San Diego
HOUSING COMMISSION

ITEM 107

REPORT

DATE ISSUED: May 28, 2008 REPORT NO: HCR08-036

ATTENTION: Chair and Members of the Housing Commission
For the Agenda of June 6, 2008

SUBJECT: Inclusionary Housing

REQUESTED ACTION:
That the Housing Commission consider the information contained herein and respond to the affordable housing related issues raised by the Affordable Housing Task Force (AHTF), City Council, and other interested parties by recommending to the City Council adoption of the proposed amendments to the Inclusionary Housing Ordinance as summarized in the following section.

STAFF RECOMMENDATION:
Amend San Diego Municipal Code (SDMC) Chapter 14, Article 2, Division 13 as follows:

1. Exempt from the Inclusionary Housing Ordinance certain residential uses detailed in Staff Recommendation Number 1 on pages 7 of this Report.
2. Raise the income limit eligibility and for-sale pricing limit on for-sale affordable units.
3. Add language to Section 142.1302 codifying California's Redevelopment Law's preeminence on projects with for-sale units that are funded by the Redevelopment Agency.

SUMMARY:
In August 2002, the San Diego City Council adopted a framework for an inclusionary housing program for the City of San Diego. The San Diego Housing Commission and City of San Diego formed a team to craft implementation documents in consultation with various interested parties. On May 20, 2003 the City Council adopted the Inclusionary Housing Ordinance which took effect citywide on July 3, 2003.

The basic requirements of the Inclusionary Housing Ordinance are:

- 10 % of the units in a residential development are to be set-aside at 65% AMI for rental units and at 100% AMI for for-sale units.
- At the developer's discretion, inclusionary units could be constructed on the original development site or off the site but within the same community planning area as the original site.
- The obligation applies to any residential development of more than two units.
- Rents are restricted for 55 years. Individual purchasers are allowed to resell, with financial recapture provisions.
- As an alternative to constructing the affordable housing, a developer can choose to pay an in-lieu fee. The fee amount was phased in to provide time for the market to adjust to the new fee structure. Currently, the fee is $6.31 per sq. ft. and is scheduled to change again in July 2008.

This figure is based upon a formula that takes into consideration the median priced home in San Diego and the median income of a family of four. Fees for projects of less than 10 units will be half of the in-lieu fee amounts for projects of 10 or more units.

- Modestly priced units which are sold to and affordable for families earning up to 150% of area median income ($104,100 for a family of four) are exempt from the inclusionary housing provisions.

In June 2003, the Affordable Housing Task Force issued their housing recommendations to the Land Use & Housing Committee (LU&H) of the City Council. Included in their report were specific recommendations concerning the Inclusionary Housing Ordinance. The recommendations were reviewed at the September and October 2003 LU&H meetings. Although the Committee did take a position on many of the AHTF recommendations, little discussion was specifically devoted to the inclusionary ordinance recommendations.

When the ordinance was adopted by the City Council it was indicated that, rather than immediately acting upon the inclusionary-specific recommendations put forth by the AHTF, the ordinance should be reviewed after at least one year of implementation. Following are some statistics based upon the performance of the Inclusionary Housing Ordinance as of July 2007:

- All residential development projects of two or more units, including condominium conversions, are subject to the Inclusionary Housing Ordinance;

- The Inclusionary Housing Ordinance has been applied to 1,070 projects (25,284 units);

- 326 projects (7,208 units) have been exempted from the ordinance;

- 81 projects (1,609 units) have built or plan to build their affordable housing requirement;

- 982 of the projects (92%) have elected to pay the in-lieu fee that is expected to generate approximately $40,858,825; of that amount, $20,374,310 has already been collected with another $20,484,515 anticipated;

- 6 projects have been built with Inclusionary in-lieu fees which represents 591 affordable units;

- As approved in the Affordable Housing Fund Annual Plan, $890,000 of Inclusionary Housing Funds was made available in FY05, FY06, and FY07 for a Condominium Conversion Purchase Assistance Program. The Condo Conversion Program was not taken advantage of, thus the funds were re-directed into Housing Commission first-time homebuyer programs to assist families purchase affordability-restricted units. All of the $890,000 has been expended and the Housing Commission allocated $1.39M in Inclusionary Funding in FY08 and FY09 toward similar programming.

A number of the proposed amendments to the current Inclusionary Housing Ordinance are the result of suggested amendments put forth by the AHTF as well as the City Council and center around significant

policy changes. Other recommendations have arisen from the four years of experience with the implementation of the Ordinance itself.

The Housing Commission considered a version of these recommendations on October 29, 2004 (HCR 04-078). However, as time has passed, several recommendations have either changed or have been rendered moot due to changing circumstances. Therefore, prior to moving forward to LU&H and ultimately City Council, staff felt it appropriate to resubmit these revised recommendations to the Commission Board for consideration.

AHTF Recommended Changes:

1. *Large-Scale Development* – Initial AHTF discussions identified larger scale development projects as having more flexibility in physical attributes and may have greater financial ability to build the required affordable units and it was therefore discussed whether larger scale developments should be precluded from the in-lieu fee option.

The AHTF subsequently took the position that "large-scale developments" should continue to be treated the same as any other development types under the inclusionary housing program, and should be offered all three methods of compliance contained in the Inclusionary Housing Ordinance. These options include: construction of the affordable units on-site; construction of the units off-site; or paying the in-lieu fee.

One of the leading difficulties the AHTF recognized was the current lack of a definition for "large scale" projects. If larger projects are to be treated differently, then a definition should include both a number of dwelling units as well as a minimum acreage in order for a development project to qualify as "large scale." Any working definition should also take into account downtown high-rise condominium projects where a requirement to build affordable housing within such developments is not considered to be financially practical.

