WHEREAS, the City's Inclusionary Housing ordinance includes a provision to suspend the inclusionary housing requirements for rental housing until such time as the limitation

in the *Palmer/Sixth Street Properties v. City of Los Angeles* (2009) 175 Cal. App. 4th 1396 decision is overturned or modified by another court or the legislature; and

WHEREAS, the proposed amendment to the Policy, as set forth in Attachment A, attached hereto and incorporated herein, would suspend, effective immediately, the current rental housing requirements contained in the Policy until the earlier of: January 1, 2013 or the effective date of the City's Inclusionary Housing Ordinance; and

WHEREAS, staff also recommends that the Policy be amended to change the definition of for-sale project to include any project for which a parcel or tentative and final map has been obtained creating condominium units, which could ultimately be sold separately as for-sale units. Inclusionary affordable units would be required at such time as the units were ultimately sold, notwithstanding that the developer decided to initially develop a rental project.

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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 temporarily suspend inclusionary housing requirements related to newly constructed rental units until the earlier of: January 1, 2013, or the effective date of the City's Inclusionary Housing Ordinance and other changes as described above.

ADOPTED this 22nd day of June, 2010, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, HERRERA,
KALRA, LICCARDO, NGUYEN, OLIVERIO, PYLE; REED.

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.



CHUCK REED
Mayor

ATTEST:



LEE PRICE, MMC
City Clerk

ATTACHMENT A
Amendment to Inclusionary Housing Policy
(Palmer Suspension) 6/8/2010

The following language shall be added to Article I, General, of the Inclusionary Policy:

I. Notwithstanding anything to the contrary contained herein, the rental requirements of this policy shall be temporarily suspended as such Policy relates to newly constructed rental units until the earlier of: January 1, 2013, or the effective date of the City's Inclusionary Housing Ordinance.

The following language shall be added to Subsection I D of the Inclusionary Policy:

For purposes of this policy, "For-Sale" shall mean any dwelling unit, including a condominium, stock cooperative, community apartment, or attached or detached single family home, for which a parcel or tentative and final map is required for the lawful subdivision of the parcel upon which such unit is located or for the creation of the unit in accordance with the Subdivision Map Act (California Government Code section 66410 *et seq.*), or any Project including such units.

The following language shall be added as Subsection 4 to Subsection II A of the Inclusionary Policy:

4) Conversion from Rental to For-Sale Project: During any period that the requirements of this Policy that apply to newly constructed rental units are suspended, any Project which contains units that are defined as "for-sale" units but which are initially developed and operated as rental projects shall comply with this policy and the provisions of this paragraph. Prior to issuance of a foundation or building permit for such project, the Developer shall record a for-sale affordability agreement which would require such project to comply with the for-sale requirements of this policy at such time as such project is converted from a rental to a for-sale project. Upon any future conversion of the project from a rental project to a for-sale project, the Developer shall comply with the for-sale inclusionary requirements contained in the recorded affordability agreement.