

RESOLUTION NO. 71-2002

Adopted July 23, 2002

AUTHORIZING AN AMENDMENT TO THE AGENCY'S HOUSING PARTICIPATION POLICY TO AMEND THE HOUSING PARTICIPATION REQUIREMENTS FOR ALL RESIDENTIAL DEVELOPMENTS; ALL REDEVELOPMENT PROJECT AREAS

BASIS FOR THE RESOLUTION

1. The Redevelopment Agency of the City and County of San Francisco ("Agency") has adopted a Mission Statement which establishes that a primary objective of the Agency is to increase the supply of affordable housing in San Francisco.
2. Affordable housing development in San Francisco is falling well short of the current and projected demand, according to the City of San Francisco's (the "City") Planning Department and the Association of Bay Area Governments.
3. The Agency has invested millions of dollars in public investment in its Redevelopment Project Areas which has in turn made these areas desirable for development and directly benefited developers building in these areas.
4. Under the California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*) (the "Law") fifteen percent 15% of all new and rehabilitated dwelling units developed within a project area under the jurisdiction of the Agency by public or private entities or persons other than the Agency shall be available at an affordable housing cost to persons and families of low or moderate income and shall be occupied by these persons and families.
5. Under the Law, the Agency may determine that the housing production requirements of the Law be applied to each individual case of rehabilitation, development, or construction of dwelling units.
6. To maximize affordable housing production in its Redevelopment Project Areas, the Agency should attempt to build affordable housing on Agency-owned residential sites through Disposition and Development Agreements, as well as on sites with private developers who wish to participate in redevelopment activities through Owner Participation Agreements.
7. On April 10, 1990, pursuant to Resolution No. 85-90, the Agency adopted a Housing Participation Policy (the "Policy") for new residential developments in all Redevelopment Project Areas.

8. On March 18, 2002, the City's Board of Supervisors adopted Inclusionary Affordable Housing Legislation (the "City Ordinance"), which was signed into law by the Mayor on April 5, 2002, increasing the City's existing inclusionary housing requirements, as well as adding other requirements related to the City's inclusionary housing program.

9. The Agency, after reviewing and considering the City's amended inclusionary housing requirements as codified in the recently adopted City Ordinance, now wishes to amend its Housing Participation Policy to increase some of the affordable housing participation goals and to apply such goals to a wider range of projects, in addition to adding many of the additional requirements included in the City Ordinance. The Agency's Amended Housing Participation Policy will be effective upon adoption.

RESOLUTION

ACCORDINGLY, IT IS RESOLVED by the Redevelopment Agency of the City and County of San Francisco, that the Agency adopt and implement the attached amended Housing Participation Policy, to increase some of the affordable housing participation goals and to apply such goals to a wider range of projects, in addition to adding several requirements related to the implementation of the Policy, and for the Policy to become effective upon adoption.

APPROVED AS TO FORM:


Bertha A. Ontiveros
Agency General Counsel

SAN FRANCISCO REDEVELOPMENT AGENCY

HOUSING PARTICIPATION POLICY

SEC. 1 FINDINGS AND DECLARATIONS

- 1.1 The City and County of San Francisco (the "City") faces a continuing shortage of affordable housing for very low-, low-, and moderate income residents resulting in a great need for affordable rental and owner-occupied housing in the City.
- 1.2 In furtherance of the objectives of the California Community Redevelopment Law (Health and Safety Code §§ 33000 *et seq.*) (the "Law"), the Redevelopment Agency of the City and County of San Francisco (the "Agency") undertakes programs to, among other goals, facilitate increasing the supply of urban housing.
- 1.3 The Agency is authorized pursuant to the Law to increase and maintain the housing stock in the City affordable to very low-, low- and moderate-income households, resulting in a pivotal role for the Agency in alleviating the shortage of affordable housing for very low-, low-, and moderate-income residents.
- 1.4 Pursuant to the Law, no fewer than fifteen percent (15%) of all new and rehabilitated dwelling units developed by public or private entities or person other than the Agency within a project area under the jurisdiction of the Agency (a "Redevelopment Project Area") shall be both available at affordable housing cost to and occupied by persons and families of very low-, low-, or moderate-income.
- 1.5 The Agency may determine that the housing production and affordability requirements of the Law apply to each individual case of rehabilitation, development, or construction of dwelling units.
- 1.6 The Agency has reviewed and hereby incorporates by reference section 315.2, Findings, of the City's Inclusionary Affordable Housing Program Ordinance (the "Ordinance"), effective May 5, 2002, adding sections 315 to 315.9 to the City's Planning Code. The Agency now wishes to amend its existing Housing Participation Policy to conform to the City's

Ordinance and in response to the continuing great need for affordable rental and owner-occupied housing in the City (the "Amended Policy").

