

AA

PLANNING
AND BUILDING SERVICES
DEPARTMENT

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April 2, 2001

City Council
Sacramento, California

Honorable Members in Session:

SUBJECT: M01-040

LOCATION: Citywide

COUNCIL DISTRICT: All

RECOMMENDATION: Approve Amendments to Chapter 17.190 of Title 17 (Zoning Code) of the City Code Relating to Mixed Income Housing

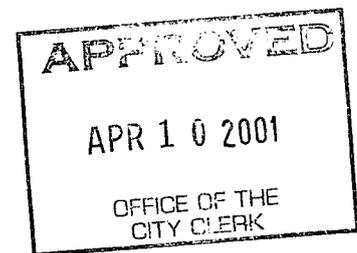
CONTACT PERSON: Steve Peterson, Principal Planner, 264-5981
Beverly Fretz- Brown, SHRA Housing Manager, 440-1347

FOR COUNCIL MEETING OF: April 10, 2001 (afternoon session)

SUMMARY: Staff has prepared the attached technical amendments to the Mixed Income Housing Ordinance which relate to the administration of the ordinance.

BACKGROUND INFORMATION:

The proposed amendments are needed to bring the ordinance into conformity with the types of development applications received at the first legislative entitlement stage that combine project specific with more general legislative entitlements. These applications may include tentative maps, parcel maps (project specific approvals) with rezonings, plan amendments and development agreements (legislative entitlements). The original



ordinance required the execution of the Inclusionary Housing Agreement, with its financing commitments, at the same time as the approval of development agreements, tentative maps and parcel maps.

The amendments permit the approval of project-specific entitlements prior to the execution of the Inclusionary Housing Agreement so long as the Inclusionary Housing Plan is in place and the phasing schedule is enforced through map conditions on those entitlements.

The ordinance amendments also define the types of circumstances under which the Planning Director may approve future amendments to a council approved Inclusionary Housing Plan and Agreement. Staff has also prepared a description of possible scenarios to advise both housing advocates and developers of where and how the Planning Director's discretion might be requested and used (see attachment).

PLANNING COMMISSION ACTION:

The Planning Commission approved the amendments and included some additional clarifying language regarding the interpretation of the timing of development provision in the ordinance. The Planning Commission expressed its opinion that the affordable developer's difficulties in obtaining external subsidies do not relieve the master (land) developer of his obligation to produce the inclusionary units before the market rate single family portion of the development is built out. This language goes somewhat further than the ordinance and may curtail the exercise of the Planning Director's discretion which allow adjustments to strict concurrency for specific reasons. Staff would prefer not to adopt the Planning Commission's language as a staff directive, but rather acknowledge that it expresses their opinion of how the ordinance ought to operate.

FINANCIAL CONSIDERATIONS:

None.

POLICY CONSIDERATIONS:

The proposed amendments implement the Mixed Income Housing policy adopted by the City Council to promote affordable housing within new growth areas.

ENVIRONMENTAL CONSIDERATIONS:

The City has prepared a Tiered Negative Declaration on the Housing Element and

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implementation ordinances pursuant to the California Environmental Quality Act.

ESBD EFFORTS:

No goods or services are being purchased.

Respectfully submitted,



GARY STONEHOUSE, PLANNING DIRECTOR

RECOMMENDATION APPROVED:



ROBERT P. THOMAS,
CITY MANAGER

Attachments

Examples of Development Conditions for Planning Director's Discretion
Ordinance Amendments

Examples of Development Conditions that Could Lead to a Request for the Exercise of the Planning Director's Discretion

The following examples were generated by staff at the request of developers and Legal Services of Northern California to better understand the types of situations that might lead to a request for the Planning Director's exercise of the discretion permitted under the Mixed Income Housing Ordinance. While these examples are not inclusive, neither do they represent situations where the Planning Director is obligated to exercise discretion. They are only examples, recognizing the complexity of market rate and affordable housing development.

The City of Sacramento's Mixed Income Housing Ordinance provides the Planning Director with discretion in the areas listed below, followed by situations where requests for discretion might arise:

Timing of Development.

