



2006 JUN 22 PM 8:09

ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney
John A. Russo
City Attorney

June 27, 2006

(510) 238-3601
FAX: (510) 238-6500
TTY/TDD: (510) 238-3254

HONORABLE CITY COUNCIL

Re: Items 14.4, 14.4.1 and 14.4.2 – Inclusionary Housing Ordinance

President De La Fuente and Members of the City Council:

At the June 27, 2006 meeting, the City Council will consider adopting an inclusionary housing ordinance. Before the Council are several proposals.

- An ordinance that would amend the Planning Code (Item 14.4)
- Amendments to the Proposed Ordinance from Councilmember Brunner that would amend the Oakland Municipal Code (Item 14.4.1)
- An amendment proposed by Councilmember Reid (Item 14.4.2) as follows:

“Add new section 12; renumber existing Section 12 to section 13

Section 12. This ordinance shall not apply in any redevelopment project area where more than 75% of the land within that redevelopment project area, as that area is designated as of the date of the adoption of this ordinance, is developed pursuant to a master plan of development that satisfies the affordable housing production requirements of Health and Safety Code section 33413.”

The amendment proposed by Councilmember Reid references the Health and Safety Code section which has affordable housing requirements. The inclusionary obligations in the proposed ordinances and the affordable housing requirements under Health and Safety Code Section 33413 are different in a number of significant ways, including but not limited to:

1. First, Section 33413, unlike the ordinances, does not necessarily require that affordable units be set aside in each private, market rate project; the obligation is imposed on the redevelopment agency, not developers, to be met project area-wide over a 10 year period.

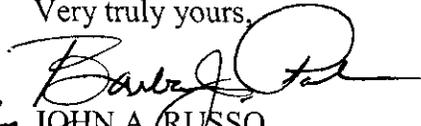
2. Second, while both Section 33413 and the proposed ordinances generally require 15% of units to be affordable, the affordability levels are different.

Section 33413 requires that 9% of residential units be affordable to low to moderate incomes (i.e., 120% of area median income), and 6% be affordable to very low incomes (i.e., 50% of area median income), whether units are rental or ownership.

Councilmember Brunner's amendments require that 9% of rental units be affordable to low incomes (i.e. 80% of area median income) and 6% to very low incomes, while all ownership inclusionary units are affordable to households at 110% of area median income.

3. Third, Section 33413 allows units that receive City or Agency subsidy to be counted toward meeting the affordable housing requirement. Generally, the proposed ordinances do **not** permit units receiving any City or Agency subsidy to be counted toward a developer's inclusionary requirement.
4. Fourth, the laws have different requirements for providing affordable units off-site. Under Section 33413, twice as many affordable units must be provided if the units are off-site (i.e., instead of 15%, there is a 30% requirement if the units are off-site.) The ordinances require that off-site affordable units be provided at a 20% level rather than a 15% level.

Very truly yours,


for JOHN A. RUSSO
City Attorney

Attorney Assigned:
Daniel Rossi

Document # 376273