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February 3, 2010

Planning and Land Use Management Committee
Housing, Community and Economic Development Committee
Room 395, City Hall
Los Angeles, CA 90012

CF 08-2614 – Development of a Mixed Income Housing Ordinance

Honorable Members:

Pursuant to the direction of the City Council in October, 2008 (City Council Motion and PLUM/HCED instruction), the Department of City Planning (DCP), with the support of the Los Angeles Housing Department (LAHD) and the Community Redevelopment Agency (CRA/LA), began the process of developing a citywide mixed income housing ordinance. This report describes the actions staff has taken thus far pursuant to the Council's direction, the implications of a recent court decision that complicates the development of such an ordinance, and options available in light of the court's action.

Background

In October, 2008 the City Council introduced a motion directing the Department of City Planning to develop a citywide mixed income ordinance. The ordinance would require developers to set aside a percentage of units in residential and mixed use projects at rents or sales prices affordable to households of very low, low, or moderate incomes. On November 19, 2008 the PLUM and HCED Committees approved the Council's motion and created a Technical Advisory Taskforce to advise DCP staff regarding the financial analyses of various housing prototypes and the opportunities and constraints of a mixed income housing ordinance.

The Council subsequently approved the Committee report, which included the following actions:

1. Identified general parameters for the ordinance: (a) include in the set-aside units affordable to moderate, low income, very low income, and/or extremely low income, or a combination thereof; (b) explore incentives for developers beyond the incentives already available under current City laws; (c) include as options to meet the affordable requirement an in-lieu fee, on-site units, off-site units within a defined proximity to the project, and the purchase of affordability covenants on existing buildings as prioritized by the LAHD; (d) apply the ordinance citywide; (e) apply the ordinance to projects that contain at least 20 or 50 units; (f) make the ordinance

mandatory; and (g) ensure that the ordinance can be efficiently and effectively enforced and monitored.

2. Set aside \$400,000 of Community Development Block Grant (CDBG) funds to pay for a possible Environmental Impact Report and other studies that would be required to develop an ordinance.
3. Identified a timeline for the development of the ordinance.

In accordance with the adopted timeline, a report on the proposed ordinance was to be presented to a special joint meeting of PLUM and HCED Committees in the fall of 2009. However, while staff was pursuing these actions, the 2nd District Appellate Court issued a ruling in the litigation *Palmer/Sixth Street Properties, L.P., et al. v. City of Los Angeles*, which significantly limited the City's ability to pursue a mixed income ordinance pursuant to the parameters identified by the City Council.

Taskforce

The Council appointed a 19 member Technical Advisory Taskforce, comprised of financial professionals, lenders, and housing developers. The purpose of the Taskforce was to advise DCP regarding the financial analyses of various housing prototypes that are typically built in Los Angeles. The Taskforce was chaired by Paul Hudson, President of Broadway Federal Bank, and held 5 meetings from January to April, 2009. The Taskforce agreed upon the basic housing types typically built in Los Angeles and the costs and revenues associated with each. This baseline information is necessary to understand the subsidies that will be required to make units affordable to households of various income levels. In May 2009, DCP reported on the progress made at a special joint meeting of PLUM and HCED Committees. The PLUM/HCED recommendations for next steps were then approved by the full City Council in late May 2009.

CEQA and possible requirement for an Environmental Impact Report (EIR)

Appropriate compliance with the California Environmental Quality Act (CEQA) is required before the Council may adopt a mixed income ordinance. CEQA requires that the lead agency prepare an EIR if the proposed mixed income ordinance may result in potentially significant environmental impacts. Any ordinance that requires a set-aside of at least 5% of units for very low income households or 10% of the units for low income households is automatically able to take advantage of the State density bonus law and the City's corresponding implementing ordinance. This means that a mixed income ordinance with these affordable set-aside levels would automatically permit all residential and mixed use projects to increase density by at least 20% (the minimum bonus in the density bonus law) and to take advantage of 1 or more of the density bonus incentives (additional height, floor area, etc.), provided they meet the requirements of the density bonus law. Pursuant to CEQA, an ordinance that adds density, height, floor area, etc. beyond that which is otherwise permitted by the zoning to all or some subset of residential and mixed use projects citywide is considered a "project" and the environmental impacts of such an action must be analyzed.