SEC. 2 HOUSING PARTICIPATION REQUIREMENTS

2.1 Intent

In order to increase the supply of low-, very low- and moderate-income housing, the following requirements ("Housing Participation Requirements") will apply to Agency approvals for new residential developments and amendments to existing Disposition and Development Agreements ("DDAs") and Owner Participation Agreements ("OPAs") as specified below, in all Redevelopment Project Areas.

2.2 General

2.2.1 Application

Housing Participation Requirements shall apply to any residential development containing ten (10) or more dwelling units, and to amendments to existing project OPAs or DDAs adding ten (10) or more dwelling units ("Covered Projects"). This threshold allows for economies of scale and administrative ease and enables the Agency to focus on the larger developments producing a meaningful addition of affordable dwelling units.

2.2.2 Effective Date

The Amended Policy is effective as of the date of its approval by the Agency Commission (the "Effective Date") and shall apply to all Covered Projects that the Agency has not approved prior to the Effective Date.

2.2.3 Comparability with Market Rate Dwelling Units

The affordable dwelling units constructed to meet the requirements of the Amended Policy (“Inclusionary Units” or “Affordable Units”) shall be comparable in the number of bedrooms, exterior appearance and overall quality of construction to the market rate dwelling units in the Covered Project, with a goal of comparability in square footage and interior features. The interior features of Affordable Units need not be the same as or equivalent to those in market rate dwelling units, as long as they are of good quality and are consistent with the then-current standards for new housing. The Affordable Units shall be integrated throughout the Covered Project in a unit type mix that is representative of the market rate dwelling units.

2.2.4 Completion of Dwelling Units

Onsite dwelling units constructed in a Covered Project under the Amended Policy shall be constructed, completed and ready for occupancy no later than the market rate dwelling units.

2.2.5 Conformance with Applicable Project Area Redevelopment Plan and City Zoning Overlay

The Amended Policy applies to all Covered Projects in all Redevelopment Project Areas in which the applicable Project Area Redevelopment Plan is silent with respect to inclusionary housing requirements for individual residential housing development projects.

The Amended Policy will not apply to: (a) an otherwise Covered Project in a Redevelopment Project Area in which the applicable Project Area Redevelopment Plan provides for greater inclusionary housing requirements; or (b) an otherwise Covered Project in a Redevelopment Project Area in which the applicable Project Area Redevelopment Plan provides for the application of the City's zoning overlay, including the Ordinance; or (c) a proposed residential development project in any Redevelopment Survey Area to which the Ordinance applies; or (d) a proposed residential development project governed by an OPA or DDA in effect on the Effective Date.

2.3 Affordability Requirements

2.3.1 Household Income Requirements for Tenants or Owners of Affordable Units

Affordable Units shall be targeted to low- and moderate-income households. For the purpose of the Amended Policy, low-income families are defined, in conformance with the Law and the Ordinance, as households earning up to one hundred percent (100%) of the area median income ("AMI") for first-time homebuyers and up to sixty percent (60%) of AMI for renters.

2.3.2 Rent Standards

The maximum rent that a housing developer may charge any tenant occupying a rental Affordable Unit in a Covered Project shall be no more than thirty percent (30%) of sixty percent (60%) of AMI, as adjusted for household size as set forth in California Code of Regulations (CCR), title 25, section 6932, as amended from time to time, as of the first date of tenancy ("Maximum Annual Rent").