Discussions amongst representatives from the Housing Commission, Centre City Development Corporation (CCDC), the City's Planning and Development Services Departments resulted in a consensus to not preclude "large scale" projects from the in-lieu fee for a variety of reasons. Primarily, there were not any foreseeable areas within suburban San Diego that were thought to yield the number of housing units contemplated in a large scale project (e.g. in excess of 250 units). However, the onset of a Community Plan Amendment in the Otay Mesa community has changed the landscape on this issue since consensus was reached. The re-zoning and Community Plan Amendment process in Otay Mesa presents the City with another opportunity that the North City Future Urbanizing Area (NCFUA) once presented: an inclusionary requirement higher than the citywide 10% could be placed on any future residential development in that community as it is being developed. The NCFUA has a 20% requirement and Otay Mesa could follow that same model. Otherwise, a lack of vast residentially zoned parcels in other parts of the City would preclude the use of an empty definition.

Secondly, most housing developments which would result in at least 250 units or more will likely occur in downtown high-rise condominium projects. Both the cost of land downtown in addition to the cost of construction materials necessitates the need for alternative forms of inclusionary ordinance compliance. Additionally, Homeowner Association fees in these types of buildings tend to absorb most of the "buying power" of median income homeowners, leaving very little income to pledge towards even a

modest mortgage. CCDC officials have argued that a project of 450 or more units is not considered a large scale project by CCDC standards. A requirement of 45+ affordable units would likely place many projects in jeopardy of securing adequate financing to carry the costs associated with downtown construction. Furthermore, if the definition of "large scale" takes into consideration the issue of minimum acreage then many of the downtown residential projects would fail to qualify.

Recommendation: Staff's recommendation reflects the Task Force's original position: continue applying the inclusionary housing ordinance to development projects regardless of size, allowing for all developments to take advantage of the three methods of compliance. However, when a Plan Amendment and rezone of Otay Mesa occurs, future decisions would be needed to insure future development of affordable housing at higher percentages than the rest of the City.

2. *Offsite Affordable Housing and Use of In-Lieu Fees* – The AHTF voted to recommend modification of the geographic areas for offsite construction of inclusionary housing units to allow offsite units to be constructed within a 4-mile radius of the primary project rather than only in locations within the same community planning area as the primary project as is now required. Although a developer may currently build the offsite units outside of the community planning in which the market rate project is located, it does however require further approval by the decision makers.

Previously, LU&H concluded that this policy might create unintended consequences if a primary project were located on the border between two community plan areas. Under this proposed methodology, differing community planning areas could impact a neighboring planning area over which they have no land use recommendation jurisdiction. Additionally, the primary community planning area could unduly shift their affordable housing requirement and balanced community allotment to other planning areas.

As with any development requirement, Housing Commission staff will remain open to consideration of exceptions to this policy. Where data and circumstances dictate more flexibility, Housing Commission will join with the development team to present reasons why deviation from the policy should be considered by both Planning Commission and City Council. However, as a rule the development community should be required to explore and exhaust all off-site development opportunities within the primary Community Planning Area before looking outside of the planning area.

Recommendation: Based upon the potential shifting of affordable housing requirements between communities, staff does not recommend adoption of the AHTF proposal to expand the area in which off-site units could be constructed.

3. *Shared Equity Provisions* – The AHTF recommended and LU&H previously agreed that the structure of the shared-equity provision for the for-sale inclusionary housing units should be changed from a 15-year buy-in period to a 30-year, straight-line amortization of the share in equity. Attachment 1 illustrates the original 15-year shared equity timetable and the previously recommended 30-year timetable.

In addition to extending the shared equity timeframe, the Task Force voted to recommend three percent simple interest be applied to the "price differential" between the initial purchase price and the appraised value at the time of purchase. Housing Commission General Counsel recommends against adding an interest payment to the shared equity provision due to State of California prohibitions. To require an additional interest payment in conjunction with taking a shared interest in the equity of the property could be viewed by the courts as being usurious to the homeowner.

Additionally, many land use programs on the state level utilize a shared appreciation provision rather than a shared equity provision when entering into agreements for affordability terms. Shared appreciation would give the administering jurisdiction a return of the original investment (subsidy) and a proportional share of the appreciation realized on any affordable unit for 30 years or whenever the first sale of the unit occurs. For example, if the administering jurisdiction were to provide 25% of the funding used to acquire the unit, then the jurisdiction would realize the original investment and 25% of the overall appreciation that accrues over time upon the sale of the unit.

It was thought by making this change and extending the affordability requirements it would enable the jurisdiction to take advantage of changing market forces and to in turn leverage the realized appreciation into more affordable housing opportunities. Additionally, it would provide consistency among the various programs that utilize shared appreciation and enable builders of inclusionary housing to use other programs such as density bonuses, and eases the burden of calculating competing program requirements.

Upon further consideration of this issue, staff has revised its original recommendation. After lengthy discussions with representative from the development industry and Housing Commission staff alike, extension of the 15-year shared equity provision to a 30-year timeframe may create a disincentive for homeowners to maintain their property and/or make allowable upgrades. By realizing a lesser equity percentage each year the home is occupied, a family would have to wait much longer than the typical homeowner to realize any significant return on their investment. Additionally, a longer 30-year period is not widely thought to dissuade homeowners from selling property on the open market. Other factors are often at work in such a decision (e.g. loss of job, need to move nearer to employment or family, etc.).

Recommendation: Staff recommends to maintain the shared equity 15-year provision.

