

ORDINANCE NUMBER O- 19190 (NEW SERIES)

ADOPTED ON JUN 03 2003

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 9, ARTICLE 8, DIVISION 5, OF THE SAN DIEGO MUNICIPAL CODE, BY AMENDING SECTION 98.0501; BY REPEALING SECTION 98.0502; AMENDING AND RENUMBERING THE CURRENT SECTION 98.0503 TO SECTION 98.0502; BY AMENDING AND RENUMBERING THE CURRENT SECTION 98.0504 TO SECTION 98.0503; BY CREATING A NEW SECTION 98.0504; BY AMENDING AND RENUMBERING THE CURRENT SECTION 98.0505 TO SECTION 98.0506 AND CREATING A NEW SECTION 98.0505; BY AMENDING AND RENUMBERING THE CURRENT SECTION 98.0506 TO SECTION 98.0507; BY AMENDING AND RENUMBERING THE CURRENT SECTION 98.0507 TO SECTION 98.0508; BY AMENDING AND RENUMBERING THE CURRENT SECTION 98.0508 TO SECTION 98.0509; BY AMENDING THE CURRENT SECTION 98.0509 TO SECTION 98.0510; BY REPEALING THE CURRENT SECTION 98.0510; BY REPEALING THE CURRENT SECTION 98.0511; BY AMENDING AND RENUMBERING THE CURRENT SECTION 98.0512 TO SECTION 98.0511; BY RENUMBERING SECTION 98.0522 TO SECTION 98.0512; BY AMENDING AND RENUMBERING SECTION 98.0523 TO SECTION 98.0513; BY AMENDING AND RENUMBERING SECTION 98.0524 TO SECTION 98.0514; BY AMENDING AND RENUMBERING SECTION 98.0525 TO SECTION 98.0515; BY AMENDING AND RENUMBERING SECTION 98.0526 TO SECTION 98.0516; BY RENUMBERING SECTION 98.0527 TO SECTION 98.0517; BY AMENDING AND RENUMBERING SECTION 98.0528 TO SECTION 98.0518, ALL PERTAINING TO THE SAN DIEGO HOUSING TRUST FUND; AND AMENDING CHAPTER 9, ARTICLE 8, DIVISION 6 BY RENUMBERING SECTION 98.0503 APPEARING WITHIN

THE TEXT OF THOSE SECTIONS TO READ SECTION 98.0504; BY RENUMBERING SECTION 98.0504 APPEARING WITHIN THE TEXT OF THOSE SECTIONS TO READ SECTION 98.0505; BY RENUMBERING SECTION 98.0523 APPEARING WITHIN THE TEXT OF THOSE SECTIONS TO READ SECTION 98.0513, ALL RELATING TO THE HOUSING IMPACT FEES ON COMMERCIAL DEVELOPMENT.

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter IX, Article 8, Division 5, of the San Diego Municipal Code is amended by amending Section 98.0501, to read as follows:

**§98.0501 Purpose and Intent**

- (a) It is the intent of the City Council to create an Affordable Housing Fund as a permanent and annually renewable source of revenue to meet, in part, the housing needs of the City's *very low*, *low*, and *median income* households. There are households which are income eligible and also possess one or more of the following characteristics; (1) they are burdened by paying more than thirty percent (30%) of their gross income for housing costs; (2) they live in overcrowded conditions; (3) they live in substandard housing units; (4) they are homeless individuals and families; or (5) they consist of individuals and families with special housing needs such as the elderly, the developmentally disabled, the mentally ill, the physically disabled, single parent households and large families.
- (b) The Affordable Housing Fund will serve as a vehicle for addressing very low, low, and median income housing needs through a combination of funds as provided for in these regulations.

(c) It is the intent of the City Council to address a significant portion of the City's current and projected very low, low, and median income housing need by leveraging every one dollar of City funds allocated to the Fund with two dollars of non-City subsidy capital funds.

(d) through (f) [No changes.]

Section 2. That Chapter IX, Article 8, Division 5, of the San Diego Municipal Code is amended by repealing Section 98.0502.