2.3.3 Establishment of Maximum Purchase Price

The maximum purchase price for an owned Affordable Unit (“Ownership Unit”) is that price that is affordable to a household whose income is no more than one hundred percent (100%) of AMI, adjusted for household size as set forth in CCR, title 25, section 6932, as amended from time to time, as of the date of the close of escrow, assuming an annual payment for all housing costs of thirty-three percent (33%) of the combined household annual net income, a ten percent (10%) down payment, and available financing (“Maximum Purchase Price”).

2.3.4 Duration of Affordability Restrictions

Affordable Units created under the Amended Policy shall be affordable to low- and moderate-income families for the life of the Covered Project unless financing or legal impediments require a lesser period of time, but in no event shall this be for less than fifty-five (55) years for rental housing or forty-five (45) years for homeownership housing pursuant to Health and Safety Code section 33334.3.

SEC. 3 DISPOSITION AND DEVELOPMENT AGREEMENTS

3.1 Application

On Agency-owned parcels designated for residential use, a minimum of forty percent (40%) of the dwelling units constructed onsite must be Affordable Units. At its sole discretion, the Agency Commission may grant density bonuses or land write-downs or provide other incentives if a developer agrees to build more than forty percent (40%) of the dwelling units as Affordable Units. Except under unique circumstances, approved by the Agency Commission in its sole discretion, no offsite construction or in-lieu fee option will be available to developers required to meet the Housing Participation Requirements, pursuant to a DDA, under the Amended Policy.

SEC. 4 OWNER PARTICIPATION AGREEMENTS

4.1 Application

On privately owned land, the Agency shall implement the Amended Policy for OPAs in accordance with the requirements of this Section 4.

4.2. Level I OPAs

A “Level I OPA” means an OPA for a Covered Project that pertains to a development consistent with the standards contained in the applicable Project Area Redevelopment Plan, and that does not require approval of a variance or Project Area Redevelopment Plan amendment

4.2.1. Inclusionary Requirement for Level I OPAs

(A) Onsite Requirements

Minimum of ten percent (10%) of the total number of dwelling units must be Affordable Units if constructed onsite.

(B) Offsite Requirements

Equivalent of fifteen percent (15%) of the total number of dwelling units must be Affordable Units if dwelling units are built offsite (or a higher percentage as required to meet the 2 for 1 requirement pursuant to Health and Safety Code § 33413(b)(2)(A)(ii) if Affordable Units are approved for construction outside of the applicable Project Area) or to calculate an in-lieu fee payment to an Agency affordable housing trust fund or other Agency-approved housing development.

4.3 Level II OPAs

A “Level II OPA” means any OPA that requires a higher level of discretionary approval (“Significant Discretionary Approval”), including, but not limited to, a density bonus, a land use change, a transfer of development rights (as applicable) or a Project Area Redevelopment Plan amendment, or a project that includes live/work dwelling units as defined by City Planning Code section 102.13 (“Live/Work Units”).

4.3.1. Application to Level II OPAs

For Level II OPAs, the percentage of Affordable Units required will be determined on a case-by-case basis depending on the amount of private benefit conferred to the developer as a result of Significant Discretionary Approval. Significant Discretionary Approvals conferring greater benefits (for example, a Project Area Redevelopment Plan amendment or a density bonus that allows a large number of additional dwelling units) will be conditioned on a greater inclusionary housing requirement. In no case may a Significant Discretionary Approval for a Level II OPA be conditioned on Housing Participation Requirements less than the threshold requirements set forth in Section 4.3.2 below.

4.3.2. Inclusionary Requirements for Level II OPAs

(A) Onsite Requirements

Minimum twenty percent (20%) of the total number of dwelling units must be Affordable Units if constructed onsite.

(B) Offsite Requirements

Equivalent of twenty-five percent (25%) of the total number of dwelling units must be Affordable Units if housing is built offsite (or a higher percentage as required to meet the 2 for 1 requirement pursuant to Health and Safety Code § 33413(b)(2)(A)(ii) if Affordable Units are approved for construction outside of the applicable Project Area) or to calculate an in-lieu fee payment to an Agency affordable housing trust fund or other Agency-approved housing development.

SEC. 5 AMENDMENTS TO DDAs AND OPAs

The Housing Participation Requirements in Sections 3 and 4 above also apply to any amendment to an existing DDA or OPA that includes a change in use resulting in the development of new dwelling units, or rehabilitation of or new construction in an existing development which results in the addition of ten (10) or more dwelling units.