Section 17.190.030 (C) of the ordinance states: "The Inclusionary Housing Plan and Inclusionary Housing Agreement shall include a phasing plan which provides for the timely development of the Inclusionary Units as the Residential Project is built out. The phasing plan shall provide for development of the Inclusionary Units concurrently with the Market Rate Units; provided however, that the phasing plan will be adjusted by the Planning Director away from strict concurrency where necessary in order to account for the different financing and funding environments, economies of scale, and infrastructure needs applicable to development of the Market Rate and the Inclusionary Units."

Example: Financing problems

The affordable developer can run into financing problems outside of his control after the Inclusionary Housing Agreement has been signed and recorded. The Agreement is signed after the affordable developer has a city-approved project and local financing, and before the market rate developer has obtained city approval of final maps. *The following changes may warrant an adjustment in the phasing plan, but the adjustments must not inhibit the City's ability to enforce this Chapter against the Master Developer. Difficulties in obtaining external subsidies do not relieve the Master Developer from its obligation to produce the units before the build out of the market rate single family portion of its development(Commission amendments):*

1. The affordable housing developer has applied for "External Subsidies" (most likely tax credits and/or tax-exempt bonds) at all applicable application rounds subsequent to the recordation of the Inclusionary Housing Agreement and

Has not received a reservation or allocation of the requested funding;
SHRA has determined that the application was competitive on the basis of meeting the funding source's requirements for a complete and competitive application; and

The application(s) was consistent with the project plans and description presented in the Inclusionary Housing Agreement (which includes by reference the Multifamily Plan Approval).

2. The applicable funding rounds for “External Subsidies” to which the affordable housing developer would have applied have been rescheduled so that a reservation or allocation of funding would not be possible prior to the issuance of more than the phasing plan’s percentage of building permits for the market rate units in the residential project.

Example: Economies of scale:

Situations could arise where a self-help or other construction program for the inclusionary units requires substantially more lead time to organize the program and aggregate units (self-help homes are built all together). Such delays could prompt a request for adjustment to strict concurrency in the phasing schedule.

Similarly, a situation could arise where the master single family builder sells scattered inclusionary housing sites to an affordable housing builder, who requests to construct all units together under one construction loan for financial feasibility.

Example: Infrastructure needs:

Infrastructure financing for a development project can be delayed because of environmental constraints, inability to perfect the necessary tie-ins to adjacent utilities, and disputes over required cooperative agreements, any of which might result in a request to the Planning Director to consider these problems’ effect on phasing.

Unit Size

Section 17.190.030 (D) of the Mixed Income ordinance states that the Inclusionary Housing Component shall accommodate diverse family sizes by including a mix of studio, one, two and three-bedroom units as determined by the Planning Director, upon recommendation by the SHRA Director.

Example: requests for a departure from the unit mix and size rules could arise from the affordable housing developer’s building senior housing, inter-generational housing, or assisted living.

Over concentration

Section 17.190.050 of the ordinance states in part that “...the Planning Director may allow for variation from these (Over concentration) principles, but only the extent necessary, if he or she determines that an alternative configuration of Inclusionary Units is required by funding or financing considerations associated with the

development of the Inclusionary Units or by the applicable residential land use designations within and adjacent to the Residential Project.

Example: An affordable developer's best or only location could be adjacent to another inclusionary or affordable development in another master plan; if the project's feasibility requires a number of assisted units greater than 50 percent (the Over concentration threshold), the Planning Director's discretion may be requested.

Example: Special consideration might also be given to mixed income developments where the percentage of assisted units is over 50%, or where one inclusionary development is a seniors or assisted living project and the other one is not.

Proposed Ordinance Amendment Affecting Inclusionary Housing Plan

One of the proposed amendments to the Mixed Income Housing Ordinance gives the Planning Director authority to approve minor amendments to the Inclusionary Housing Plan so long as the obligations and enforcement of the ordinance are maintained.

"The Planning Director shall have the authority to approve amendments of the Inclusionary Housing Plan to reflect changes in the underlying Development Project or Inclusionary Component, including modifications in unit size, tenure, on-site location and other similar changes. ..."

The need for minor amendment authority begins with the fact that the Inclusionary Housing Plan is approved very early in the development process - at the legislative entitlement stage - long before the subdivision improvements are designed and constructed. Changes in the development project can and do occur, despite the best master planning, as the backbone infrastructure plans progress through public works and utilities.