Section 3. That Chapter IX, Article 8, Division 5, of the San Diego Municipal Code is amended by amending and renumbering Section 98.0503 to Section 98.0502, to read as follows:

**§98.0502 Establishment of the San Diego Affordable Housing Fund**

(a) There is hereby established a fund to be known and denominated as the San Diego Affordable Housing Fund. The Affordable Housing Fund shall consist of funds derived from the commercial development linkage fees paid to the City pursuant to Chapter 9, Division 6, Article 8 of the San Diego Municipal Code; revenues from the Transient Occupancy Tax as provided in Section 35.0128 of the San Diego Municipal Code; funds derived from in lieu fees paid to the City pursuant to Chapter 14, Article 2, Division 13; revenues received from the use of a shared-equity program pursuant to Section 142.1309(e) of the San Diego Municipal Code; and any other appropriations as determined from time to time by legislative action of the City Council. The Affordable Housing Fund shall be administered by the San Diego Housing Commission pursuant to the provisions of this Division, the appropriation ordinances and Council policies applicable thereto.

- (b) There is also hereby established within the Affordable Housing Fund, a San Diego Housing Trust Fund account. Except for funds received from in lieu fees paid to the City pursuant to Chapter 14, Article 2, Division 13 and revenues received from the use of a shared-equity program pursuant to Section 142.1309(e) of the San Diego Municipal Code, all funds received by the Affordable Housing Trust Fund, either from special funds or general fund appropriations, shall be deposited in the Housing Trust Fund account. The administration and use of monies from the San Diego Housing Trust Fund shall be subject to all provisions under this Division related to the Affordable Housing Fund.
- (c) There is also hereby established within the Affordable Housing Fund, an Inclusionary Housing Fund account. Funds received from in lieu fees paid to the City pursuant to Chapter 14, Article 2, Division 13 and revenues received from the use of a shared-equity program pursuant to Section 142.1309(e) of the San Diego Municipal Code shall be deposited in the Inclusionary Housing Fund account. The administration and use of monies from the Inclusionary Housing Fund shall be subject to all provisions under this Division related to the Affordable Housing Fund.

Section 4. That Chapter IX, Article 8, Division 5, of the San Diego Municipal Code is amended by amending and renumbering Section 98.0504 to Section 98.0503, to read as follows:

**§98.0503 Purpose and Use of Affordable Housing Fund and Monies**

- (a) The Affordable Housing Fund shall be used solely for programs and administrative support approved by the City Council in accordance with Section 98.0507 to meet

the housing needs of *very low income*, *low income* and *median income* households.

These programs shall include those providing assistance through production, acquisition, rehabilitation and preservation.

- (b) Principal and interest from loan repayments, proceeds from grant repayments, forfeitures, reimbursements, and all other income from Affordable Housing Fund activities, shall be deposited into the Affordable Housing Fund. All funds in the account shall earn interest at least at the same rate as pooled investments managed by the Treasurer. All interest earnings from the account shall be reinvested and dedicated to the account. All appropriated funds in the Affordable Housing Fund account shall be available for program expenditures as directed by the Commission and pursuant to Section 98.0507. The City's Annual Appropriation Ordinance shall provide for the transfer of designated funds to the Affordable Housing Fund.

Transfers shall be made quarterly or upon direction of the City Manager.

Transferred funds shall accrue interest from the time of transfer.

Section 5. That Chapter IX, Article 8, Division 5, of the San Diego Municipal Code is amended by creating a new Section 98.0504, to read as follows:

**§98.0504 Purpose and Use of San Diego Housing Trust Fund**

- (a) The San Diego Housing Trust Fund may be used in any manner, through loans, grants, or indirect assistance for the production and maintenance of *assisted units* and related facilities. The San Diego Housing Trust Fund monies shall be distributed to the target income groups according to the following guidelines:

