

RESOLUTION NUMBER R-304623

DATE OF FINAL PASSAGE JANUARY 27, 2009

A RESOLUTION APPROVING WAIVER FROM THE
REQUIREMENTS OF THE INCLUSIONARY AFFORDABLE
HOUSING REGULATIONS ORDINANCE – CHABAD
EDUCATIONAL CAMPUS – PROJECT NO. 123607.

WHEREAS, Friends of Chabad Lubavich San Diego, Inc., Owner/Permittee, filed an application with the City of San Diego for a Waiver from the requirements of the Inclusionary Affordable Housing Regulations Ordinance related to the Chabad Educational Campus, Project No. 123607, located at 10785 Pomerado Road, and legally described as Parcel 2 of Parcel Map No. 7724, in the County of San Diego, State of California, filed in the Office of the County Recorder of San Diego, August 18, 1978, in the Scripps Miramar Ranch Community Plan area, in the RS-1-8 zone; and

WHEREAS, pursuant to San Diego Municipal Code Section 142.1305(e), Friends of Chabad Lubavitch San Diego, Inc. requests a Wavier from the application of the Inclusionary Affordable Housing Regulations Ordinance for its proposal to construct 280 units of on-campus housing for students, married students and faculty, in support of the build-out and completion of its educational campus consistent with City Council Resolution Numbers R-284501 and R-304622 and Conditional Use Permit No. 133-PC; and

WHEREAS, Friends of Chabad Lubavitch San Diego, Inc. contend that there is no reasonable relationship between the impact of Chabad's proposal to build this on-campus

housing and the stated inclusionary requirement of the Inclusionary Affordable Housing Regulations Ordinance; and

WHEREAS, on September 18, 2008, the Planning Commission of the City of San Diego considered the Friends of Chabad Lubavitch San Diego, Inc. request for Waiver from the requirements of the Inclusionary Affordable Housing Regulations Ordinance for the Chabad Educational Campus, Project No. 123607, and pursuant to Resolution No. 4415-PC voted to recommend City Council denial of the Waiver; and

WHEREAS, under Charter Section 280(a)(2), this Resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body, a public hearing was required by law implicating due process rights of individuals affected by the decision, and the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, the matter was set for public hearing on January 27, 2009, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it agrees with following conclusions with respect to the Waiver from the requirements of the Inclusionary Affordable Housing Regulations Ordinance and finds that there is no reasonable relationship between the impact of the Chabad development and the inclusionary requirement of the Ordinance:

A. FINDINGS FOR A WAIVER FROM THE REQUIREMENTS OF THE INCLUSIONARY HOUSING ORDINANCE:

1. The Inclusionary Affordable Housing Regulations Ordinance is intended to apply to residential development. The use and the development regulations for schools, colleges and universities are found under the Institutional Use category of the Municipal Code and Section 131.0111(d) of the Code states that any use within the institutional, retail sales, commercial services, offices, vehicle and vehicular equipment sales and services categories is considered a commercial use or commercial development.

2. San Diego Municipal Code Section 142.1306 General Inclusionary Affordable Housing Requirements requires that 10 percent of the total dwelling units in the proposed development shall be affordable to targeted rental households or targeted ownership households in accordance with Section 142.1309, and it stipulates how the requirement can be met for residential development and condominium conversions. Chabad's and most other on-campus student housing is not for rent and not for sale and not subject to condominium conversion. The costs and fees one pays for taking classes and going to school pays for the on-campus housing.

3. The General Inclusionary Affordable Housing Regulations Ordinance does not clearly state the applicability to on-campus housing or provide direction on how development that is neither intended for rent or for sale is supposed to be able to comply.

4. The Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual which establishes submittal requirements, review procedures and standards and guidelines for the program does not provide any information relative to how on-campus housing of an educational institution is supposed to comply. The document indicates that the Program requirements can be fulfilled through the provision of affordable rental or for-sale housing, however, the Chabad on-campus housing is not for rent or for sale.

5. Housing Commission staff have acknowledged that there is considerable complexity and substantial administrative difficulty in attempting to administer the affordable housing requirements for on-campus student housing and there is not currently any guidance or direction available on how to implement such a program.

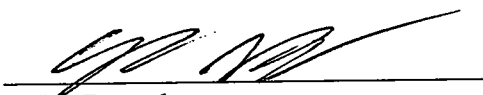
6. Friends of Chabad Lubavitch San Diego, Inc. has agreed to the placement of a deed restriction on the Chabad property that would require compliance with the Inclusionary Affordable Housing Regulations Ordinance if the on-campus student housing is ever converted to anything other than student housing by Chabad or any successor in interest.

BE IT FURTHER RESOLVED, that the Waiver from the requirements of the Inclusionary Affordable Housing Regulations Ordinance for the Chabad Educational Campus,

Project No. 123607, is granted to Friends of Chabad Lubavich San Diego, Inc., Owner/Permittee,
under the terms and conditions set forth in the Waiver incorporated herein by reference.

APPROVED: JAN I. GOLDSMITH, City Attorney

By



Keith Bauerle
Deputy City Attorney

SRE:KB:pev
10/10/08
05/05/09 COR.COPY
Or.Dept:DSD
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