4. *Threshold Project Size for Application of Ordinance* – The AHTF recommended that the threshold of exempted projects be set at four units or less. Currently, the ordinance exemption applies to projects of two units or less. In September 2003 LU&H agreed that the threshold should be raised to four units, but little discussion was devoted to this proposed amendment.

Upon further analysis, it was discovered that since the inception of the Inclusionary Housing Ordinance, approximately 477 projects have been submitted that are of 4 units or less. Approximately 225 of those 477 are projects of two units or less. Approximately $1,342,000 has been collected as in-lieu fees for those non-exempt projects with another $944,000 still anticipated. Additionally, roughly 56% of the projects consisting of two to four units are located in high cost areas in town (e.g. La Jolla, Uptown, the beachside communities area).

It should be noted that the in-lieu fees for smaller projects (fewer than ten units) are half of the amount of the established fee for projects of ten units or more. Staff does not find that the discounted fee is detrimental to development. Finally, in December 2004, LU&H voted to maintain the exemption at two or fewer units.

Recommendation: Staff recommends that the number of units exempted from the ordinance remain at two units or less.

5. *Self-Certification* – The final AHTF recommendation was to allow for developers who build units qualifying for the exemption under the modestly priced home provision of the ordinance (units in a project that are offered to families earning 150% AMI or less) to self-certify prospective buyers. Self-certification was included in the inclusionary provisions applicable to condominium conversion projects. Currently, the Housing Commission requires buyers, not developers, to self-certify their income. This methodology places the burden on the party with access to the best information and the most to gain from qualifying. Due to the difficulty inherent in allowing for self-certification of income (fraud, accurate data gathering, etc.) the Housing Commission is not in favor of self-certification in general, but defers to the forces of the marketplace to make the transaction more fluid in an ever changing housing market.

Recommendation: Through its implementation powers granted by SDMC 142.1307 and 142.1311, the Housing Commission will allow purchasers of moderately priced housing units to self-certify their income.

Staff Recommended Changes:

1. *Exemptions from the Ordinance* – Currently, the Inclusionary Housing Ordinance applies to all residential uses. One of the goals of the inclusionary housing policy is to create a balance in the neighborhoods of San Diego between multi-family and single family homes as well as a balance of affordability. Many existing residential land uses appear inappropriate for application of the ordinance, for example: requiring affordable units to be built as part of a fraternity or sorority house does not comport with the original intent of the ordinance.

The City of San Diego's Redevelopment Agency (Agency) submitted a memo dated May 13, 2008 (Attachment 4) detailing concerns over the exemption of Student Housing in particular. The Agency's concern is in Redevelopment Project Areas, such as the San Diego State University project area, the exemption of student housing from the Inclusionary Housing Ordinance would "place the Agency behind in meeting its California Community Redevelopment Law (CRL) inclusionary production requirements." In short, the Agency is under a state mandate to provide a total percentage of affordable housing within their Redevelopment Project Areas. By exempting student housing the requirement to produce the affordable units shifts from the developer to the Agency itself.

Housing Commission staff has discussed this topic with the Agency's staff and still maintains the exemption is reasonable. Given the difficulties in both tracking the tenancies typical of an ever-moving student body as well as trying to determine what constitutes a "family" per HUD guidelines, the administrative difficulties of administering the program to this type of construction are substantial. Student populations move either every semester (every four months) or every eight to nine months as the academic year dictates. Additionally, HUD guidelines do not recognize unrelated students who choose to co-habitate with one another as a "family" for purposes of determining a family's income and eligibility for low income units. If Commission staff is not to look to the current inhabitants of a restricted unit as a family unit, then it is imperative to look to the parents of the students which also complicates the administration of the ordinance.

The Agency's memo offers an option to limit the affordable units to graduate students and/or university staff and to market them as "family units." This option may limit the number of unrelated persons co-habitating with one another and may provide more stability in the tenant turnover on a yearly basis.

However, if this option is chosen the Commission would want to place similar deed restrictions on those affordable "family" units that would limit the types of tenants allowed to reside in the units to actual families who are related to one another.

Recommendation: Staff suggests that the following residential uses be exempted:

- Boarder and Lodging Accommodations
- Companion Units
- Fraternity/Sorority Housing subject to deed restrictions dictating the units shall only be inhabited by students
- Student Dormitories
- Student Housing subject to deed restrictions dictating the units shall only be inhabited by students
- Group Living Accommodations
- Guest Quarters
- Residential Care Facilities
- Transitional Housing Facilities
- Time Shares
- Developments subject to a Vesting Tentative Map deemed complete prior to June 3, 2003
- Development Agreements approved prior to June 3, 2003

2. *Moderately Priced Housing Exemption* – The adopted Inclusionary Housing Ordinance includes a provision to exempt housing units from the inclusionary requirement if the units are offered for-sale at prices affordable to families earning 150% AMI or less. This exemption was intended as an incentive for developers. Under this provision, developers would agree to sell units in a development at the 150% AMI affordability level, thus assisting a segment of the population that has few programs designed to assist in the procurement of affordable housing. Additionally, each purchaser would agree under penalty of perjury to certify that they meets all requirements under the inclusionary housing program.

