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8/8/06

ORDINANCE NUMBER O- 19530 (NEW SERIES)

DATE OF FINAL PASSAGE AUG 15 2006

AN ORDINANCE AMENDING CHAPTER 14, ARTICLE 2, DIVISION 13 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 142.1304, 142.1305 AND 142.1310, ALL RELATING TO INCLUSIONARY HOUSING.

WHEREAS, the Council of the City of San Diego adopted Inclusionary Affordable Housing Regulations (Ordinance No. O-19189 N.S.) on June 3, 2003, adding sections 142.1301 through 142.1312 to the San Diego Municipal Code requiring that most new residential development provide a percentage of affordable housing or pay an in lieu fee; and

WHEREAS, the City enacted the Inclusionary Affordable Housing Regulations to further geographic and community balance by providing a range of housing opportunities throughout the City, to increase the City's affordable housing supply in a balanced manner, to comply with state law, to meet the goals of the City's Housing Element, and to promote the health, safety, and welfare of the City's residents; and

WHEREAS, the City Council desires to clarify that the regulations provide protection to applicants under the case of *Home Builders Association of Northern California v. City of Napa, et al.*, 90 Cal.App.4th 188 (2001), and desires to change the timing of the in lieu fee payment;

NOW, THEREFORE,

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

Section 1. That Chapter 14, Article 2, Division 13 of the San Diego Municipal Code is amending by amending Sections 142.1304, 142.1305 and 142.1310 to read as follows:

**§ 142.1304 Variance Rules for Inclusionary Affordable Housing Regulations**

- (a) Except as provided in Section 142.1304(c), a variance, adjustment, or reduction from the provisions of Section 142.1306 may be requested and decided in accordance with Process Four and shall require either that the findings in Section 142.1304(d) or in Section 142.1304(e) be made.
- (b) An application for a variance, adjustment, or reduction shall be filed in accordance with Section 112.0102 and shall include financial and other information that the City Manager determines is necessary to perform an independent evaluation of the *applicant's* basis for the variance, adjustment, or reduction, and shall be a matter of public record.
- (c) A *development* located within an adopted redevelopment project area and subject to a San Diego Redevelopment Agency agreement may seek a variance, adjustment, or reduction from the requirements of this Division, upon an express finding that the *development* is fulfilling a stated significant objective of the Redevelopment Agency's approved Five Year Redevelopment Plan for the Redevelopment Project Area. The variance, adjustment, or reduction request shall be reviewed in accordance with Process Four.
- (d) No variance, adjustment, or reduction shall be issued unless:
  - (1) Special circumstances unique to that *development* justify the granting of the variance, adjustment, or reduction;

- (2) The *development* would not be feasible without the modification;
  - (3) A specific and substantial financial hardship would occur if the variance, adjustment, or reduction were not granted; and
  - (4) No alternative means of compliance are available which would be more effective in attaining the purposes of this Division than the relief requested.
- (e) No variance, adjustment, or reduction shall be issued to an *applicant* unless there is an absence of any reasonable relationship or nexus between the impact of the *development* and either the amount of the in lieu fee charged or the inclusionary requirement.
- (f) A project that proposes to provide affordable housing on a site different from the proposed project site and outside the community planning area may be approved or conditionally approved only if the decision maker makes the following supplemental findings in addition to the findings in Section 142.1304(d):
- (1) The portion of the proposed *development* outside of the community planning area will assist in meeting the goal of providing economically balanced communities; and
  - (2) The portion of the proposed *development* outside of the community planning area will assist in meeting the goal of providing transit oriented development.

**§ 142.1305 Waiver Rules for Inclusionary Affordable Housing Regulations**

- (a) Except as provided in Section 142.1305(c), a waiver, adjustment, or reduction from the provisions of Section 142.1306 may be requested and decided in accordance with Process Five and shall require either that the findings in Section 142.1305(d) or in Section 142.1305(e) be made.
- (b) An application for a waiver, adjustment, or reduction shall be filed in accordance with Section 112.0102 and shall include financial and other information that the City Manager determines is necessary to perform an independent evaluation of the *applicant's* rationale for the waiver, adjustment, or reduction, and shall be a matter of public record.
- (c) A *development* located within an adopted redevelopment project area and subject to a San Diego Redevelopment Agency Agreement may seek a waiver, adjustment, or reduction from the requirements of this Division, upon an express finding that the *development* is fulfilling a stated significant objective(s) of the Redevelopment Agency's approved Five Year Redevelopment Plan for the Redevelopment Project Area. The waiver, adjustment, or reduction shall be in accordance with Process Five.
- (d) No waiver, adjustment, or reduction shall be issued to an *applicant* unless:
  - (1) Special circumstances, unique to that *development* justify the grant of the waiver, adjustment, or reduction;