The magnitude and scope of such an environmental study will depend on the specifics of a proposed ordinance. Thus, it is very possible that the more projects subject to the ordinance, the more complex and comprehensive the environmental analysis will be, and it could require a full environmental impact report (EIR)

Block Grant Funds

The Council requested that \$400,000 of Community Development Block Grant (CDBG) monies be set aside to fund an EIR (or other environmental analysis) as well as any other studies related to the ordinance. As such, the City applied for CDBG-Recovery (CDBG-R) funds and was awarded \$400,000 in September 2009 to conduct financial feasibility and environmental studies related to the development of a mixed income housing ordinance. The CDBG-R funds are a part of the American Recovery and Reinvestment Act (Recovery Act), which was enacted to provide immediate stimulus to the economy. Recipients of Recovery Act funding are required by the U.S. Department of Housing and Urban Development (HUD) to draw down 50% of the award dollars within 120 days of approval of the grant application. HUD expects grantees to draw down CDBG-R funds on at least a quarterly basis based on actual cash needs for CDBG-R activities. HUD also requires quarterly reporting of activities, benchmarks and the amount of funding expended. All CDBG-R funds must be spent no later than September 30, 2012.

Impact of the Palmer lawsuit

DCP efforts to develop the ordinance have been complicated by the July, 2009 court action in *Palmer/Sixth Street Properties, L.P., et al. v. City of Los Angeles*, a lawsuit challenging inclusionary housing requirements imposed on rental housing. In summary, the Court of Appeals' decision establishes that State law (Costa-Hawkins Act) permits landlords to impose whatever rent they choose at the commencement of a tenancy, and that City requirements to set aside affordable units within a project at specific rents denies the landlord this right and is therefore contrary to State law. Thus, this Court decision eliminates the opportunity to develop a mixed income housing ordinance applicable to rental housing. The court action did not preclude the city from requiring that a percentage of units be set aside for affordable housing in for-sale housing (single family houses or condominiums). It should also be noted that the Court decision confirms that affordable housing requirements may be imposed if an applicant enters into an agreement with the City to limit rents in exchange for incentives provided by the city, such as pursuant to the SB 1818 density bonus law, financial assistance, or as part of a development agreement. While the City cannot force a developer to accept incentives, once the developer agrees to receive an incentive, the City can require that the developer enter into an agreement to limit rents in exchange for the incentive. The court's action also does not address the use of an impact fee to support affordable housing development, which is typically imposed in conjunction with a nexus study that supports such a fee.

Alternative Options

The lawsuit clearly limits options for a citywide mixed income housing ordinance. There now appears to be three potential alternative approaches for a citywide ordinance that would meet the new criteria established by *Palmer*:

- (1) Seek a change in State law and subsequently pursue the Council's original proposal.
- (2) Require an affordable housing impact fee on all new development (residential, commercial, industrial) to provide a new income stream dedicated to the development and preservation of affordable housing.
- (3) Require an affordable housing set-aside in for-sale projects only.

Additionally, the following alternative approach has been discussed: adopt an ordinance requiring an affordable housing set-aside in all rental and for-sale housing projects, with a provision that the set-aside for rental housing becomes effective at a future date, when the State law (Costa Hawkins) is amended.

Each alternative, including the challenges, costs and timelines is discussed in more detail below.