This item was discussed at Council in August of 2004. Testimony was presented suggesting that few, if any, homes are being built for the 150% AMI affordability range, thus making this exemption an empty one. Council requested staff to look at other levels and the ramifications of raising the AMI level of the moderately priced housing exemption. The table below as well as Attachment 2 both illustrate a comparison of the options available to a family of four at the 150% and 200% AMI level. Within these two income levels exist a range of choices from which decision makers can choose the appropriate level of housing debt the median family could bear:

150% AMI: $104,100/year
Monthly Income: $8,675

Housing Debt (as % of Income)	30%	35%	40%	45%	50%
Amt. Avail. For Housing per Month	$2,603	$3,036	$3,470	$3,904	$4,338
Max. Sales Price	$319,671	$381,228	$442,785	$504,342	$565,899

200% AMI: $138,800/year
Monthly Income: $11,567

Housing Debt (as % of Income)	30%	35%	40%	45%	50%
Amt. Avail. For Housing per Month	$3,470	$4,048	$4,627	$5,205	$5,784
Max. Sales Price	$442,785	$524,861	$606,937	$689,013	$771,089

With the median priced home costing approximately $395,000, there are still many homes for sale that are not within reach of a family falling in the 150% AMI level. A family of four at the 150% AMI level would need to spend between 35% and 40% of their monthly income to afford the median priced home. Alternatively, a family of four at the 200% AMI level can be served by the housing market and comfortably afford the median priced home, spending less than 30% of their monthly income. Therefore, the exemption provided to developers to sell their units at the 150% AMI income bracket creates an incentive for the development of modestly priced housing that the market might not otherwise provide. It creates the additional benefit of empowering families in 150% AMI income bracket to devote a lower percentage of their monthly income to the purchase of their home.

Recommendation: Staff recommends keeping the exemption at the 150% AMI level.

3. *Raise the income qualification limits for affordable for-sale units* – After four years of experience with the Inclusionary Housing program, staff has encountered difficulty with finding qualified buyers for the for-sale affordable units. The reason for the difficulty is in the way the ordinance was written and adopted. All for-sale units are sold at prices that a family at 100% AMI can afford. The problem with this measure is that developers will sell the units at the uppermost limit of the 100% AMI level range and the family that can qualify cannot make more than 100% AMI. If the family should have a car loan, credit card debt or some lingering unpaid medical bills, their purchasing power is adversely affected such that they are routinely unable to qualify for the home. This presents the situation where the developer is forced in taking only the "perfect" buyer who has no bad credit history, and no other monthly debt service.

By contrast, State Community Redevelopment Law (CRL) allows jurisdictions to allow buyers at higher AMI levels to qualify for the lower purchase price. For example under state redevelopment law, a family that would fall in the 120% AMI level can qualify for a unit that is sold at 110% AMI. This creates a wider array of qualified buyers and opens the window of eligibility to create affordable housing opportunities for families that would have normally been excluded from the prospect of home ownership because their income is too high for the program. This practice also provides the developer with a pool of candidates that cannot only afford the units, but will not be one catastrophe away from being forced out of the unit.

Recommendation: Staff recommends raising the income limit qualification criteria for for-sale affordable units to 120% AMI and raising the for-sale pricing limit to 110% AMI. This change should create more qualified buyers able to afford units at the 110% AMI sales level and to bring the local ordinance into compliance with other state laws (CRL and Density Bonus).

4. *Insert language into Section 142.1302 and 142.1303 specifying California's Redevelopment Law's preeminence on projects with for-sale units that are funded by the Redevelopment Agency* – The Housing Commission has recently worked on a number of projects with for-sale affordable housing units that have been partially funded by the Redevelopment Agency (Agency). Currently, these affordable for-sale units are subject to both the Inclusionary Ordinance and CRL. The Inclusionary Ordinance allows the affordable for-sale units to be resold at market rates with a recapture of the initial subsidy and equity sharing, while CRL calls for affordable units to be resold at restricted prices to eligible households for a minimum of 45 years.

Section 142.1302 of the Ordinance states that the Inclusionary requirements shall not be cumulative to other state and local affordable housing requirements and further, to the extent that restrictions overlap, the more restrictive of the two shall apply. Based upon guidance from the City Attorney's Office, it has been determined that the resale restrictions of CRL are more restrictive than those of the Inclusionary Ordinance. As a result, the Housing Commission has previously agreed to use CRL's resale restrictions for affordable for-sale units that are funded by the Agency. Staff recommends codifying this practice by adding language to the Inclusionary Ordinance documenting this practice in order to avoid confusion in the future. Finally, the Agency's memo (Attachment 4) details an addition to Section 142.1303 that would exempt these types of developments from the Inclusionary Housing Ordinance's requirements entirely. Commission staff agrees with the Agency with respect to this addition.

Recommendation: Add language to Section 142.1302 and 142.1303 codifying CRL's preeminence on projects with for-sale units that are funded by the Redevelopment Agency and exempting developments in the Redevelopment Project Areas from the recordation requirements of Inclusionary Housing.

Other Inclusionary Housing Topics:

1. *Elimination of the In-Lieu Fee* – Members of the City Council have noted that most developers opt to pay the in-lieu fee rather than build the affordable housing, and have asked whether policy changes could alter that trend. The fee amount was phased in to allow for the market to adjust to the new fee structure and to avoid undue burden on pipeline projects. Therefore, it was to be expected that payment of the fee would be chosen over building the affordable units because it is better business sense to do so.

LU&H asked for a legal analysis on eliminating the in-lieu fee. In the City Attorney's analysis (Attachment 4) it is clear that it is not illegal on its face to eliminate the fee. However, in September of 2006 the City Council entered into a settlement with the BIA which stipulated the City would not alter or attempt to eliminate the in-lieu fee option for two years from the date of the settlement (September 3, 2008).

Recommendation: Abide by the terms of the settlement with the Building Industry Association (BIA) and retain the in-lieu fee as an option of alternative compliance to the Inclusionary Housing Ordinance thus maintaining the three methods of compliance (on site construction, off site construction or in-lieu fee) as set forth in the Inclusionary Housing Ordinance, regardless of project size.