When changes do occur in the development's plans, the City should be able to respond in a timely fashion to their effect on the Inclusionary Housing Plan.

Location. At the time of the Inclusionary Housing Plan's approval, the land developer may not be in contract with an affordable housing developer. When that occurs, the affordable housing developer may be interested in purchasing other appropriate property than that designated in the Plan or constructing different types of housing.

Location. When exclusively single family subdivisions are approved, the land developer may not have sold sections of the master plan to the single family builders. Although the sites for the

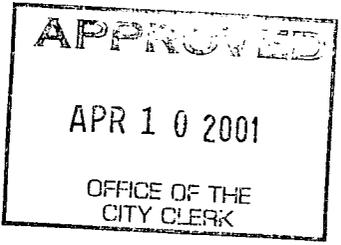
inclusionary units were identified in the Inclusionary Housing Plan, the actual builder may suggest other lot locations which are equivalent to the distribution of lots suggested in the Plan.

Unit size. As the affordable housing developer's financing plans and market studies progress, the inclusionary housing originally proposed may change from senior, intergenerational, or assisted living to conventional multifamily, or vice versa.

Tenure. As financing plans progress and state and federal programs change, the developer responsible for the inclusionary housing production may find it more feasible to alter tenure without changing the affordability requirements. This is particularly likely in the development of half-plexes, cluster housing or patio homes. It may also occur if different sites are chosen by the affordable housing developer than those identified in the Inclusionary Housing Plan.

ORDINANCE NO. 2001-016

ADOPTED BY THE SACRAMENTO CITY COUNCIL



ON DATE OF _____

AN ORDINANCE AMENDING SECTIONS 17.190.020, 17.190.070, 17.190.110 AND 17.190.130 OF CHAPTER 17.190 OF TITLE 17 OF THE CITY CODE, RELATING TO MIXED INCOME HOUSING REQUIREMENTS

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

Section 1

The definition of "Legislative Entitlements" set forth in Section 17.190.020 of Title 17 of the Sacramento City Code is amended to read as follows:

Legislative Entitlements means and includes general and community plan amendments, zonings and rezonings, planned unit development (PUD) schematic plans and amendments thereto, planned unit development guidelines and amendments thereto, and development agreements.

Section 2.

Subsection C of Section 17.190.030(C) is amended to read as follows:

C. Timing of Development. The Inclusionary Housing Plan and Inclusionary Housing Agreement shall include a phasing plan which provides for the timely development of the Inclusionary Units as the Residential Project is built out. The phasing plan shall provide for development of the Inclusionary Units concurrently with the Market Rate Units; provided however, that the phasing plan will be adjusted by the Planning Director away from strict concurrency where necessary in order to account for the different financing and funding environments, economies of scale, and infrastructure needs applicable to development of the Market Rate and the Inclusionary Units, but such adjustment must be consistent with the provisions of this Chapter and not inhibit the City's ability to enforce

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compliance with this Chapter.

Section 3.

Subsection G of Section 17.190.070 of title 17 of the City Code is amended to read as follows:

- G. Any Residential Project in the North Natomas Community Plan Area which does not have a Development Agreement as of June 20, 2000, but which is the subject of a formal application on which the Planning Commission took final action on or before June 20, 2000, regardless of whether the Planning Commission's action was thereafter appealed; provided that the City Council thereafter approves the project in substantially the same form as approved by the Planning Commission. If the City Council denies the application as approved on or before June 20, 2000 by the Planning Commission, the Development Project shall comply with this Chapter. If the City Council approves the application but modifies the project in any substantial manner from the project approved by the Planning Commission, the Project shall comply with the provisions of this Chapter to the extent required by the Council at the time of approval of the project. If changes in the Residential Project are proposed subsequent to the Council's approval of the pending application, and the proposed changes require the approval of one or more Legislative Entitlements or amendments which are Major rather than Minor, the revised Residential Project shall be subject to the Inclusionary Housing Component requirement and the other provisions of this Chapter.

Except as Subsection G is amended above, the provisions of Section 17.190.070 shall remain unchanged and in effect.