- (1) No less than ten percent (10%) of the funds in the San Diego Housing Trust Fund account shall be expended to provide transitional housing for households who lack permanent housing;
  - (2) Not less than sixty percent (60%) of the funds in the Trust Fund account shall be expended to provide housing to *very low income* households at *affordable housing costs*.
  - (3) No more than twenty percent (20%) of the funds in the San Diego Housing Trust Fund account shall be expended to provide housing to *low income* households at *affordable housing costs*;
  - (4) No more than ten percent (10%) of the funds in the San Diego Housing Trust Fund account shall be expended to assist *median income* first-time home buyers purchase a home at an *affordable housing cost* with special consideration given to those proposals (1) involving neighborhoods that are predominately *low income* with substantial incidence of absentee ownership, or (2) which further the goals of providing economically balanced communities.
- (b) The San Diego Housing Commission shall ensure that a program to increase the capacity of nonprofit organizations to develop and operate housing for *very low*, *low* and *median income* households be included in the Affordable Housing Fund Annual Plan to be submitted to the City Council in accordance with Section 98.0507. Through such a program, the Housing Trust Fund may fund training programs for nonprofit organizations, and provide funds for administrative

support. Furthermore, the San Diego Housing Commission shall ensure that technical assistance related to the preparation of project proposals is made available to nonprofit organizations requesting such assistance.

(c) Funds shall not be used for the operation of supporting services such as child care or social services unless:

- (1) The funds are used in connection with transitional housing or in neighborhoods where the addition of units will create the need for supportive services.
- (2) The recipient can demonstrate to the Commission that other funds are not available, and
- (3) No more than twenty-five percent (25%) of the loan, grant or assistance is designated for such services. Whenever such funds are disbursed from the Trust Fund account, the San Diego Housing Commission shall determine the terms and conditions which shall be attached to the grant or loan of those funds.

Section 6. That Chapter IX, Article 8, Division 5, of the San Diego Municipal Code is amended by amending and renumbering the current Section 98.0505 to Section 98.0506, and by creating a new Section 98.0505, to read as follows:

**§98.0505 Purpose and Use of San Diego Inclusionary Housing Fund**

- (a) The Inclusionary Housing Trust Fund shall be used solely for programs and administrative support approved by the City Council pursuant to the provisions of Section 98.0507.

- (b) Priority for the expenditure of funds from the Inclusionary Housing Trust Fund shall be given to the construction of new affordable housing stock. The monies may also be allowed to be expended for other programs administered by the San Diego Housing Commission if approved by the City Council in the Affordable Housing Fund Annual Plan, pursuant to the provisions of this Division.
- (c) Priority for the expenditure of funds from the Inclusionary Housing Trust Fund shall be given to the Community Planning Area from which the funds were collected. The funds shall be used to promote and support the City's goal of providing economically balanced communities.

**§98.0506 Term of Affordability**

- (a) Whenever funds from the Affordable Housing Fund are used for the acquisition, construction or substantial rehabilitation of an affordable rental or cooperative unit, the San Diego Housing Commission shall impose enforceable requirements on the owner of the housing unit that the unit remain affordable for the remaining life of the housing unit, assuming good faith efforts by the owner to maintain the housing unit and rehabilitate it as necessary. The remaining life of the housing unit shall be presumed to be a minimum of fifty-five (55) years.
- (b) Whenever funds from the Affordable Housing Fund are used for the acquisition, construction or substantial rehabilitation of ownership housing, the San Diego Housing Commission shall impose enforceable resale restrictions on the owner to keep the housing unit affordable for the longest feasible time, while maintaining an



equitable balance between the interests of the owner and the interests of the San Diego Housing Commission.

(c) For programs funded with funds from the Affordable Housing Fund which are not described in (a) or (b) above, the Commission shall develop appropriate mechanisms to ensure affordability which shall be described in the San Diego Housing Fund Annual Plan.

(d) [No change.]