2. *Relationship of Inclusionary Housing Ordinance to Density Bonus Programs* – At the August 2, 2004 Affordable Housing Day, it was suggested that Council consider a ten percent on-site building bonus to the Inclusionary Housing Ordinance. In the fall of 2004 SB 1818 was signed into law. Subsequent discussions with City Staff and the City Attorney's office indicate that significant changes to the City's

Density Bonus program are needed to comply with state law. These efforts were addressed during the City Council hearing on Density Bonus on November 6, 2007 and need no further action at this time.

FISCAL CONSIDERATIONS:
In the event that the recommended actions are approved, there will be nominal financial costs associated with the administration of future actions which would be absorbed by the Housing Commission as well as the City's City Planning and Community Investment and Development Services Departments.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:
The Land Use and Housing Committee considered this Report on December 1, 2004. The Committee's actions regarding the proposed recommendations are included as Attachment 3.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:
The San Diego Housing Commission considered the first iteration of this Report on October 29, 2004 (HCR 04-078). The Planning Commission considered the first iteration of this Report on April 7, 2005. These two bodies' recommendations are also included in Attachment 4 to this report. The San Diego Housing Commission will consider this iteration of the Report on May 16, 2008. Furthermore, many of the recommendations put forth in this report are the result of a widely inclusive stakeholder group known as the Affordable Housing Task Force (AHTF).

The development community, as represented by the BIA, opposes inclusionary housing in concept, but through numerous discussions with staff they have indicated no opposition to the proposed recommendations set forth in this report. Affordable housing advocates have indicated their opposition to staff's recommendation to keep the in-lieu fee option available to developers and have expressed their desire to eliminate the in-lieu fee altogether thus requiring developers to build the affordable units.

ENVIRONMENTAL REVIEW:
This activity is not a "project" and is therefore not subject to the California Environmental Qualities Act (CEQA) pursuant to State CEQA Guidelines Section 15060(c)(3).

KEY STAKEHOLDERS & PROJECTED IMPACTS:
The development community, a host of affordable housing advocates and the low income individuals and families of San Diego are all key stakeholders in this item. The numerous recommendations listed in this report would have minimal impact on the current program.

These recommendations seek to balance financial hardship on the development community with the potential of exacerbating the affordable housing crisis in San Diego by perpetuating unbalanced communities.

Respectfully submitted,

D. Todd Philips
Director, Policy and Public Affairs

Approved by,

Carrol M. Vaughan
Interim President & Chief Executive Officer

1. Shared Equity Tables
2. AMI Level Affordability Index
3. San Diego Housing Commission, LU&H and Planning Commission Recommendations
4. City of San Diego Redevelopment Agency Memo dated May 13, 2008

Distribution of these attachments may be limited. Copies available for review during business hours at the Housing Commission offices at 1122 Broadway, Ste. 300.

Attachment 1

Current Table 142-13B

Length of Ownership at the Time of Resale, Refinance, or Transfer	Share of Equity to Household
Months 0-12	15%
Year 2	21
Year 3	27
Year 4	33
Year 5	39
Year 6	45
Year 7	51
Year 8	57
Year 9	63
Year 10	69
Year 11	75
Year 12	81
Year 13	87
Year 14	93
Year 15 or after	100%

Proposed Table 142-13B

Length of Ownership at the Time of Resale, Refinance, or Transfer	Share of Equity to Household
Months 0-12	15%
Year 2	18
Year 3	21
Year 4	24
Year 5	27
Year 6	30
Year 7	33
Year 8	36
Year 9	39
Year 10	42
Year 11	45
Year 12	48
Year 13	51
Year 14	54
Year 15	57
Year 16	60
Year 17	63
Year 18	66
Year 19	69
Year 20	72
Year 21	75
Year 22	78
Year 23	81
Year 24	84
Year 25	87
Year 26	90
Year 27	93
Year 28	96
Year 29	99
Year 30 or after	100%

ATTACHMENT 2

Family Size	4	4	4	4	4
150% AMI - Annual	$ 104,100	$ 104,100	$ 104,100	$ 104,100	$ 104,100
Monthly	$ 8,675	$ 8,675	$ 8,675	$ 8,675	$ 8,675
Housing Debt	30%	35%	40%	45%	50%
Amount Available for Housing	$ 2,603	$ 3,036	$ 3,470	$ 3,904	$ 4,338
Less HOA	$ (350)	$ (350)	$ (350)	$ (350)	$ (350)
Less Taxes@ 1.25%	$ (333)	$ (397)	$ (461)	$ (525)	$ 589
	$ (683)	$ (747)	$ (811)	$ (875)	$ (939)
Amount Available for 1st Trust Deed	$ 1,920	$ 2,289	$ 2,659	$ 3,029	$ 3,399
1st TD*	$ 303,687	$ 362,167	$ 420,646	$ 479,125	$ 537,604
5% Down	$ 15,984	$ 19,061	22,139	25,217	28,295
Maximum Sales Price	$ 319,671	$ 381,228	442,785	504,342	565,899

