

Agenda Report

TO: CITY COUNCIL **DATE: APRIL 2, 2001**

FROM: CITY MANAGER

RE: ZONING CODE AMENDMENT TO REQUIRE A SHARE OF AFFORDABLE HOUSING IN RESIDENTIAL AND MIXED-USE DEVELOPMENT PROJECTS ("INCLUSIONARY HOUSING CODE AMENDMENT")

RECOMMENDATION

It is recommended that the City Council, following a public hearing:

1. Adopt the Negative Declaration prepared for the Inclusionary Housing Code Amendment;
2. Adopt a finding that the proposed amendment is consistent with the policies of the General Plan and the purposes of Title 17 of the Pasadena Municipal Code;
3. Approve the proposed amendment to Title 17 of the Pasadena Municipal Code requiring residential development projects and mixed-use projects with housing to include a share of units that are affordable to moderate- and low-income households ("inclusionary housing code amendment");
4. Direct the City Attorney to prepare (1) an ordinance amending Title 17 and (2) regulations to implement the amendment.

ADVISORY BODIES

The Planning Commission held a public hearing on February 21, 2001, which was continued for additional public comment and Commission deliberation to the meetings of March 14 and March 28. The recommendation of the Planning Commission will be provided separately as an addendum.

The Community Development Committee discussed the proposed amendment on March 22, 2001. A summary of the Committee's discussion will be provided in the addendum with the Planning Commission recommendation.

EXECUTIVE SUMMARY

The proposed amendment to Title 17 (Zoning Code) would require that residential and mixed use projects include a share of housing that is affordable to moderate- and low-income households. It is intended to supplement other programs that assist and encourage affordable housing in the city. The requirement would apply to projects of ten or more units. It would require that 15 percent of units, whether new or substantial rehabilitation, be affordable. The amendment provides alternatives to constructing the required units on the primary development site. The three alternatives are: construct the units on another site, donate another site, pay a fee in lieu of building the units. To accommodate projects that have begun the review and approval process, the amendment would establish an interim requirement that six percent of units be affordable. The interim requirement would be in effect for one year, until the full 15 percent share is required. In addition, the amendment provides certain exemptions for projects that have received discretionary approvals or would be subject to the requirements of agreements.

BACKGROUND

The General Plan Land Use Element, 1994, says the City will adopt an inclusionary zoning ordinance to distribute affordable housing in the city (Policy 15.3). An inclusionary zoning ordinance, as an amendment to the City's Zoning Code, would require affordable housing units to be included in residential and mixed-use development projects. In a series of meetings convened to develop housing policy in the city, Housing 2000, participants confirmed that the City should adopt an inclusionary program. In a workshop on housing issues on July 31, 2000, councilmembers discussed the need and directed staff to return with a proposed program. After additional meetings with Housing 2000 stakeholders, others with an interest in housing issues, and economic and legal consultants, staff proposed to the Planning Commission a Zoning Code amendment to require affordable housing units in residential and mixed-use projects, i.e., inclusionary housing.

Need

The need for additional affordable housing has been established both in the housing allocations assigned by the Southern California Association of Governments (SCAG) and also in the experience of Pasadena residents. For each cycle of local five-year general plan housing elements, the SCAG prepares a Regional Housing Needs Assessment (RHNA). The RHNA for the current period (1998-2005) assigns a housing construction need of 1,777 units to Pasadena. Of the 1,777 units, there is a need for 26 percent (462 units) to be affordable to very low-income households and another 16 percent (284 units) for low-income households. An additional 19 percent (338 units) are needed for moderate-income households. The remainder, 39 percent (693 units), may be available at above-moderate income prices. (Attachment A for income levels.) The opportunity to produce those units has been provided through the potential for additional development in the city's zoning.

Although the opportunity exists, however, actual proposed residential development does not offer the mix of income levels assigned in the RHNA. Market opportunities for housing priced above the moderate income level offer profits that exceed those for affordable housing, under current regulations, unless government subsidies are

provided. More specifically, current land prices are based on the opportunity for exclusively market-rate housing, not on projects that include units that are affordable at moderate or lower-income levels. The proposed inclusionary zoning ordinance will require that affordable units be provided, with the probable result that land costs will adjust, at least on sites where the most profitable opportunity is the development of new housing.

Pasadena, especially the downtown area, is a focus of housing production in the Tri-Cities (Burbank, Glendale, and Pasadena) and the San Gabriel Valley. More than four thousand units are either under construction or currently proposed, including nearly two thousand units in certain proposals for the properties formerly occupied by the Worldwide Church of God. Among the total are proposed units with local or federal government subsidies as well as very low-income units in projects with a density bonus. In the absence of some requirement by the City or a contractual agreement, only approximately seven percent of the total number, including affordable senior citizen units, will be affordable at moderate or lower-income levels. If senior units are excluded, the share of affordable units falls to approximately three percent.