(1) *Change State law*

Even before the ruling on the *Palmer* lawsuit was issued, there was much discussion about the intent of *Costa Hawkins* and whether it was intended to apply to the type of housing ordinance proposed by the City Council. A change in the law could clarify the intent of *Costa Hawkins*, particularly whether it applies to a mixed income type of housing ordinance. This change in the State law could eliminate the conflict cited in the *Palmer* decision and could subsequently permit the type of mixed income ordinance the City Council initially intended, although the timing and the potential for success are difficult to estimate. It should be noted that there have been previous attempts over the years to amend *Costa Hawkins*, which have not been successful.

(2) *Affordable housing impact fee*

A citywide affordable housing impact fee would impose a fee on development that is identified to contribute to the need for affordable housing. This would potentially include residential development (for-sale and rental housing), the conversion of apartments to condominiums, as well as new commercial and industrial development. According to State law, such a fee must be based on a nexus study which demonstrates that an affordable housing need is generated by various types of development and establishes how much of a need each type of use generates. The amount of the fee could be adjusted according to the type of development, the size of the development, and the economic feasibility of various fee levels. Proceeds from such an impact fee would be used toward developing affordable housing across the city. Without the limitations imposed on other sources of funds by state and federal law, the city would have a new funding source with more flexibility to design affordable housing programs that are responsive to the city's greatest needs.

The City is currently developing a citywide affordable housing nexus study with the consultant Economic Roundtable, pursuant to a motion by the City Council in August, 2007. This study is anticipated to be completed in the fall of 2010 and can form the basis for an affordable housing impact fee ordinance.

In addition to responding to the *Palmer* case, this option would also be responsive to other recent challenges to mixed-income ordinances, in which plaintiffs have demanded that they be justified by a nexus-type study.

Challenges:

The nexus study, its methodologies to establish that any given type of development generates a need for affordable housing, and the various fees that would ultimately be proposed must be defensible in the courts. However, impact fees that are based on reasonable nexus studies have a long history in California and have successfully withstood numerous legal challenges.

Cost Impacts and Timelines:

As contemplated, an impact fee ordinance does not in and of itself generate the use of the density bonus law or the incentives and this fee would not create physical environmental impacts, as defined by CEQA. Therefore, this option may be exempt from CEQA and could likely be drafted shortly after the nexus study is completed in the fall. In addition, costs related to the administration of the fee are minimal because there is no on-going monitoring and enforcement of requirements tied to housing units, such as covenants to prepare and record, rent levels to monitor each year, and income qualifications of tenants to spot check from year to year. The City's Housing Department has extensive experience with administering funds for affordable housing.

(3) Affordable housing set-aside in for-sale projects

This citywide ordinance would impose the requirement to include a set-aside of affordable units in all for-sale residential developments, including condominium conversions. The sales prices of the affordable units would be restricted so that they are affordable to the target household incomes, and the units would have to be sold to income-qualified households. With the exception of applying to very low or low income households, this ordinance would adhere to the parameters identified by the HCED and PLUM Committees in the "Background" section above.

Challenges:

A. Determining projects that are for-sale projects.

This approach is complicated by the fact that many housing projects are constructed with a condominium approval (a subdivision map, which is required by State law), yet are placed in service and often retained as rental units. An owner is not required to sell units merely because a subdivision map has been approved. In fact, an owner with a condominium approval may opt to never turn a rental building into a condominium, or may opt to do so immediately, or in 20 years. When an owner does ultimately sell such housing units, there is no requirement or mechanism by which to inform the City.

In other words, projects may appear to be “for sale” but there is no way for the city to know when or if a project with a condominium approval actually uses the approval. Thus, it is difficult to determine which projects are actually “for-sale” projects.

B. Home ownership for low and very low income households.

Both the CRA and the Housing Department have had experience providing ownership housing to low and very low income households. Both agencies have found that targeting ownership programs to households with these incomes is not feasible without substantial public subsidies and have therefore limited such programs to moderate income households or have provided public funding to augment the incomes of low income households.

