# COUNTY OF SANTA CRUZ

Planning Department

# MEMORANDUM

Date: November 2,2006

To: Housing Advisory Commission

From: Erik Schapiro, Housing Program Chief

Re: Measure J Investor-Owned (rental) units

Dear HAC Commissioners:

The County's Affordable Housing Ordinance (County Code Section 17.10) requires market rate developers of five or more units provide 15% affordable housing as part of their development projects. As a result of this program, over the past 27 years, over 400 affordable housing units have been created throughout the unincorporated County. By and large, Measure **J** units are located in subdivisions, and the vast majority of Measure **J** homes are owner occupied single-family homes, condominiums or town homes, although there are a few multi-family Measure J projects that include investor-owned (rental) units.

Ever since the program's inception, the Measure J program required the initial occupant of a Measure **J** unit to either meet the County moderate income requirements for an owner occupied unit or low income requirement for Investor-Owner (rental) units. The Investor-Owner provision was in large part, included in the original ordinance to ensure that the program serve lower income households and also to account for the possibility of apartment projects providing rental housing as part of the Measure **J** program. The program also allows for any Measure J owner to convert their owner occupied unit to a rental unit. As part of the Measure J program evaluation, there has been a shift toward the gradual conversion of more traditional owner occupied Measure J homes to rental units and staff is concerned about the programmatic implications of this trend. The purpose of this letter is to request your Board authorize staff to conceptually approve a program modification that would establish parameters for the conversion of owner occupied Measure **J** homes to rental units.

USE OF MEASURE J RENTAL UNITS

Based on the 2006 monitoring information, there are currently 423 Measure J units, of which sixty (60) units are investor-owned. While most of the investor-owned units are located in multi-family projects, over the years, an increasing number of traditionally owner-occupied units have been converted to investor-owned units in accordance with the provision of the ordinance that allows all Measure **J** owners to rent their unit if they do not occupy their home.

In order to build flexibility into the ordinance, County Code Section 17.050 permits any Measure J owner to convert their unit to a rental unit, subject to paying a park dedication fee, which is not applicable to Measure J ownership units. In addition, similar to owner occupied units, rental units only require income certification as part of initial occupancy and do not require on-going income eligibility.

Based on a staff analysis of this Investor-Owner component of the program, a few key issues have emerged.

- An increasing number of traditionally owner occupied Measure J homes are converting to rental units. While the Measure **J** inventory includes several multi-family projects, over the past few years, units that are part of the single family home, condominium or town home inventory have been converted to rental units which removes those units from the owner-occupied inventory and creates enforcement issues, as described below.

- Measure J rental units are more difficult to monitor than ownership units[1]. For rentals, the County must certify the income eligibility of the tenant prior to the landlord and tenant entering into a rental agreement. This process may be time-consuming, and may interfere with landlords filling a vacant unit. If a landlord circumvents this process and rents a unit prior to the County certifying the eligibility of the tenant, and the County retroactively deems the tenant ineligible, than enforcement measures may involve the landlord displacing the tenant, even if the tenant's income was slightly over the threshold amount. In addition regular verification of Measure J rent levels is also necessary and County staff must also cross check the owner's and tenant's tenancy records to ensure Measure J rent levels are being adhered to. Monitoring rental units is more problematic than ownership units, possibly placing the County in a difficult enforcement position visa a vie tenant/landlord issues, and requires more administrative support.

- Because on-going income certification is not required[2] for any Measure J unit, there is a particular benefit to Measure **J** renters who may benefit from the Measure J rents without being income-eligible. While owner occupants are also not recertified, in the case of an ownership unit, the owner is nonetheless bound by the resale restriction; in the case of an Investor-Owned unit, even though the owner is subject to the resale restriction, a tenant who later becomes over-income derives a financial benefit from the restricted Measure J rent levels.

- While the Measure J ownership requirement allows for households to earn up to 120% of median income, staff's review of the buyer profile of Measure J units indicates that only 28% of Measure J purchasers had a household income level between 100-120% of County median; 72% of new Measure J owners qualified as median income or below, with more than half of those households qualifying as low

[1] Monitoring ownership units involves verifying that the Measure J owner continues to utilize their Measure J home as the primary residence. Evidence of primary residence includes verification that Measure J owner **is** receiving a homeowner exemption, which **is** easily documented through the Assessor's Office.
[2] Most housing programs, including Measure J, do not require annual recertification. If annual recertification were required, and a household income increased and the household was no longer income eligible, than the occupant would be required to move out, resulting in displacement.

or very low income. Because a sizeable number of Measure J owner occupants are low or very low income, the Measure J program is not reliant on Investor-Owned units to serve low-income households.

- Upon review of the dozens of inclusionary programs in California, jurisdictions typically include an owner occupancy requirement; our Investor-Owner provisions are atypical and any prospective change in this requirement would conform to standard practices.

As a result of these factors, staff believes that it would better serve the community if the Measure J program was transitioned to a point where only units the multi-family units in the inventory serve as rental housing and the balance of the Measure J inventory functions as owner occupied housing. In an effort to fairly implement this change without unduly affecting existing property owners, staff recommends that the proposed changes be structured as follows:

- All existing Measure J owners would retain their ability to convert their home to a rental unit.
- Proposed restrictions for rental use would only apply to new units and upon resale of existing Measure **J** homes.
- Exceptions would apply to existing units in multi-family projects, and new units located in multi-family projects, as determined by the Planning Director.
- To account for unexpected changes in life circumstances that may justify the temporary rental of a Measure J home[3], Measure J owners could rent their home for up to one year under the following circumstances as determined by the Planning Director in his/her sole discretion:
  (1) An owner of a Measure J home who has resided therein for at least one year is unable to continue to occupy the home either temporarily or permanently by reason of illness or absence from the area for other than vacation purposes; or
  (2) An owner or person in a fiduciary capacity who has received title to a Measure J home as a result of the death of the previous owner, or due to bankruptcy or foreclosure procedures and requires time to arrange for the sale of the Measure **J** home to an eligible purchaser or to arrange for occupancy of the Measure **J** home by the owner.

## Conclusion / Recommendation

The Investor-Owner provision of the Measure J program was originally included in the ordinance to address the need for rental projects to incorporate the 15% affordabilii requirement, to provide for housing that serves lower income households, and to Measure **J** provide owners with a degree of flexibility. Based on current trends, staff is concerned about the increased number of ownership units converting to investor-owned rental units, and the number of concerns related to

[3] This provision is based on the provisions County Code Section 13.34.030 Temporaty Rental of Mobile Homes, which provides for rental of **a** mobile home for up to one **year** in an owner occupied mobile home park under specified conditions.

the loss of units from the ownership inventory, and administrative and monitoring difficulties. While staff believes that any programmatic change must be phased in and not apply to existing owners, and that there is a subset of Measure **J** multi-family rental units that should continue to serve as rental housing, staff nonetheless believes it is appropriate to amend the ordinance in an effort to better preserve the inventory of Measure J ownership units, and to improve the Department's monitoring and enforcement efforts. Furthermore, because the Measure J ownership program serves a sizeable number of lower income households, one of the original program goals – that Measure **J** serve both low and moderate income households – would also be retained, while improving the overall Measure **J** monitoring and enforcement efforts.

Staff requests the HAC to consider this matter and in the event that **HAC** supports the approach outlined above, staff will develop an appropriate ordinance amendment for consideration by the Board of Supervisors