The proposed inclusionary housing program will require that a share of the total housing production be affordable at moderate- and low-income levels. The program is not intended to provide, by itself, all of the low and moderate-income units allocated to the city in the RHNA. Additional programs will also be required and will be described in the draft 2000-2005 Housing Element, both for low- and moderate-income units and also for very low-income units. Although very low-income units are not required as inclusionary units, the amendment provides an incentive to encourage substituting them for the required low- or moderate-income units.

Provisions of Proposed Inclusionary Housing Code Amendment

Applicability: Development projects, either new construction or substantial rehabilitation, that include ten or more dwelling units will be required to provide inclusionary units or an alternative. Single-family units that are proposed pursuant to a Planned Development (PD) are subject to the requirement, if the PD provides for ten or more units.

Basic Requirement: Fifteen percent of the project units shall be guaranteed to remain affordable as inclusionary housing units according to the required mix. The number of units shall be determined by multiplying the number of project units by fifteen percent. Fractional units, in projects of 10 to 20 units, shall be rounded up to the next whole unit when the calculation produces a fraction exceeding .75 of a unit. In projects of 21 or more units, the number shall be rounded up when the calculation produces a fraction exceeding .50 of a unit.

For density bonus projects, the 15-percent requirements shall be calculated on the number of units permitted by the base zoning, not by the total number allowed with the density bonus. For instance, if a maximum of 40 units could be constructed according to the base zoning (e.g., RM-16 or RM-32) and lot size, the inclusionary requirement would be six units, even if the project qualifies for and employs a density bonus to construct 50 units. Affordable units that serve to meet the density bonus requirement may also be used to meet the inclusionary housing requirement.

Mix of affordable units: In ownership projects, including condominiums, the entire inclusionary 15-percent requirement may be fulfilled with units that are affordable to and exclusively available to households that do not exceed the moderate-income limits. In projects of rental units, ten percent of the total units shall be provided for households with incomes that do not exceed the low-income limits. The remaining five percent of total units shall be provided for households not exceeding the moderate-income limits.

In some cases, a developer may prefer to provide very-low income units rather than low-income or moderate-income units, in order to qualify for a density bonus or for various financial incentives. Similarly, a developer may prefer to substitute low-income for moderate-income units. The total number of required units will be reduced by the substitution, in order to encourage substitution and provide units at the lower levels. The reduction will be calculated using the following equivalencies: 1 very-low equals 1.5 low; 1 low equals 1.5 moderate; 1 very low equals 2 moderate.

Affordable housing cost limits: The City will set maximum rents and eligibility requirements annually. The total of rent and typical utilities shall not exceed 30 percent of the top limit of the income range. For moderate-income units, rent and typical utilities shall not exceed 30 percent of 120 percent of Los Angeles County median income, adjusted for household size appropriate to the unit (i.e., the number of bedrooms). Similarly, for low-income units, rent and housing costs shall not exceed 30 percent of 80 percent of the median, also adjusted for the appropriate household size.

The sales price for ownership units is based on a *larger portion* of annual household income. The price is based, however, on a *household income* that is not at the very top of the moderate-income range. The total housing costs for ownership units include: mortgage payment, utilities, homeowner's association fees, taxes, mortgage insurance and any other related assessments. The moderate-income units required by the program may sell at a price that involves mortgage payments and the other specified housing costs totaling 40 percent of the income for a household at 110 percent of the County median. The City will set maximum prices and eligibility requirements annually.

Term of covenants: Rental units shall remain permanently affordable, with a recorded agreement. For ownership units, the term of the covenant guaranteeing affordability will be 30 years. If the unit is sold before the end of the 30-year term, the sale shall result in a recapture by the City or its designee of a financial interest in the unit equal to (1) the difference between the initial affordable sales price and the appraised value at the time of the initial sale plus (2) a share of the appreciation. That financial interest shall be deposited in the housing trust fund, to provide affordable housing.

Additional standards: All inclusionary units shall be reasonably dispersed throughout the development project and shall be proportional in location, number, and bedroom size to the non-inclusionary units.

Alternatives: The program allows three alternatives to providing the inclusionary units on the primary development site. First, comparable units may be constructed on another but comparable site, that is, "off-site," with approval of the Director of Planning and Permitting. Second, a comparable site for construction by another developer may be donated to the City, again with approval of the Director of Planning and Permitting. Finally, a fee may be paid in lieu of constructing the units.

In-lieu fees: In lieu of constructing the inclusionary units, a developer may choose to pay a fee into a housing trust fund to provide affordable housing on other sites in the city. The City will adopt a schedule of in-lieu fees, by resolution, to provide this alternative to meeting the requirement on-site. The schedule of in-lieu fees will implement this provision of the program.