Section 4

Section 17.190.110 of Title 17 of the City Code is amended as follows:

- a. Subsection B of Section 17.190.110 is amended to read as follows
 - B. Action on Inclusionary Housing Plan. The SHRA Director shall review the proposed Inclusionary Housing Plan and shall make recommendations to the Planning Director. The Inclusionary Housing

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Plan shall be subject to the same review and approval as the Legislative Entitlements. No Legislative Entitlement shall be granted without an approved Inclusionary Housing Plan. The elements of the Inclusionary Housing Plan shall be incorporated into the terms and conditions of the applicable Legislative Entitlements and Project-level approvals.

Amendment of Inclusionary Housing Plan: The Planning Director shall have the authority to approve amendments of the Inclusionary Housing Plan or Inclusionary Housing Component, if the Planning Director finds that the amendments are necessary to facilitate the development, the amendments are consistent with the provisions of this Chapter and the amendments will not inhibit the City's ability to enforce compliance with this Chapter. Such amendments will be limited to modifications in total number of units, unit size and mix, to reflect changes in the underlying Development Project, including modifications in unit size, tenure, on-site location and other similar changes. Where the proposed amendment(s) will result in a change in the phasing or timing of development of the Inclusionary Units, the Planning Director may approve that amendment if he/she finds that the circumstances specified in Section 17.190.030C are present and that the requirements of that section are satisfied.

Amendment Process: Amendments shall be subject to notice, review, approval and appeal in the same manner as a Planning Director's Special Permit.

- b. Subsection C of Section 17.190.110 is amended as follows:
 - 1. Subsection C-1 is amended to read as follows:
 - 1. Requirement. No Project-level Approval may be issued by the City or SHRA without a recorded Inclusionary Housing Agreement executed by the owner, the Developer (if not Owner) and the Director of SHRA acting with the advice of the Planning Director; provided that a tentative map or parcel map may be approved prior to execution or recordation of an

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Inclusionary Housing Agreement if (1) an Inclusionary Housing Plan including a phasing plan has been approved; (2) any tentative map and parcel map contain conditions that enforce the applicable phasing and other requirements of the Housing Plan; and (3) the Legislative Entitlements contain provisions that condition approval of Special Permits, Plan Review, or building permits on execution and recordation of and compliance with an Inclusionary Housing Agreement.

2. Subsection C-2 of Section 17.190.110 is amended to read as follows:

Timing. The Inclusionary Housing Agreement shall be negotiated concurrently with the processing of an application for the first Project-level Approval, except tentative maps or parcel maps may issue prior to such negotiation pursuant to subparagraph 1 above. The SHRA shall act with the advice of the Planning Director. At the request of the Developer, and if Developer makes the project development and financing details set forth below in subparagraphs 3 and 4 available, the Inclusionary Housing Agreement may be negotiated earlier in connection with the issuance of a Legislative Entitlement.

3. Subsection C-6 of Section 17.190.110 is amended to read as follows:

Incorporation into Project-level Approvals and Recordation. The Developer obligations and the Inclusionary Incentives in the Agreement shall be incorporated into the applicable Project-level Approvals. The executed Agreement shall be recorded as a covenant running with the land against the real property of the Residential Project and, in the case of Off-Site Inclusionary Units, against the real property on which such Units are to be located.

- c. Except as Subsection A is specifically amended by "a" above, and Subsection B by "b" above, the provisions of Section 17.190.110 shall remain unchanged and in effect.

Section 3

Section 17.190.130 is amended to read as follows:

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- A. No Legislative Entitlement shall be issued or valid without an Inclusionary Housing Plan as required by this Chapter.
- B. No Project-level Approval shall issue for any Development Project unless an Inclusionary Housing Agreement has been executed and recorded, except tentative maps or parcel maps may issue prior to such recordation pursuant to Section 17.190.110(C) above, and no building permit or certificate of occupancy shall issue until the Inclusionary Housing Agreement has been recorded as required by this Chapter.
- C. The City may bring such civil and criminal enforcement actions as are provided for in the City Code.

DATE PASSED FOR PUBLICATION:
 DATE ENACTED:
 DATE EFFECTIVE:

 MAYOR

ATTEST:

 CITY CLERK

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DATE ADOPTED: _____