

REVISED LEGISLATIVE DIGEST

(Revised in Committee 10/18/10)

[Planning Code, Administrative Code – Amending Inclusionary Housing Ordinance.]

Ordinance amending the Planning Code and Administrative Code by amending the Residential Inclusionary Affordable Housing Program, Planning Code Section 415 et seq. (formerly Code Section 315 et seq.) (the "Program") to change the name of the Program to the Affordable Housing Program and to require all project applicants to pay the Affordable Housing Fee unless they are eligible for an alternative; making other amendments to the Program including expanding the uses of the Citywide Affordable Housing Fund, deleting provisions relating to certain requirements for off-site units, and deleting provisions requiring a refund of fees after issuance of certificate of occupancy; amending Sections 416 and 417 to make conforming amendments to the Affordable Housing Program; amending Section 827 to delete the requirement that 50% of on- or off-site affordable housing units provided under Section 415 et seq. in the Rincon Hill Area Plan be provided as rental; amending the Administrative Code by amending Chapter 56 related to Development Agreements to create certain exceptions from its requirements for rental housing developments with on-site inclusionary units; and making findings including findings under the California Environmental Quality Act.

Existing Law

The Residential Inclusionary Affordable Housing Program, Planning Code Section 415 et seq. ("Program") currently requires all residential developments of 5 units or more to provide 15 percent of the units on-site of the development as affordable units. The Program also gives all developers the option to meet the Program requirements through the provision of 20% of the units as affordable off-site units or to pay an in lieu fee equivalent to the number of off-site units. All in lieu fees are paid to the Citywide Affordable Housing Fund. The funds can be used to increase the supply of affordable housing and for certain "small sites" projects subject to various limitations. The Program also currently provides that, in general, applicants must insure that off-site units are located within a one mile radius of the principal project but that 25% of off-site units constructed per year shall be permitted by the Planning Department to be located outside of that radius. The Program provides that the City shall refund fees under certain circumstances including a provision that allows for a proportionate refund of in lieu fees after a certificate of occupancy is issued and during the life of the project. The Rincon Hill Area Plan provisions of the Planning Code contain requirements that differ from the Program including, but not limited to a requirement that 50% of all on- or off-site affordable units must be provided as rental units. The Development Agreement ordinance (Administrative Code Chapter 56) requires an initial hearing at the Board of Supervisors to set a budget and fee for a development agreement.

Amendments to Current Law

The Amendments to the Program would change the primary requirement of the Program such that all developers would be required to pay an Affordable Housing Fee ("fee"). The fee would be set at the same level as the current in lieu fee. Only developers who can meet certain requirements would be eligible for the alternative to provide on- or off-site affordable units. There are three ways to become eligible to provide units on- or off-site as an alternative to payment of the fee: (1) Insure that the on- or off-site units will be provided as ownership units; (2) Provide a contract to the City demonstrating that the on- or off-site units are exempt from the Costa Hawkins Rent Control Act, Civil Code Section 1954.50 et seq.; or (3) enter into a Development Agreement with the City to provide on-site units. In addition, the uses of the Citywide Affordable Housing Fund would be expanded to include providing down payment assistance to low and moderate income homebuyers. The amendments delete the exception to the rule that all off-site units need to be built within one mile of the principal project. The amendments retain refunds for projects that do not obtain their certificate of occupancy but delete a refund provision that requires refunds after issuance of a certificate of occupancy through the life of the project. The amendments delete the Rincon Hill Area Plan requirement that 50% of all on- or off-site affordable units must be provided as rental units. The amendments to the Development Agreement ordinance allow for a waiver of an initial hearing at the Board of Supervisors and a fee for the Development Agreement if the primary purpose of a Development Agreement is to provide on-site affordable units.

On July 27, 2010 the sponsors introduced Revised Interim Controls and this substitute legislation (Draft Revised Permanent Controls) to address the fact that in Ordinances Nos. 0107-10 and 0108-10 the Board of Supervisors subsequently adopted the "Development Fee Collection Procedure; Administrative Fee" and the "Development Impact and In-Lieu Fees" ordinances. These subsequently adopted ordinances made amendments to the Building Code and Planning Code and, to some extent, amended the same provisions of the Planning Code covered by Interim Control Resolution 36-10 and the Draft Permanent Controls including, but not limited to, moving Sections 315 et seq. to Sections 415 et seq. in a new Article IV of the Planning Code. In order to conform Interim Controls Resolution 36-10 with Ordinances 0107-10 and 0108-10, the Board introduce the Revised Interim Controls and Draft Revised Permanent Controls. The Revised Interim Controls and Draft Revised Permanent Controls are not intended to alter the substance of Interim Controls Resolution 36-10, but incorporate the newly enacted language of Ordinance No. 0108-10. The Draft Revised Permanent Controls are being simultaneously introduced and substituted in Board File No. 100046.

On October 18, 2010 additional amendments were made at the Land Use Committee. In general, these changes respond to the recent economic downturn and its effect on units in the Inclusionary Housing Program and updates to the Program suggested by the Mayor's Office of Housing. The amendments include:

- Procedures for Units Unable to Sell Due to Economic Downturn: The downturn in the economy has resulted in areas of the City where the below market rate (BMR) price is close to the unrestricted market rate price, resulting in an ability of owners to sell their BMR units. The amendments would authorize MOH to request changes to the Procedures Manual from the Planning Commission as follows:
 - Providing for a waiver of certain re-sale requirements including one-time waivers of first-time homebuyer requirements, household size requirements, owner occupancy rules, the asset test for new buyers, or an increase in the qualifying income level.
 - For BMR units where the price is inherently close to the market rate, exemptions from the ordinance would be permitted to allow certain units to (1) resell the unit to a higher income household at a higher price than the ordinance now allows; and (2) the owner who resells the unit would share appreciation above a certain percent with MOH.
 - Amendments to lottery preferences related to Certificate of Preference holders to conform to earlier legislation on this issue;
 - Amendments related to inheritance of BMR units;
 - Clarifying resale lottery procedures;
 - Increase the maximum capital improvements cap;
 - Provide that projects receiving California Debt Limit Allocation Committee financing and 100% affordable housing projects as defined will be exempt from the ordinance as long as they meet the requirements of those programs.
 - Expand the language related to use of fees;
 - Clarify the language prohibiting affordable units under the Program to have received federal subsidies;
- other administrative and technical changes to correct errors and conform with the Procedures Manual.