Timing: An Inclusionary Housing Agreement shall be executed and recorded before project building permits are issued. All inclusionary units shall be constructed concurrently with, or prior to, the non-inclusionary units. For phased projects, the inclusionary units shall be provided equally in each phase.

Phase-in: For one year after the inclusionary housing ordinance becomes effective, the requirement will be six percent of project units, not the full 15-percent requirement, which will be in effect after the first year. Projects that receive building permits during the first year but that are not exempt from the requirements of the ordinance will be subject to the six-percent requirement. For ownership units, all six percent of the units shall be affordable at the moderate-income level. For rental units, four percent shall be affordable at the low-income level and two percent at the moderate level. A project may substitute very-low or low-income units for low or moderate, according to the equivalencies described above. In no case, however, shall the share of inclusionary units be less than five percent.

Exemptions: Projects that have received one of the following discretionary approvals before the ordinance becomes effective shall be exempt from the requirement, if the approval pertains in whole or in part to the housing component of the project and if the project relies on a building permit that is issued within one year after the ordinance becomes effective: Concept Design Review, Variance, Conditional Use Permit, or Use Permit for a Project Exceeding 25,000 Square Feet.

Certain projects with development agreements or agreements with the Community Development Commission will be subject to the requirements of the agreements, not to the specific requirements of the ordinance. Development projects of more than 50 units with a Development Agreement that includes a provision requiring at least six percent of units to be affordable will be exempt from the specific requirements of the ordinance. The Development Agreement, if entered into either before or within two years after the effective date of the ordinance, will exempt the project, so long as the agreement is in full force and effect at the time the building permit is issued. Similarly, developments of more than 50 units with an agreement between the Community Development Commission and the development (e.g., Disposition and Development Agreement or Owner Participation Agreement) that includes a provision requiring at least six percent of units to be affordable will be exempt from the specific requirements of the ordinance. The agreement, if entered into either before or within two years after the effective date of the ordinance, will exempt the project, so long as the agreement is in full force and effect at the time the building permit is issued.

Enforcement: The City will enforce the requirements of the program through a variety of measures. Building permits or entitlements will not be granted for projects that do not meet the requirements of the program, unless they are exempt. Any individual who sells or rents a restricted unit, i.e., an inclusionary unit, in violation of the requirements shall be required to forfeit all monetary amounts so obtained. Recovered funds will be added to the City's housing trust fund. The City may take legal actions that are necessary to

ensure compliance, including but not limited to actions to revoke, deny or suspend any permit, including building permits, development approvals or certificates of occupancy.

Regulations: The City will establish by resolution, as a separate document, the regulations for implementing the Title 17 requirements. The regulations will provide additional details and procedures

Issues

Relationship to total housing need: The inclusionary program is intended to guarantee that a share of Pasadena housing development will be affordable, at least to low- and moderate-income households. By itself, it requires neither the proportions of affordable housing allocated in the Regional Housing Needs Assessment nor, more specifically, housing that is affordable to very low-income households. The RHNA indicates that 61 percent of newly constructed or substantially renovated units is necessary for moderate and lower-income (both low and very low) households. The inclusionary program requires 15 percent. The most effective program must recognize, however, not only the total need but also economics and equity. If housing is to be developed, the economics of residential development must support not only the actual development of housing on available parcels but also the sale of land for residential development, so parcels are available. An excessive requirement for affordable units could reduce the market value of potential sites so severely that parcels will not be available for development. The resulting reduction in total housing production would exacerbate the present difficulties for households with lower incomes. Staff believes that foreseeable market conditions can accommodate a requirement that 15 percent of units be affordable.

Further, the RHNA assigns a large share of the total units, 26 percent, to be very low-income units. The inclusionary program itself requires no very low-income units, because the additional costs (i.e., amount of reduced revenue, depending on market value of units) of providing very low-income units would be severe in many cases.

The program, however, encourages the development of very low-income units in two ways. First, the program allows developers to provide a smaller number of total inclusionary units if some of those units are very low-income units. With the equivalency of counting 1.5 low income units for each very low-income unit, a project can qualify for a density bonus as well as meet the inclusionary requirement by providing 10 percent of the units (i.e., of the number of units permitted by base zoning) as very low-income housing. Three projects in the city's downtown area are using a density bonus that is granted for having 10 percent of units affordable to very low-income households. The three projects were proposed without the requirement established by the inclusionary program, but they demonstrate the feasibility of building very low-income units under the right circumstances. Second, the inclusionary requirement provides the opportunity for the City and the development project to share the costs of offering very low-income units. The City can provide assistance to cover the "gap" between the required low-income units and the additional costs (reduced revenue) of very low-income units. By requiring that a share of units be affordable to low- or moderate-income households, the City will reduce the amount of public subsidy necessary to create very low-income units and thereby increase the number of units that can be assisted.

