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Agenda Date: 12/16/2009  
Agenda Placement: 9B

## Napa County Planning Commission Board Agenda Letter

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**TO:** Napa County Planning Commission  
**FROM:** John McDowell for Hillary Gitelman - Director  
Conservation, Development & Planning  
**REPORT BY:** Lawrance Florin, COM AND INTERGOV AFFAIRS MGR - 253-4621  
**SUBJECT:** Affordable Housing and Density Bonus Ordinance

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### **RECOMMENDATION**

#### **AFFORDABLE HOUSING AND INCENTIVES ORDINANCE - ZONING ORDINANCE TEXT AMENDMENT P09-00501-ORD**

**CEQA Status:** The project is intended to implement some of the programs in the 2009 Housing Element Update and falls within the scope of the 2009 Housing Element Update adopted June 23, 2009 and the program-level Environmental Impact Report (EIR) prepared for the 2009 Housing Element Update certified on June 23, 2009 adequately describes the activity for the purposes of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15168(c); General Rule: It can be seen with certainty that there is no possibility the proposed action may have a significant effect on the environment and therefore CEQA is not applicable. [See Guidelines For the Implementation of the California Environmental Quality Act, 14 CCR 15061(b)(3)].

**Request:** The ordinance would reorganize existing County Code provisions regarding affordable housing and incentives for affordable housing development. Ordinance amendments would: 1) require that 20 percent of new single-family homes and 17 percent of condominiums and townhomes be affordable to moderate-income households; 2) require that moderate-income homes be built on site for developments with 5 or more for-sale units; 3) require payment of housing impact fees for rental housing developments; 4) allow alternative affordable housing proposals; 5) add application requirements for affordable housing; 6) modify housing trust fund procedures; 7) amend provisions for density bonuses and other incentives as required by State law; and 8) continue to require the payment of housing fees with respect to nonresidential development projects.

**Ordinance Title:** AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NAPA, STATE OF CALIFORNIA, REPEALING CHAPTERS 15.60 (AFFORDABLE HOUSING) AND CHAPTER 18.107 (RESIDENTIAL DENSITY BONUS AND INCENTIVES) OF THE NAPA COUNTY CODE AND ADDING CHAPTER 18.107 (AFFORDABLE HOUSING AND INCENTIVES) TO IMPLEMENT THE 2009 HOUSING ELEMENT UPDATE OF THE NAPA COUNTY GENERAL PLAN AND MAKING VARIOUS ADDITIONAL TECHNICAL CHANGES

**Staff Recommendation:** That the Planning Commission conduct a public hearing and forward a recommendation of approval to the Board of Supervisors.

**Staff Contact:** Larry Florin, 253-4621 lflorin@co.napa.ca.us

***(CONTINUED FROM DECEMBER 2, 2009 REGULAR MEETING)*****EXECUTIVE SUMMARY****Proposed Action :**

1. A) That the Planning Commission recommends to the Board of Supervisors that the proposed ordinance has been adequately addressed within the scope of the 2009 Housing Element Update Program Environmental Impact Report (EIR) certified on June 23, 2009; and B) that the Planning Commission recommends to the Board of Supervisors that the proposed ordinance also qualifies as statutorily exempt from the provisions of CEQA pursuant to Section 14 CCR 15061(b)(3), General Rule.
2. That the Planning Commission recommend an amendment to the Ordinance that would require that the Ordinance go into effect at the same time that a new resolution establishing impact fees for residential housing is established.
3. That the Planning Commission recommends to the Board of Supervisors that the proposed ordinance be found consistent with the Napa County General Plan, and that the Board of Supervisors adopt the proposed ordinance.

**Discussion :**

At its regular meeting of December 2m 2009 the Planning Commission met to consider a recommendation on amendments to the County's Affordable Housing Ordinance. At that hearing the Board asked for two things:

1. To consider a provision that would allow for owner/builders of new homes to be exempted for the ordinance
2. That the fee structure be established that was similar to the fee structure that is in place in Sonoma County.

It is both staff and legal counsel's opinion that an exemption for owner-builders would be difficult to enforce. It may also violate certain equal protection provisions of law.

Attached for your consideration is a revision to the fee structure for your consideration.

**FISCAL IMPACT**

Is there a Fiscal Impact?                      No

**ENVIRONMENTAL IMPACT**

The project is intended to implement some of the programs in the 2009 Housing Element Update and falls within the scope of the 2009 Housing Element Update adopted June 23, 2009 and the program-level Environmental Impact Report (EIR) prepared for the 2009 Housing Element Update certified on June 23, 2009 adequately describes the activity for the purposes of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15168(c); General Rule: It can be seen with certainty that there is no possibility the proposed action may

have a significant effect on the environment and therefore CEQA is not applicable. [See Guidelines For the Implementation of the California Environmental Quality Act, 14 CCR 15061(b)(3)].

## **BACKGROUND AND DISCUSSION**

The Planning Commission considered at its December 2, 2009 hearing amendments to the County's Affordable Housing Ordinance. Specifically the Commission asked staff to evaluate the following:

1. An amendment to the ordinance that would exempt owner builders from the ordinance
2. Amendments to the proposed impact fee structure that would more closely resemble the structure in Sonoma County

**Owner Builder Fees.** The Commission suggested that the staff explore the idea of exempting homes built by owner builder up to a maximum of 2,000 square feet. In reviewing this issue we found that the California courts have struck down local efforts to apply different land use rules to owner occupied and non owners occupied properties. The courts have found this distinction to be a violation of the equal protection clause of the California constitution because the distinction is not related to the purpose of the ordinance.

As the affordable housing ordinance is now drafted its primary purpose is to mitigate the impacts that the construction of market rate housing has on the need for affordable housing. The nexus study prepared by Keyser Marston found that, in general, single family homes have greater impacts than attached homes and larger homes have greater impacts than smaller homes. Rental have the fewest impacts. The report does not look at the difference between owner built and other single family homes, and we're not aware of any other studies or data showing that homes built by owner builders would generate few local jobs, and so less need for affordable housing, than would homes built by developrs. Consequently we do not believe that this distinction would be supportable.

In revising the impact fee structure we added another tranche into the consideration. First we categorically exempted all homes less than 1,200 square feet. We then instituted a graduated fee structure that establishes a higher rate for larger homes over 2,000 square feet. The attached memo illustrates the proposed new fee structure.

## **SUPPORTING DOCUMENTS**

A . Revised Fee Structure

Napa County Planning Commission: Approve

Reviewed By: John McDowell