Family Size	4	4	4	4	4
200% AMI - Annual	$ 138,800	$ 138,800	$ 138,800	$ 138,800	$ 138,800
Monthly	$ 11,567	$ 11,567	$ 11,567	$ 11,567	$ 11,567
Housing Debt	30%	35%	40%	45%	50%
Amount Available for Housing	$ 3,470	$ 4,048	$ 4,627	$ 5,205	$ 5,783
Less Hoa	$ (350)	$ (350)	$ (350)	$ (350)	$ (350)
Less Taxes@ 1.25%	$ (461)	$ (547)	$ (632)	$ (718)	$ (803)
	$ (811)	$ (897)	$ (982)	$ (1,068)	$ (1,153)
Amount Available for 1st Trust Deed	$ 2,659	$ 3,151	$ 3,645	$ 4,137	$ 4,630
1st TD*	$ 420,646	$ 498,618	$ 576,590	$ 654,562	$ 732,534
5% Down	$ 22,139	$ 26,243	$ 30,347	$ 34,451	$ 38,555
Maximum Sales Price	$ 442,785	$ 524,861	$ 606,937	$ 689,013	$ 771,089

* Assumes an interest rate of 6.50% based on 30-year fixed

OTHER RECOMMENDATIONS

On October 29, 2004 this Report was presented to the San Diego Housing Commission. On December 1, 2004 this Report was presented to the Land Use and Housing Committee. And on April 7, 2005 this Report was presented to the Planning Commission. Each of those reviewing bodies voted on each of Staff's recommendations as follows:

1. Maintain in-lieu fee payment option for Large-Scale Developments.
   SDHC: Approved.
   LU&H: Forwarded to City Staff to develop a definition for "Large-Scale Development."
   PC: Voted 6-0 to phase out In-Lieu fees altogether.

2. Maintain off-site building to within same Community Planning Zone.
   SDHC: Approved.
   LU&H: Approved.
   PC: Approved.

3. Extend the shared equity provisions for for-sale affordable units from 15-years to 30-years.
   SDHC: Approved.
   LU&H: Approved.
   PC: Approved.

4. Maintain Inclusionary Housing Ordinance exemption for projects of 2 dwelling units or less.
   SDHC: Failed on a vote of 3-3. Offered no other recommendation.
   LU&H: Approved.
   PC: Approved.

5. Extend the application of the self-certification provision for Moderately Priced Housing projects.
   SDHC: Approved.
   LU&H: Approved.
   PC: Approved.

6. Exempt from the Inclusionary Housing Ordinance certain above-referenced residential uses detailed in Number 1 on pages 5-6 of this Report.
   SDHC: Approved.
   LU&H: Approved.
   PC: Approved.

7. Maintain the Moderately Affordable Housing exemption at 150% AMI.
   SDHC: Approved.
   LU&H: Approved.
   PC: Approved.

8. Maintain the in-lieu fee payment phase-in schedule.
   SDHC: Approved.
   LU&H: Forwarded to City Attorney to conduct a legal analysis on the elimination of the in-lieu fee (see Attachment 5).
   PC: Approved.

ATTACHMENT 4

THE CITY OF SAN DIEGO

MEMORANDUM

DATE: May 13, 2008

TO: San Diego Housing Commission, Chair and Members of the Board

FROM: Janice Weinrick, Deputy Executive Director, Redevelopment Agency
Nancy Graham, President, Centre City Development Corporation
Carolyn Smith, President, Southeastern Economic Development Corporation

SUBJECT: Proposed Revisions to the Inclusionary Housing Ordinance
San Diego Municipal Code Chapter 14, Article 2, Division 13
May 16, 2008 Agenda - Item #105 / HCR08-036

As you may be aware, the Housing Commission participates in the Affordable Housing Collaborative with the City of San Diego's Redevelopment Agency (Centre City Development Corporation, Southeastern Economic Development Corporation and the Redevelopment Division of the City Planning & Community Investment Department). Our Collaborative members have participated in several constructive discussions regarding proposed revisions to the Inclusionary Affordable Housing Regulations.

As part of this ongoing discussion, we have been made aware of the changes to the Inclusionary Affordable Housing Regulations proposed in HCR 08-036 to be considered by your board at its meeting on May 16, 2008. This memorandum is provided to offer counter-suggestions to two (2) of the proposals contained in the referenced report.

Student Housing Exemptions

HCR 08-036 includes a recommended list of residential uses to be exempted from the Inclusionary Affordable Housing Regulations. We are in support of those recommended exemptions, except for "student housing subject to deed restrictions dictating the units shall only be inhabited by students." We do not support an exemption from the Municipal Code requirements for this residential use.

A deed restriction requiring habitation by students does not guarantee housing affordability and, in some cases, can result in a "unit" rent (leased by bedroom) in excess of a similarly-sized market rate unit.

Student housing is a lucrative development option in this economic environment. The demand for private student housing is expected to remain strong for several years. College enrollments have

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City Planning & Community Investment

been on the rise as the baby boomer's children come of age. Investors can anticipate steady rent increases regardless of economic conditions or the interest rate climate. The success of these investments is tied to college enrollment, not to external economic factors like job creation.[1] For example, there have been two recent projects proposed in the College Community Redevelopment Project Area which would not require Agency financial assistance. An exemption to the Inclusionary Affordable Housing Regulations for these projects would place the Agency behind in meeting its California Community Redevelopment Law (CRL) inclusionary production requirements.

We acknowledge Housing Commission staff's concern that monitoring the long-term affordability restrictions on a "student unit" would be complex. However, wouldn't monitoring to ensure compliance with the "habitation by student deed restriction" be equally burdensome? How would the term "student" be defined – full-time, part-time, a particular course load? When a student graduates, would he/she be evicted within 30 days?

As one option, we would suggest the "affordable units" in a student development be designed as "family" units – marketed to graduate students, university staff, etc. This may also help ease the management-intensive nature of student housing projects, which can experience turnover approaching 100 percent, with lease-up periods of a short window of time.