Development Standards: The cost of development on a site is dependent on, among other factors, the cost of the land per unit and the regulations (i.e., development standards) for constructing the project. Like zoning regulation in general, the inclusionary housing requirement will be a significant factor in determining the value of land for development. Other standards, such as limits on height and density and requirements for front yard areas and common areas, also affect the value of land for housing development. Those standards are a factor not only in establishing the value of land for potential development but also in determining how many units can be built most economically on a site. Some standards may impose additional costs that are not warranted by the quality of living experience that results.

As part of the update of the City's Zoning Code, staff is reviewing the standards for multifamily housing, both the City of Gardens standards and those for the downtown area, to determine which are necessary to provide the quality of housing desired in the city and which, as adopted, are more costly than beneficial. The City of Gardens standards, in particular, are intended to produce housing that is compatible with Pasadena's neighborhoods and physical environment. (Chapter 17.24 of the Zoning Code provides a more comprehensive list of purposes.) Planning and Permitting Department staff will be meeting during the next several months with developers and others who have an interest in the City of Gardens requirements. The standards, both in City of Gardens and for the downtown area, may be revised to accomplish their purposes more fully and economically. For many developers and for the local Association of Realtors, changes to the development standards are closely tied to the success of the inclusionary housing requirement.

Impact on proposed projects: The large number of market-rate units in, or approaching, the development review and approval process highlights the need for affordable units. In almost all cases, however, the land sales transaction assumed no new requirement for affordable units. In some cases, actual design and approval of projects has begun or has been completed. The financial viability, and hence the construction, of many projects may depend on how much the new inclusionary requirement compensates for existing investment and commitments.

The proposed program exempts those projects with certain discretionary approvals, if they rely on a building permit that is issued within the first year after the ordinance is in effect. In addition, it sets a transitional requirement of six percent, rather than the ultimate 15-percent requirement. Finally, the development process for very complex projects is normally lengthy and often involves multiple agreements and approvals. The program recognizes the contractual agreements that may be made between the City or Community Development Commission and the developers of complex projects. These agreements provide the opportunity to establish specific requirements for the individual projects, if entered within two years after the effective date of the amendment.

Use of in-lieu fees: The in-lieu fees, which will be adopted separately by resolution, will be based on an analysis of the difference ("gap") between the market prices (either rental or sales) of residential units and the price that is affordable at the levels required by the ordinance. The fees will represent a percentage of that difference, to provide the subsidy necessary for producing affordable units to replace the units that would otherwise have been constructed by the developer on-site. Fees will be calculated and established for different areas of the city, based on the value of development in those areas. The fees will be used to subsidize affordable housing development throughout

the city, not only in areas where development is least costly, and to pay administrative costs that are necessary to implement the program. Fees will be deposited in a housing trust fund, which will provide assistance for the provision of affordable housing units.

General Plan Consistency: The proposed amendment to Title 17 implements General Plan Land Use Policy 15.3, which states that the City will adopt an inclusionary zoning ordinance. It is further consistent with numerous General Plan policies in the Land Use and Housing Elements, which place a strong emphasis on the availability and distribution of affordable housing in the city.

ENVIRONMENTAL REVIEW

A Negative Declaration (Attachment B) was prepared, based on an Initial Study of potential impacts of the propose amendment of Title 17. The Initial Study identified no potential impacts, including impacts considered under the mandatory findings of significance.

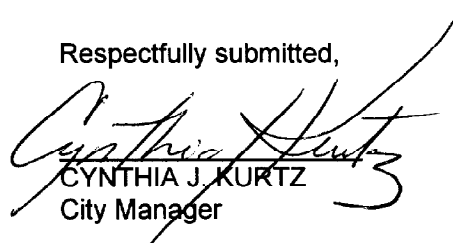
IMPACT ON FAMILIES AND YOUTH

The severe need for low- and very low-income housing, especially for families, in the city is the primary reason for adopting the inclusionary housing program. The program will increase the supply of newly available units. Total production of affordable units will depend on the overall production of housing in the city.


FISCAL IMPACT

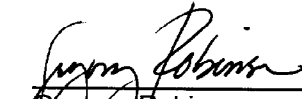
Review of plans for development projects with inclusionary units will be conducted as part of the normal review of projects by Planning and Permitting staff. In addition, the Housing and Development Department will establish a program to review Inclusionary Housing Plans and Inclusionary Housing Agreements and to monitor compliance with the requirements after units are constructed. Review by the Housing and Development Department and monitoring of compliance will be funded from the Low and Moderate Income Housing Trust Fund and from the in-lieu fees, as may be determined.

Respectfully submitted,


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