SEC. 6 IN LIEU FEE REQUIREMENTS

6.1 Fee Determinations

An in-lieu fee (cash contribution) to an Agency affordable housing trust fund or other Agency approved housing development may be allowed as an alternative to producing housing onsite or offsite under an OPA. The Agency will prepare an in-lieu fee schedule based on the amount of subsidy required to produce a dwelling unit meeting the affordability standards of Section 2.3 of the Amended Policy. The fee schedule will be based on the fee schedule produced by the City pursuant to section 315.6 of the Ordinance, as amended from time to time. The fee schedule will require that the in-lieu fee be comparable to the costs for developing the number of dwelling units required for offsite development.

6.2 Payment of In-Lieu Fee

The in-lieu fee shall be paid to the Agency prior to the City Department of Building Inspection's issuance of the first site or building permit for the Covered Project.

6.3 Penalty for Noncompliance with In-Lieu Fee Requirement

If an applicant fails to comply with the requirements of this Section, the Agency may take any lawful action the Commission determines appropriate against the applicant and/or the Covered Project. Agency enforcement actions may include one or more of the following actions, or any other action the Commission is authorized to take under applicable law: (a) recording a lien against the Covered Project in the sum of the in-lieu fee required under this Policy, as adjusted pursuant to amendments to section 315.6 of the Ordinance; (b) refusing to issue any permit required for the Covered Project; (c) refusing to issue any certificate of occupancy for the Covered Project; or (d) revoking any previously issued permit or certificate of occupancy for the Covered Project.

SEC. 7 INCENTIVES FOR MEETING OR EXCEEDING MINIMUM INCLUSIONARY REQUIREMENTS

7.1 Agency Provided Incentives

For all developments providing affordable housing, the Agency may provide one or more of the following incentives:

- (a) Expedited permit processing;
- (b) Tax-exempt bond financing if the development meets all appropriate federal and state requirements; and
- (c) Tenant/buyer referrals.

7.2 Additional Incentives for Construction of Additional Affordable Units above the Housing Participation Requirements

In negotiating OPAs, the Agency may provide incentives to facilitate the construction of additional affordable housing (i.e., Affordable Units in addition to the Housing Participation Requirements of twenty percent (20%) of all dwelling units for Level II OPAs and ten percent (10%) of all dwelling units for Level I OPAs).

For developments exceeding the Housing Participation Requirements, the Agency may consider, for example, density or use variances, Project Area Redevelopment Plan amendments, or, at the applicant's request, assistance in obtaining nonprofit sponsorship.

SEC. 8 PREFERENCE FOR ONSITE DEVELOPMENT OF AFFORDABLE UNITS

The Agency encourages onsite construction of Inclusionary Units. An onsite affordable component is more desirable than offsite construction or the payment of in-lieu fees because this is the fastest way to bring the affordable housing on-line, ensures construction quality, facilitates meeting the Project Area housing production requirements of the Law, and promotes economic diversity within residential neighborhoods.

SEC. 9 REQUIREMENTS FOR OFFSITE CONSTRUCTION OF INCLUSIONARY UNITS

9.1 Determination of Eligibility as an Offsite Inclusionary Unit

To qualify as Inclusionary Units, offsite Inclusionary Units shall not have received development subsidies from any federal, state or local program established for the purpose of providing affordable housing.

9.2 Live/Work Unit Comparable Unit Calculations

If the Affordable Units in the Covered Projects are Live/Work units which do not contain bedrooms or are other types of dwelling units which do not contain bedrooms separated from the living space, the offsite dwelling units shall be comparable in size according to the following equivalency calculation between live/work and dwelling units with bedrooms:

Live/Work Unit	Comparable Unit
Less than 600 square feet	Studio unit
601 to 850 square feet	One bedroom unit
851 to 1100 square feet	Two bedroom unit
1101 to 1300 square feet	Three bedroom unit
More than 1300 square feet	Four bedroom unit

SEC. 10 RECORDING REQUIREMENTS

10.1 General Recording Requirements

A Notice of Special Restrictions or its equivalent as determined by the Agency in its sole discretion (the "NSR") shall be recorded with the San Francisco Recorder's Office for all Ownership Units and developments including rental Affordable Units ("Rental Projects"). The NSR must specify the Housing Participation Requirements and related conditions applicable to the Ownership Unit or Rental Project.