The monthly housing cost burden for a condominium includes a mortgage payment, property tax, and a homeowners’ fee. It has proven to be very difficult to provide newly constructed units in any part of the city that can support these three payments with the monthly income a very low income family has available for housing. When a portion of a building is set aside for affordable housing, the homeowner fees are not reduced; they are the same for all units in the building (market rate and affordable units). Additionally, when a condominium board of directors votes to repair or remodel a building or make other unanticipated investments, each owner must pay the new assessment, regardless of their household income. CRA and LAHD have both provided soft second loans for their first time homebuyer programs in order to make them work. These loans do not require repayment until the property is sold or after 30 years in the case of LAHD.

CRA/LA provides home buyer assistance and allows for a deferred payment over 45 years or an equity share provision in case the home is sold before the expiration of the 45 year period.

Cost Impacts and Timeline:

This ordinance would likely require a significant environmental analysis, as it would trigger the use of the State density bonus law, as described above. A full Environmental Impact Report (EIR) will likely be necessary, and environmental consultants would be engaged for this work. Approximately 12 months would be needed to complete the EIR. Additional financial feasibility analyses will be necessary to assess the various identified housing prototypes under this conceptual ordinance as well as to assess the impact of density bonuses and corresponding incentives available to such projects. These additional financial analysis tasks could be completed by consultants within approximately 2 months from the time of engagement. CDBG-R funds would be used for these environmental and financial analyses, although the \$400,000 will likely be insufficient for such a comprehensive CEQA analysis and additional funds may be required.

(4) Affordable housing set-aside in all projects (rental and for-sale) with a future effective date

This approach would involve the development and adoption of a citywide ordinance that would carry out the initial direction of the City Council, as if the Palmer lawsuit had not occurred. It would impose the requirement to include a set-aside of affordable units in all residential development over a certain threshold size, including rental and for-sale developments. The rents

and sales prices of the required affordable units would be restricted to be affordable to the target household incomes, and the units would have to be occupied by income-qualified households. This ordinance would adhere to the parameters identified by the HCED and PLUM Committees (see "Background" section above).

This comprehensive ordinance would be prepared and ready for implementation, but the rental component would not be implemented unless and until the State law is changed to permit affordable housing requirements on new rental housing units (for example, through an amendment to the Costa-Hawkins Act or through a specific exemption).

Challenges:

The for-sale component of this ordinance faces the same challenges as those noted above regarding a citywide for-sale ordinance only. Regarding the rental component, assumptions and best guesses would have to be made as to how State law might be changed or what exemptions might be incorporated such that the ordinance the city prepares applies to what will ultimately be permitted by State law. Similarly, the environmental review will have to be based on such assumptions and best guesses. Additionally, depending on the number of years that lapse before State law is changed and the degree to which conditions might be different at that point in time, it is possible that the environmental clearance would need to be re-evaluated and/or supplemented before it is deemed adequate for the implementation of the ordinance,

Cost Impacts and Timeline:

This ordinance would face the same CEQA-related issues as above but on a far greater scale, as all residential and mixed use development would need to be analyzed for potential environmental impacts created by the use of the density bonus and development incentives. Additional time may be required to develop and analyze assumptions and best guesses for the rental housing component. CDBG-R funds would be used for these environmental and financial analyses, but may need to be augmented.

Budget and Staff Resources

Economic conditions over the past several years have caused the Mayor and City Council to take unprecedented actions to dramatically reduce the city's payroll. The Department of City Planning has been particularly hard hit. The 2009-2010 adopted budget eliminated 35 positions and took away funding from the remaining 65 vacancies. Over 80% of our current staff members are EAA members and subject to the 10% mandatory furlough. All of the remaining staff are on reduced hours that amount to an almost 5% reduction in their work capacity. Finally, 15% of our total staff are taking advantage of the Early Retirement Program. Over the next five months, the total capacity of the Department will be reduced by almost one-half.