Section 7. That Chapter IX, Article 8, Division 5, of the San Diego Municipal Code is amended by amending and renumbering the current Section 98.0506 to Section 98.0507; amending and renumbering the current Section 98.0507 to Section 98.0508; amending and renumbering the current Section 98.0508 to Section 98.0509; and by amending and renumbering the current Section 98.0509 to Section 98.0510, to read as follows:

**§98.0507 Affordable Housing Fund Annual Plan**

Prior to the commencement of the fiscal year and annually thereafter, the San Diego Housing Commission shall adopt an Affordable Housing Fund Annual Plan for the use of the Affordable Housing Fund, including the Housing Trust Fund account and the Inclusionary Housing Fund account, and present it to Council for action. This document shall plan for the following fiscal year or other appropriate time frame to ensure for accurate and effective planning and budgeting of fund revenues. The Affordable Housing Fund Annual Plan shall include:

- (a) A description of all programs to be funded with funds from the Affordable Housing Fund account specifying the intended beneficiaries of the program including the capacity building program for nonprofit organizations;
- (b) [No change.]
- (c) The amount of funds budgeted for administrative expenses, exclusive of legal fees.

All disbursements from the Affordable Housing Fund shall be consistent with the Affordable Housing Fund Annual Plan.

**§98.0508 Solicitation of Program Suggestions**

Each year, the San Diego Housing Commission shall solicit suggestions on the programs to be funded by the Affordable Housing Fund account in the next fiscal year from any person who has indicated such a desire in writing to the Board of Commissioners of the San Diego Housing Commission.

**§98.0509 Preparation and Funding of Affordable Housing Fund Annual Plan**

Each year, the San Diego Housing Commission shall hold three (3) public hearings to solicit testimony from the general public on programs to be funded by the Affordable Housing Fund account in the next fiscal year. A hearing shall be held in the North, South and Central areas of the City. The San Diego Housing Commission shall consider the suggestions from the neighborhood groups and the testimony from the public hearings, and cause a draft Annual Plan to be prepared for its consideration. The San Diego Housing Commission shall hold a public hearing to obtain public comments on the draft Affordable Housing Fund Annual Plan, make modifications as it deems appropriate and submit it to the Council for action. The City Council shall consider the Affordable Housing

Fund Annual Plan as submitted by the San Diego Housing Commission, modify it if it so elects; approve it no later than July 31 of each year; and appropriate to fund the Affordable Housing Fund Annual Plan from the Affordable Housing Fund account or an other funding sources it chooses to consider for this purpose. These procedures and dates may be adjusted as necessary for the preparation of the first Affordable Housing Fund Annual Plan after the enactment of this Division.

**§98.0510 Project Selection and Disbursement of Funds**

- (a) [No change.]
- (b) The San Diego Housing Commission may notify potential recipients that specified funds from the Affordable Housing Fund are available to be distributed as loans or grants through issuing requests for proposals and notices of fund availability.

Section 8. That Chapter IX, Article 8, Division 5, of the San Diego Municipal Code is amended by repealing the current Section 98.0510; by repealing the current Section 98.0511; by amending and renumbering Section 98.0512 to Section 98.0511; by renumbering Section 98.0522 to Section 98.0512; by amending and renumbering Section 98.0523 to Section 98.0513; by amending and renumbering Section 98.0524 to Section 98.0514; by amending and renumbering Section 98.0525 to Section 98.0515; by amending and renumbering Section 98.0526 to Section 98.0516; by renumbering Section 98.0527 to Section 98.0517; by amending and renumbering Section 98.0528 to Section 98.0518, to read as follows:

**§98.0511 Regulation of Recipients**

Every recipient shall enter into a written agreement with the San Diego Housing Commission which sets forth the terms and conditions of the grant or loan. The agreement shall contain at least the following provisions:

- (a) The amount of funds to be disbursed from the Affordable Housing Fund.
- (b) The manner in which the funds from the Affordable Housing Fund are to be used.
- (c) The terms and conditions of the grant or loan.
- (d) through (g) [No change in text]

**§98.0512 Publication of Program Documents**

The Commission shall publish such administrative rules and guidelines as are necessary and desirable to implement the programs approved by the City Council in the Annual Plan.

