

NOV 29 2005

Cox, Sara

From: Andy Katz [Andykatz@cal.berkeley.edu]
Sent: Tuesday, November 29, 2005 3:07 PM
To: Berkeley Mayor's Office; Maio, Linda; Moore, Darryl; Anderson, Maxwell; Spring, Dona; Capitelli, Laurie; Olds, Betty; Worthington, Kriss; Wozniak, Gordon; Englund, Sandy; Myers, Barbara; Cox, Sara; Clerk
Subject: Inclusionary Ordinance Applicability

OFFICE OF THE CITY CLERK
CITY OF BERKELEY

Inclusionary Ordinance Applicability and Combination Residential-Live/Work Projects

I am writing to support Councilmember Worthington's proposal to close the "4+4 = 4 loophole" in the inclusionary ordinance.

Under the ordinance, constructing 4 residential units and 4 live/work units does not trigger an inclusionary requirement, because inclusionary live/work units are not considered residential units and are governed by a separate section of the code. This unfortunately occurred with 2 separate projects in West Berkeley. Also, if 4 live/work units are provided in a larger mixed-use building such as 2700 San Pablo Avenue, those units do not count toward the 20% inclusionary housing required by the residential portion of the project. Although staff have addressed this with an interpretation that the ZAB requested, this interpretation is not necessarily supported with in the code and a clarifying ordinance would improve the city's enforcement of current interpretation.

This unintended effect has prevented affordable live/work units from being constructed, a particular type of affordable housing scarce for artists living in West Berkeley.

I have suggested two options for language altering the ordinance for the City Attorney, Planning Department, and Planning Commission to consider to solve this loophole. I strongly recommend in Recommendation 2 that the Council or Planning Commission revisit provisions to bring Live/Work policy in conformance with residential housing policy, to (1) require inclusionary in-lieu fees for a fraction of a unit, and to (2) prohibit the developer from providing inferior quality units as inclusionary units. Both are inconsistent with how the City addresses inclusionary housing units.

Recommended language 1 in italics:

Section 23E.20.080 Low Income Inclusionary Live/Work Units

- A. The developer of any project which creates five or more *Units, either combining Live/Work and Residential Dwelling Units or only Live/Work Units* shall provide low income inclusionary units which conform with the following provisions:
 1. One inclusionary Live/Work Unit shall be provided for each five (5) Live/Work Units in the project, however there shall be no inclusionary requirement for a fraction of a *Live/Work unit. One inclusionary Live/Work Unit or inclusionary residential dwelling Unit shall be provided for each five (5) Units in the project, in addition to the requirements of Section 23C.12. Provision of inclusionary Live/Work Units may count as Inclusionary Units under Section 23C.12. The developer shall provide at least one inclusionary Live/Work Unit in the project.*

-or- Recommended language 2 in italics and ~~strike through~~:

- A. The developer of any project which creates five or more *Units, either combining Live/Work and Residential Dwelling Units or only Live/Work Units* shall provide low income inclusionary units which conform with the following provisions:
 1. *Any project subject to this chapter is required to include at least 20% of the total number of Live/Work and Residential Dwelling Units within the project as Inclusionary Units. In applying the required 20%, any decimal fraction above a whole number of Live/Work and Residential Dwelling Units shall be paid as an in-lieu fee. One inclusionary Live/Work Unit shall be provided for each five (5) Live/Work Units in the project.* ~~however there shall be no inclusionary requirement for a fraction of a unit.~~ *The developer shall provide at least one inclusionary Live/Work Unit in the project.*
 2. Inclusionary Live/Work Units shall be sold or rented at a price or rent affordable to a household with an income of eighty percent (80%) of the median income for the Oakland Primary Metropolitan Statistical Area;
 3. Inclusionary units shall be affirmatively marketed by the developer of a project to income-eligible persons performing a work activity permitted in the District where the project is located whose type of work causes them to have a requirement

for a space larger in size than typically found in residential units;

4. Inclusionary Live/Work Units shall maintain affordable rents or resale prices under the provisions for increase set forth in the City-wide regulations concerning inclusionary units (Chapter 23C.12).

B. ~~Inclusionary Live/Work Units may, at the applicant's sole discretion, differ from the other Live/Work Units in the project in that the inclusionary units may be smaller than other Live/Work Units in the project as long as they meet the minimum size requirement for Live/Work Units in the District; may have a lower grade of finishes than other Units in the project; and may be located anywhere within the project. (Ord. 6478-NS § 4)~~

Sincerely,

Andy Katz
Chair, Zoning Adjustments Board