Offering an across-the-board exemption to the Municipal Code, also eliminates the opportunity for the Housing Commission to collect an in lieu fee for such projects. In general, an exemption to the Inclusionary Affordable Housing Regulations for "student housing subject to deed restrictions dictating the units shall only be inhabited by students" is a missed opportunity to create affordable housing units for the City of San Diego.

Redevelopment Project Exemptions

With regard to Housing Commission staff's third recommendation in HCR08-036, we appreciate the effort to accommodate comments made at your board meeting on March 14, 2008 by Agency staff. The recommendation to add language to section 142.1302 codifying the preeminence of CRL on projects with for-sale units that are funded by the Redevelopment Agency would address only the units' resale restrictions and does not seem to address the other requirements of the ordinance, such as the recordation of Declaration of Covenants, Conditions and Restrictions described in Section 142.1311. The preeminence of the CRL would apply to not only the resale restrictions on for-sale units, but the duplicative process of recording affordability restrictions for both "Inclusionary" and "CRL" requirements on for-sale and rental developments.

The Redevelopment Agency, with input from the Housing Commission, and after receiving feedback from the development community, has been taking steps to streamline our approval and regulatory procedures and eliminate redundancies. For example, the Agency has established clear underwriting guidelines for development proposals that will reduce predevelopment costs

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[1] Source: "College-Town Real Estate: The Next Big Niche?" The New York Times. August 20, 2006

and decrease redundancy among the three branches of the Agency. These guidelines will be presented to the Agency board with our budget on May 20, 2008.

Please see the enclosed copy of a notated version of the existing Inclusionary Affordable Housing Regulations – demonstrating that the regulations seemed to anticipate a duplicative process in the CRL requirements and attempted to reduce this redundancy.

To further clarify, it is our recommendation that either:

(1) The recommendation of Housing Commission staff for new language to Section 142.1302 be expanded so that it is clear the inclusionary ordinance is not cumulative, or in other words, is not "in addition to" state housing requirements ***and affordability restrictions that would be recorded against the property by the state agency***. Redevelopment Agency assisted projects are subject to California Community Redevelopment Law (H&SC Sections 33000 *et seq.*) and, therefore, the Inclusionary Affordable Housing Regulations would not apply, OR

(2) Add the following language to the Inclusionary Affordable Housing Regulations:

§142.1303 Exemptions From the Affordable Housing Inclusionary Regulations

(e) A development located within an adopted redevelopment project area and subject to a San Diego Redevelopment Agency Agreement, upon an express finding that the development is fulfilling a stated significant objective(s) of the Redevelopment Agency's approved Five Year Redevelopment Plan for the Redevelopment Project Area and the purpose of the Inclusionary Affordable Housing Regulations.

In either case, the standard language used by the Development Services Department on site development/building permits would need to be revised to allow for Redevelopment Agency agreements to satisfy the housing affordability line items.

We appreciate your consideration. If you have any questions, please do not hesitate to contact Michele St. Bernard, Affordable Housing Project Manager directly at (619) 236-6531 or via email at MStBernard@sandiego.gov.

REDEVELOPMENT AGENCY

Janice Weinrick
Deputy Executive Director

CENTRE CITY DEVELOPMENT CORPORATION

Nancy Graham
President

SOUTHEASTERN ECONOMIC DEVELOPMENT CORPORATION

Carolyn Y. Smith
President

Enclosure: Notated Inclusionary Ordinance

cc: Carrol M. Vaughn, Interim President & Chief Executive Officer, Housing Commission
D. Todd Phillips, Director, Policy and Public Affairs, Housing Commission
Sherry Brooks, Project Manager, Southeastern Economic Development Corporation
Eri Kameyama, Associate Project Manager, Centre City Development Corporation
James Davies, Community Development Coordinator, Redevelopment Agency
Michele St. Bernard, Affordable Housing Project Manager, Redevelopment Agency
Kelly Broughton, Director, Development Services Department, City of San Diego

Article 2: General Development Regulations

Division 13: Inclusionary Affordable Housing Regulations
(Added 6-3-2003 by O-19189 N.S.)

§ 142.1301 Purpose of Inclusionary Affordable Housing Regulations

The purpose of this Division is to encourage diverse and balanced neighborhoods with housing available for households of all income levels. The intent is to ensure that when developing the limited supply of developable land, housing opportunities for persons of all income levels are provided.
(Added 6-3-2003 by O-19189 N.S.)

§ 142.1302 When Inclusionary Affordable Housing Regulations Apply

This Division applies to all residential *development* except as provided in Section 142.1303. The requirements of this Division shall not be cumulative to state or other local affordable housing requirements where those units are subject to an affordabilty restriction recorded against the property by the state or local agency. To the extent that state or local regulations are inconsistent with the requirements of this Division for the length of the restriction or the level of affordability, the more restrictive of the two shall apply.
(Added 6-3-2003 by O-19189 N.S.)

§ 142.1303 Exemptions From the Affordable Housing Inclusionary Regulations

This Division is not applicable to the following:

(a) Residential *development* located in the North City Future Urbanizing Area of the City of San Diego or any project located in an area of the City that was previously located in the North City Future Urbanizing Area and has been phase shifted into the Planned Urbanizing Area, and is subject to the inclusionary zoning requirements contained in the North City Future Urbanizing Area Framework Plan, San Diego Municipal Code section 143.0450(d), the Subarea Plans, Development Agreements, Affordable Housing Agreements, or conditions of approval of a *development* permit, as applicable.