**§98.0513 Annual Report**

- (a) The Commission shall within ninety (90) days following the close of each fiscal year prepare and submit an annual report to the City Council on the activities undertaken with funds from the Affordable Housing Fund account. The report shall specify the number and types of units assisted, the geographic distribution of units and a summary of statistical data relative to the incomes of assisted households, the monthly rent or carrying charges charged the amount of state, federal and private funds leveraged, and the sales prices of ownership units assisted. The report shall specifically contain a discussion of how well the goals of the previous year's Annual Plan were met. The report shall also contain the

information necessary to support the findings specified in Section 66001 of Chapter 5, Division 1 of Title 7 of the California Government Code.

**§98.0514 Reserve Fund**

The Commission may establish and maintain a reserve fund account subject to approval of the City Council, adequate to preserve the ability of the Affordable Housing Fund to take maximum advantage of unforeseen opportunities in assisting housing and to ensure prudently against unforeseen expenses. The amount to be maintained in this reserve fund shall be determined by the San Diego Housing Commission. The San Diego Housing Commission shall establish procedures for maintaining such a fund.

**§98.0515 Financial Management**

- (a) The City Auditor shall maintain a separate Affordable Housing Fund and any required related subsidiary funds and transfer the balance on deposit from such funds to the San Diego Housing Commission on a quarterly basis upon the direction from the Financial Management Director.
- (b) The San Diego Housing Commission shall maintain and report within their accounts a separate Affordable Housing Fund and the subsidy funds of the Housing Trust Fund, the Inclusionary Housing Fund, and any other required related subsidiary funds for all related financing transferred from the City and any related income. Such funds shall be accounted for and reported separately on the San Diego Housing Commission's annual audited financial report, and such funds shall be audited for compliance with the Affordable Housing Fund Ordinance, Inclusionary Housing Ordinance, and related policies and regulations. The

Commission shall also prepare any other reports legally mandated for financing sources of the Affordable Housing Fund.

**§98.0516 Equal Opportunity Program**

The San Diego Housing Commission shall apply its equal opportunity program to assure that contractors doing business with and/or receiving funds from the Affordable Housing Fund will not discriminate against any employee or applicant for employment because of race, color, religion, sex, handicap, age, or national origin and that equal employment opportunity is provided to all applicants and employees without regard to race, religion, sex, handicap, age, or national origin. The goals of the equal opportunity program are to ensure that all contracts achieve parity in the representation of women, minorities, and the handicapped in each contractor's work force with the availability of women minorities, and the handicapped in the San Diego County labor market. The program shall apply to all vendors, grantees, lessees, consultants, banks, and independent corporations under contract with the San Diego Housing Commission.

**§98.0517 Compliance with Antidiscrimination Laws**

[No change in text.]

**§98.0518 Commission Powers To Enforce**

The San Diego Housing Commission may institute any action or proceeding it deems appropriate, judicial or otherwise, against recipients or other persons to carry out the provisions of this Division, to enforce the terms of any agreement related to the use of funds from the Affordable Housing Fund, or to protect the interest of the City, the San Diego Housing Commission, or intended beneficiaries of programs operated pursuant to

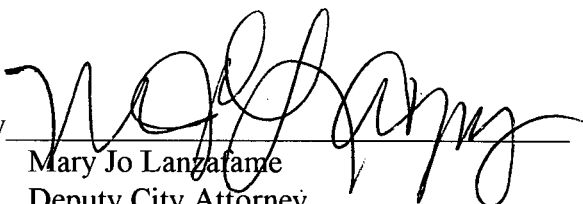
this Division. The San Diego Housing Commission may foreclose on property assisted with funds from the Affordable Housing Fund, seek to assume managerial or financial control over property financed with funds from the Affordable Housing Fund, directly or through a receiver, seek monetary damages or seek equitable or declaratory relief

Section 9. That Chapter 9, Article 8, Division 6 is amended by renumbering Section 98.0503 appearing within the text of those Sections to read Section 98.0504; by renumbering Section 98.0504 appearing within the text of those Sections to read Section 98.0505; by renumbering Section 98.0523 appearing within the text of those Sections to read Section 98.0513, all relating to the housing impact fees on commercial development.

Section 10. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 11. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By   
Mary Jo Lanzafame  
Deputy City Attorney

MJL:pev  
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