10.2 Requirements for Ownership Units

(A) Resale Restrictions

The NSR affecting each Ownership Unit must include a provision restricting the resale price to the Maximum Purchase Price and purchaser income levels according to a formula specified by the Agency.

(B) Subordination of Agency Restrictions

If subordination of the affordability conditions contained in a recorded NSR is necessary to ensure adequate construction and/or permanent financing for the development, or to enable first time homebuyers to qualify for first mortgages, the Agency may subordinate such restrictions upon request. A release following foreclosure or other transfer in lieu of foreclosure may be authorized if required as a condition to financing pursuant to Agency policy.

(C) Security for NSR Obligation

Each purchaser of an Ownership Unit shall secure the obligations contained in the NSR by executing and delivering to the Agency a promissory note secured by a recorded deed of trust encumbering the applicable Ownership Unit.

SEC. 11 AFFIRMATIVE MARKETING

The Agency's affirmative marketing requirements, including a preference for Agency Certificate of Preference Holders (the "Affirmative Marketing Requirements"), shall apply to all [Affordable Units] created under the Amended Policy, and at the Agency's request, certain information including a tenant selection plan and marketing plan must be submitted to the Agency for review and approval. The NSR for Rental Projects and Ownership Units must refer to these Affirmative Marketing Requirements.

SEC. 12 WAIVER OR REDUCTION OF HOUSING PARTICIPATION REQUIREMENTS

12.1 Equivalent Community Benefit Waiver or Reduction

In its sole discretion, the Agency Commission may approve Covered Projects that do not meet the Housing Participation Requirements set forth above, provided that the applicant is able to demonstrate to the Commission that the Covered Project will confer other clear, compensating community benefits of comparable value (for example, provision of daycare facilities, provision of a neighborhood-serving supermarket, etc.), or that the proposed Covered Project achieves other Project Area Redevelopment Plan or Agency community benefit objectives, such as community economic development goals.

12.2 Project Impact Waiver or Reduction

OPA and DDA applicants subject to the Housing Participation Requirements of the Amended Policy may appeal to the Agency Commission for a reduction, adjustment, or waiver of the requirements based upon the absence of any reasonable relationship or nexus between the impact of development and either the amount of the in-lieu fee charged or the Housing Participation Requirements.

12.3 Economic Hardship Waiver or Reduction

OPA applicants who optioned or acquired property subject to the Amended Policy prior to April 30, 2002, and are proposing a project which was not covered by the Agency's prior Housing Participation Policy (i.e., Level I OPAs, or Level II OPAs containing nineteen (19) or fewer dwelling units) may request the Agency Commission's consideration of an economic hardship waiver or reduction of the Housing Participation Requirements based on economic burden to the development because of the application of the Amended Policy (the "Economic Hardship Waiver or Reduction").

OPA and DDA applicants may apply to the Commission for the Economic Hardship Waiver or Reduction for a period ending twelve (12) months after the Effective Date ("Waiver Availability Period"). Following the Waiver Availability Period, this waiver will no longer be available.

Developers requesting the Economic Hardship Waiver or Reduction will have the burden of proving the claimed extent of economic burden on the development to the satisfaction of the Commission, in its sole discretion. For the purpose of demonstrating cause for an Economic Hardship Waiver or Reduction, an applicant must provide an independent market study to validate any claims of economic burden.

SEC. 13

SAFE HARBOR PROVISIONS

A reduced Housing Participation Requirement of five percent (5%) Affordable Units for onsite dwelling units and ten percent (10%) Affordable Units for offsite dwelling units will apply to any OPA applicant subject to the Housing Participation Requirements of the Amended Policy whose property meets all of the following criteria: (1) the property was optioned or acquired by the applicant prior to April 30, 2002; (2) the proposed project would be a Level I OPA (regardless of the number of dwelling units) or a Level II OPA containing nineteen (19) or fewer dwelling units; and (3) the Agency Commission first hears a request for approval of the OPA during the period ending 180 days after the Effective Date of the Amended Policy.