

REVISED LEGISLATIVE DIGEST

(3/19/2013, Substituted)

[Planning Code - Inclusionary Affordable Housing Program, Updates, and Clarifications]

Ordinance amending the Planning Code, Section 401, and provisions of the Inclusionary Affordable Housing Ordinance, Sections 415 et seq., to update and clarify provisions of the Inclusionary Affordable Housing Program (Program) by reducing certain on-site requirements under Charter, Section 16.110; providing a cap on rent increases; clarifying the timing of off-site developments; requiring rental units that convert to ownership to sell at less than the price for ownership units under certain circumstance; establishing pricing for affordable Single Room Occupancy units; changing the status of projects using California Debt Limit Allocation Committee tax exempt bonds so that such projects are subject to the Program, but that units may qualify as on- or off-site units under certain circumstances; allowing income levels of qualifying households to exceed those specified in certain situations; clarifying that the threshold application of the Program to projects of 10 units or more applies to the South of Market Youth and Family Special Use District and all other areas of the City; making technical clarifications and corrections; and making environmental findings and findings of consistency with the General Plan.

Existing Law

The Inclusionary Affordable Housing Program, Planning Code Section 415 et seq. (the "Program"), requires that certain housing projects pay an Affordable Housing Fee or provide a certain percentage of units constructed on-site as affordable to qualifying households ("Below Market Rate" or "BMR" units") or a higher percentage if constructed off-site. The Program Procedures Manual ("Procedures Manual") contains procedures for monitoring and enforcement of the Program.

Amendments to Current Law

Reducing On-Site Requirements Under Charter Section 16.110. In November, 2012 the voters amended the Charter by adopting Proposition C "The Affordable Housing Trust Fund and Housing Production Incentives" which is, in part, codified as Charter Section 16.110 ("Proposition C"). Charter Section 16.110(g) states that "Beginning on January 1, 2013, the City shall reduce by 20% the on-site inclusionary housing obligation for all projects subject to the on-site Inclusionary affordable housing requirements" The proposed legislation reduces certain on-site requirements under Charter Section 16.110.

Updates and Clarifications to the Program. The proposed legislation makes a number of changes to the Program to update the way that the Program is implemented. The legislation is being proposed in connection with an update to the Procedures Manual. In addition to some technical corrections, the proposed legislation:

- provides an explicit cap on rent increases for landlords of Below Market Rate units where it is not clear if landlords can currently “bank” rent increases from year to year;
- clarifies the timing of off-site developments by requiring that the principal project may not get a certificate of occupancy until the required off-site units have a certificate of occupancy;
- clarifies the process to convert a BMR rental unit to a BMR ownership unit and requires rental units that convert to ownership to sell at less than the price for ownership units where a current tenant qualifies for the unit and wishes to purchase it. These provisions modify a provision of the former Procedures Manual that required all units that convert to ownership to sell at a price affordable to renters under the Program;
- establishes a pricing category for affordable SRO units where none currently exists;
- changes the status of projects using California Debt Limit Allocation Committee tax exempt bonds so that such projects are subject to the Program, but that units may qualify as on- or off-site units under certain circumstances. Currently projects that use CDLAC tax exempt bonds and meet certain criteria are exempt from the Program;
- allows income levels of qualifying households to exceed those specified in recorded use restrictions in certain situations including an updated pricing mechanism for new BMR units; an allowance to exceed the maximum qualifying income level for new buyers of BMR units at the initial sale by up to 20% above the maximum income level allowed; an allowance to exceed the specified maximum income level when a project sponsor or current owner cannot sell a BMR ownership unit in a timely manner; and allowing the income of current BMR renters to increase upon recertification. Currently such allowances do not exist;

Changing the Threshold to Projects of 10 Units or More. The Board has previously adopted legislation entitled “Planning Code – Threshold For Application of Inclusionary Affordable Housing Program” which changed application of the requirements of the Program from projects of 5 units or more to projects of 10 units or more. The threshold in the South of Market Youth and Family Special Use District was not changed in the earlier legislation and this legislation corrects provisions of the Special Use District to change the threshold to 10 units or to a building in excess of 45 feet. The legislation also provides that, even if other provisions of the Code still contain a threshold of 5, the 10 unit threshold is the correct threshold to apply to all projects.