



Memorandum

TO: City Council

FROM: MAYOR CHUCK REED

SUBJECT: CITYWIDE INCLUSIONARY
HOUSING ORDINANCE

DATE: December 4, 2008

APPROVED:

Chuck Reed

DATE:

12/4/08

BACKGROUND

Over the past year or so, I have voted several times to move ahead with an inclusionary housing ordinance, but I have tried to be clear that I want to avoid three things: litigation, a ballot measure fight, and a housing production crash. As I said at the hearing on June 17th, I believe we can develop an ordinance that people can live with, whether they are landowners, developers or affordable housing advocates. Recent reports from staff reflect an approach that provides a good basis for Council deliberation. Based on information gathered through on-going communication with stakeholders, I submit to you other refinements that should be debated on December 9.

RECOMMENDATION

Adopt staff recommendations with the following amendments:

1. Timing of the adoption: The City Council should adopt the general policy recommendations offered by staff in reports dated November 14, 2008 and November 26, 2008, as well the operative date when the ordinance comes into effect as recommended in item #2 below. In the spirit of open government; however, I recommend the draft ordinance be given public review prior to adoption, which will allow for a full and meaningful review of the proposal and opportunity for final Council, staff and stakeholder refinements to be included. I also recommend that staff be directed to publish the draft ordinance not later than December 19th or set a hearing on the ordinance for January 27, 2009.

2. Operative Date: The ordinance will take effect 30 days after final adoption, but to assure that a true sustained economic recovery is in place, the ordinance will not be operative until a calendar year in which building permits for unsubsidized housing in San José are at least equal to 100% of the number of permits for unsubsidized housing issued in a rolling average of the past 10 years. No more than 50% of the units may be in the North San José Planning Area. Projects may elect to be covered under the new ordinance prior to the operative date. To establish an operative date of no later than January 1, 2012, irrespective of prevailing economic conditions, seems to me to be counter to the spirit in which the ordinance is being presented.
3. Geographic Applicability: Apply the ordinance to all residential projects, including those in redevelopment areas. Projects in redevelopment areas that are in the pipeline may choose to be processed under the new ordinance or under existing policies, unless State Law requires otherwise.
4. Pipeline: A project will be in the pipeline and not subject to the requirements of the ordinance if it meets the staff recommended criteria or does not need a General Plan change and meets any of the following criteria:
 - a. any property that proceeds under an existing residential zoning and receives a building permit within 27 months after the effective date of the ordinance; or
 - b. any proposed residential or mixed use project that submits a substantially complete zoning application within 6 months of the effective date of the ordinance and receives a building permit within 27 months after the effective date of the ordinance; or
 - c. any property that the applicant has purchased within one year prior to the effective date of the ordinance if the applicant has submitted a preliminary review application for a rezoning to the city prior to the effective date of the ordinance and receives a building permit within 27 months after the effective date of the ordinance; or
 - d. any property for that which the applicant has entered into a purchase agreement within one year prior to the effective date of the ordinance and has made a payment of substantial consideration to the land owner or the city, if the applicant has submitted a preliminary review application for a rezoning to the city prior to the effective date of the ordinance and receives a building permit within 27 months after the effective date of the ordinance; or
 - e. any property which the applicant has owned for more than one year prior to the effective date of the ordinance, if the applicant submits a preliminary review application for a rezoning to the city prior to the effective date of the ordinance and submits a completed application for a rezoning within one year of the preliminary review and receives a building permit within 27 months after the effective date of the ordinance.

These timelines will be extended by the amount of time necessary to resolve any delays that may have been imposed during the development process by the City or other regulatory agencies.

For phased developments, the language from the November 14th staff report should be included in the ordinance, to assure that those projects are grandfathered in so long as timely progress is being made on obtaining building permits.

Projects in redevelopment areas that are in the pipeline may choose to be processed under the new ordinance or under existing policies.

5. Pressure Relief Valve: In addition to the staff recommendations, the requirements of the ordinance will not apply to zoning or development permit applications that are filed and deemed complete when building permits for unsubsidized housing in San José for the prior year are less than 50% of the number of permits for unsubsidized housing issued in a rolling average of the past 10 years.
6. In-Lieu Fees: To provide more certainty, stimulate housing production, and generate a fund towards affordable housing, it is recommended that maximum in-lieu fees be established at the following levels, which shall be adjusted for inflation annually:
 - a. Multi-family units at \$25,000
 - b. Single family attached units at \$50,000
 - c. Single family detached units at \$100,000

In-lieu fees shall be used to reimburse the General Fund for lost property taxes, park fees, construction taxes, and any other General Fund revenue lost from all affordable units constructed after the effective date of the ordinance. Furthermore, 20% of in-lieu fees received will be transferred to the City Housing Trust Fund to provide funding for housing and services for the homeless. Developers may elect to pay in-lieu fees and payments may be deferred until Certificates of Occupancy are issued, if reasonable assurances of performance are provided.

7. Annual Report to City Council: Staff should report to Council each year on the effectiveness and appropriateness of the ordinance and whether or not any modifications are necessary due to economic, financial or market conditions.

CONCLUSION:

San José has one of the most productive affordable housing programs within the State. We need to be sure our actions don't put our very successful program at risk. We must address legitimate concerns that have been brought to us from a wide variety of local stakeholders. We must ensure that the framework for the ordinance we adopt has all the right elements that will lead to a successful end and not to a divisive and ugly campaign against affordable housing.