- (2) The *development* would not be feasible without the waiver, adjustment, or reduction;
  - (3) A specific and substantial financial hardship would occur if the waiver, adjustment, or reduction were not granted; and
  - (4) No alternative means of compliance are available which would be more effective in attaining the purposes of this Division than the relief requested.
- (e) No waiver, adjustment, or reduction shall be issued to an *applicant* unless there is an absence of any reasonable relationship or nexus between the impact of the *development* and either the amount of the in lieu fee charged or the inclusionary requirement.

**§142.1310 In Lieu Fee Regulations**

In accordance with Section 142.1306(b)(4), an applicant may pay an in lieu fee subject to the following regulations and the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual

- (a) The rate of the in lieu fee shall be determined as follows:
  - (1) For building permits that are obtained within three (3) years of the date that the subject application for the first *tentative map* or *development permit* was *deemed complete*, the rate of the in lieu fee shall be the rate in effect at the time the application for that first *tentative map* or *development permit* was *deemed complete*.

- (2) For building permits that are not obtained within three (3) years of the date that the subject application for the first *tentative map* or *development permit* was *deemed complete*, but are issued within three (3) years of the date of approval of the first *tentative map* or *development permit*, the rate of the in lieu fee shall be the rate in effect at the time that first *tentative map* or *development permit* was approved.
- (3) For building permits that are not obtained within three (3) years of the date that the subject application for the first *tentative map* or *development permit* was *deemed complete*, and that are not issued within three (3) years of the date of the approval of the first *tentative map* or *development permit*, the rate of the in lieu fee shall be the rate in effect at the time the application for the building permit is *deemed complete*.
- (4) For any *tentative map* or *development permit* approved on or before July 3, 2006, that contains a condition to pay the inclusionary housing in lieu fees, the rate of the in lieu fee at building permit issuance shall be fixed at not more than \$1.25 per square foot for projects of nine (9) or less residential units or \$2.50 per square foot for projects of ten (10) or more residential units for a period of three (3) years from the date the *tentative map* or *development permit* was approved, or until July 3, 2006, whichever occurs later. The rate of the in lieu fee thereafter shall be the rate

in effect at the time the application for the building permit is  
*deemed complete.*

- (b) The amount of the in lieu fee shall be the sum of the applicable per square foot charge multiplied by the aggregate *gross floor area* of all of the units within the *development*.
- (c) No building permit may be issued without payment of the in lieu fee.
- (d) Collection of in lieu fees during the first three (3) years after the initial adoption of this Division shall be in accordance with Table 142-13C or 142-13D, as applicable.

**Table 142-13C**

PROJECTS OF 10 OR MORE UNITS	
YEAR ONE	\$1.00/ SQ. FOOT
YEAR TWO	\$1.75/SQ. FOOT
YEAR THREE	\$2.50/SQ FOOT

**Table 142-13D**

PROJECTS OF LESS THAN 10 UNITS	
YEAR ONE	\$0.50/SQ FOOT
YEAR TWO	\$0.875/SQ FOOT
YEAR THREE	\$1.25/SQ FOOT

- (e) The amount of the in lieu fees shall be adjusted by San Diego Housing Commission, annually, commencing with the fourth year after the initial adoption of this Division, based upon 50% of the difference between the

median cost of housing and housing price affordable to the median household.

Section 2. 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 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

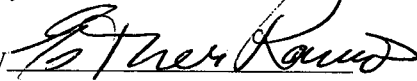
APPROVED: MICHAEL J. AGUIRRE, City Attorney

By   
Leslie A. FitzGerald  
Deputy City Attorney

CBC:LAF:pev  
07/12/06  
Or.Dept:Land Use & Econ Dev  
O-2007-11  
MMS #3484

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of ~~AUG 08 2006~~

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk

Approved: 8-15-06  
(date)

  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

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JERRY SANDERS, Mayor