Professional planners in the Department work on two types of planning activities: casework (private projects that require subdivisions, zone changes, variances, plan amendments, sign-offs for Historic Preservation Overlay District projects, specific plan projects, etc.) or policy work (development of the New Community Plans, specific plans, new HPOZs; code amendments to regulate/incentivize/disincentivize such activities as affordable housing, liquor stores, medical

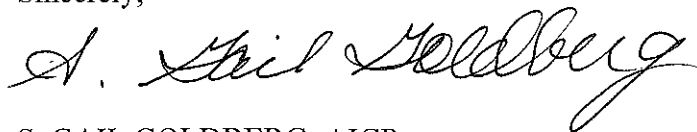
marijuana; and responses to State mandates such as the preparation of a housing element, climate change laws, sustainable strategies, census reports, etc.)

Approximately 75% of the professional planners work on cases and 25% work on policy development. Since casework is required by law (federal, State, local) and cannot be eliminated from the department's work program, all reductions in staffing must come from the staff working on plans and policy development. Thus, by spring 2010, the Department's staffing allocation could be closer to 90% casework and 10% policy work, with only 10 to 15 planners available to do all of the policy work.

Given this reality, staff working on policy must be allocated to state mandates, such as SB375 (the development of a sustainable communities strategy) and the two highest and overarching priorities of the Mayor and City Council -- to develop new Community Plans and to implement code reform (including the 12 to 2 program).

Any remaining capacity can be allocated to the development of new policy, such as the mixed income ordinance. It is imperative that staff resources be carefully and realistically considered as the City Council determines the most appropriate next steps.

Sincerely,

A handwritten signature in cursive script that reads "S. Gail Goldberg". The signature is written in black ink and is positioned above the typed name.

S. GAIL GOLDBERG, AICP
Director of Planning

Council File Management System

Council File: 08-2614

Title
Citywide Mixed-Income Housing Ordinance

Date Received / Introduced
10/02/2008

Last Change Date
06/05/2009

Expiration Date
05/27/2011

Mover
ED REYES
HERB WESSON, JR.

Second
ERIC GARCETTI

File Activities

Date	Activity
06/03/2009	File closed by City Clerk.
06/02/2009	Final Council Action.
05/27/2009	Council adopted item, subject to reconsideration, pursuant to Council Rule 51.
05/22/2009	City Clerk scheduled item for Council on May 27, 2009 .
05/19/2009	Planning and Land Use Management Committee approved as amended .
05/15/2009	Housing, Community and Economic Development Committee; Planning and Land Use Management Committee scheduled item for committee meeting on May 19, 2009.
05/15/2009	Housing, Community and Economic Development Committee transmitted file to Planning and Land Use Management Committee Clerk to verify file content.
05/14/2009	City Clerk transmitted Council File to Housing, Community and Economic Development Committee .
05/14/2009	City Planning document(s) referred to Housing, Community and Economic Development Committee; Planning and Land Use Management Committee.
05/14/2009	Document(s) submitted by City Planning, as follows:

Online Docs

Title	Date
Council Action	05/27/2009
Report from Planning and Land Use Management Committee	05/22/2009
Communication from City Planning	05/19/2009
Report from City Planning	05/19/2009
Speaker Cards	05/19/2009

Council Vote Information (2 Votes)

Meeting Date: 05/27/2009
 Meeting Type: Regular
 Vote Given: (13 - 0 - 2)

Member Name	CD	Vote
RICHARD ALARCON	7	YES
TONY CARDENAS	6	ABSENT
ERIC GARCETTI	13	YES
WENDY GREUEL	2	YES
JANICE HAHN	15	YES
JOSE HUIZAR	14	YES
TOM LABONGE	4	YES
BERNARD C PARKS	8	YES
JAN PERRY	9	YES
ED REYES	1	YES
BILL ROSENDAHL	11	YES
GREIG SMITH	12	YES
JACK WEISS	5	ABSENT
HERB WESSON	10	YES
DENNIS ZINE	3	YES

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