(b) Residential *development* or portion of the *development* that meets the following criteria:

(1) The unit is being sold to persons who own no other real property and will reside in the unit;

(2) The unit is affordable to and sold to households earning less than one hundred fifty percent (150%) of the *area median income*;

(3) The unit has two (2) or more bedrooms; and

(4) The unit(s) has recorded against it an agreement between the *applicant* and the San Diego Housing Commission assuring that the provisions of Section 142.1303(c) have been met.

(c) Rehabilitation of an existing building that does not result in a net increase of *dwelling units* on the *premises*.

New subsection (e) is an option

(d) *Density* bonus units constructed in accordance with the provisions of Chapter 14, Article 3, Division 7.

(Amended 3-8-2004 by O-19267 N.S.)

§ 142.1304 Variance Rules for Inclusionary Affordable Housing Regulations

(a) Except as provided in Section 142.1304(c), a variance, adjustment, or reduction from the provisions of Section 142.1306 may be requested and decided in accordance with Process Four and shall require either that the findings in Section 142.1304(d) or in Section 142.1304(e) be made.

(b) An application for a variance, adjustment, or reduction shall be filed in accordance with Section 112.0102 and shall include financial and other information that the City Manager determines is necessary to perform an independent evaluation of the *applicant's* basis for the variance, adjustment, or reduction, and shall be a matter of public record.

Delete and Provide for exemptions

(c) ~~A *development* located within an adopted redevelopment project area and subject to a San Diego Redevelopment Agency agreement may seek a variance, adjustment, or reduction from the requirements of this Division, upon an express finding that the *development* is fulfilling a stated significant objective of the Redevelopment Agency's approved Five Year Redevelopment Plan for the Redevelopment Project Area. The variance, adjustment, or reduction request shall be reviewed in accordance with Process Four.~~

(d) No variance, adjustment, or reduction shall be issued unless:

(1) Special circumstances unique to that *development* justify the granting of the variance, adjustment, or reduction;

(2) The *development* would not be feasible without the modification;

(3) A specific and substantial financial hardship would occur if the variance, adjustment, or reduction were not granted; and

(4) No alternative means of compliance are available which would be more effective in attaining the purposes of this Division than the relief requested.

(e) No variance, adjustment, or reduction shall be issued to an applicant unless there is an absence of any reasonable relationship or nexus between the impact of the *development* and either the amount of the in lieu fee charged or the inclusionary requirement.

(f) A project that proposes to provide affordable housing on a site different from the proposed project site and outside the community planning area may be approved or conditionally approved only if the decision maker makes the following supplemental findings in addition to the findings in Section 142.1304(d):

(1) The portion of the proposed *development* outside of the community planning area will assist in meeting the goal of providing economically balanced communities; and

(2) The portion of the proposed *development* outside of the community planning area will assist in meeting the goal of providing transit oriented development.

(Added 6-3-2003 by O-19189 N.S.)
(Amended 8-15-2006 by O-19530 N.S.; effective 9-14-2006.)

§ 142.1305 Waiver Rules for Inclusionary Affordable Housing Regulations

(a) Except as provided in Section 142.1305(c), a waiver, adjustment, or reduction from the provisions of Section 142.1306 may be requested and decided in accordance with Process Five and shall require either that the findings in Section 142.1305(d) or in Section 142.1305(e) be made.

(b) An application for a waiver, adjustment, or reduction shall be filed in accordance with Section 112.0102 and shall include financial and other information that the City Manager determines is necessary to perform an independent evaluation of the *applicant's* rationale for the waiver, adjustment, or reduction and shall be a matter of public record.

Move to § 142.1303

(c) A *development* located within an adopted redevelopment project area and subject to a San Diego Redevelopment Agency Agreement may seek a waiver, adjustment, or reduction from the requirements of this Division, upon an express finding that the *development* is fulfilling a stated significant objective(s) of the Redevelopment Agency's approved Five Year Redevelopment Plan for the Redevelopment Project Area. The waiver, adjustment, or reduction shall be in accordance with Process Five.

(d) No waiver, adjustment, or reduction shall be issued to an *applicant* unless:

Nox required for § 142.1305(c)

(1) Special circumstances, unique to that *development* justify the grant of the waiver, adjustment, or reduction;

(2) The *development* would not be feasible without the waiver, adjustment, or reduction;

(3) A specific and substantial financial hardship would occur if the waiver, adjustment, or reduction were not granted; and

(4) No alternative means of compliance are available which would be more effective in attaining the purposes of this Division than the relief requested.

(e) No waiver, adjustment, or reduction shall be issued to an *applicant* unless there is an absence of any reasonable relationship or nexus between the impact of the *development* and either the amount of the in lieu fee charged or the inclusionary requirement.

(Added 6-3-2003 by O-19189 N.S.)
(Amended 8-15-2006 by O-19530 N.S.; effective 9-14-2006.)

§ 142.1306 General Inclusionary Affordable Housing Requirements

(a) At least ten percent (10%) of the total *dwelling units* in the proposed *development* shall be affordable to *targeted rental households* or *targeted ownership households in accordance with Section 142.1309*. For any partial unit calculated, the applicant shall pay a prorated amount of the in lieu fee in accordance with Section 142.1310 or provide an additional affordable unit. *Condominium conversion* units affordable to and sold to households earning less than 150 percent (150%) of the *area median income* pursuant to an agreement entered into with the San Diego Housing Commission shall not be included in the *dwelling units* total for purposes of applying the ten percent inclusionary housing requirement.

(b) With the exception of condominium conversions of twenty or more dwelling units the requirement to provide *dwelling units* affordable to and occupied by *targeted rental households* or *targeted ownership households*, can be met in any of the following ways:

(1) On the same site as the proposed project site;

(2) On a site different from the proposed project site, but within the same community planning area. Nothing in this Division shall preclude an