

Prop I May Shut Down Market Rate Housing in the Mission

November's Proposition I will ask San Francisco voters to decide whether the city should stop issuing permits for new market-rate housing developments in a large portion of the Mission District. The moratorium would be aimed at developments of more than four dwellings per lot, and could last for a period of 18 months.

The construction of affordable housing in the Mission has long been the objective of city planners, elected officials and Mission activists. When the Eastern Neighborhoods (including the Mission) were rezoned in 2008, one of the main goals was to create a significant amount of affordable housing. While more affordable housing was created elsewhere, the Mission did not see the desired increase in affordable units for a number of reasons, including funding shortages.

Since 2012 the Mission has started to change due to the prosperity created by current market conditions. Mission activists contend the neighborhood's low and middle class residents have been particularly targeted and have (more than in any other area of the city) been "forced out" by no-fault evictions such as owner move-ins, Ellis Act evictions, condo conversions and demolitions. According to the website SocketSite, the Mission has seen more no-fault evictions than any other neighborhood in the city: 764 evictions, or 14% of city-wide evictions have occurred in the Mission between 2005 and 2014. That's fewer than 100 per year, but still, it carries the highest percentage.

Property owners argue that the high prices and the efforts to recover possession of units in the Mission can be traced back to the city's de facto moratorium on new housing development during the eight years it took to rezone the Eastern Neighborhoods. The lack of supply, they say, has created unusual demand pressures.

Initial moratorium attempt via Board of Supervisors

To stem the loss of affordable units and the Mission's changing neighborhood character, Supervisor David Campos, with the support of Mission activists, proposed a moratorium that would stop the construction of new market-rate housing in the district. The moratorium would have applied to projects with more than five units, and was proposed to last 45 days; in actuality the



by *M. Brett Gladstone & Susanne B. Kelly*



moratorium likely would have been extended for a total of two years. Supervisor Campos' legislation would have also stopped the issuance of any permit that would remove Production, Distribution, and Repair (PDR) uses from the neighborhood, except when the removal of PDR would be necessary to permit 100% affordable housing projects. The moratorium would have applied to all projects that had not yet received a building permit. An exception was not made for projects that were being reviewed in the city's permitting process and had not yet received a building permit. Had Supervisor Campos' moratorium passed, it was estimated the legislation would have affected 33 projects comprising 1,574 proposed units in the Mission.

The proposed legislation was not approved. Since it was an urgency measure, nine out of eleven Supervisors would have had to vote for it to pass, but only seven Supervisors voted in its favor.

Round Two: Moratorium placed on the November ballot

Undaunted, Mission activists obtained more than 15,000 signatures to place the moratorium on the November ballot. Only 9,700 signatures were needed. Now known as "Proposition I" and titled the "Mission District Housing Moratorium," the proposed measure would impose an 18-month moratorium on the issuance of building permits for any market-rate housing project with five or more units, or for projects which eliminate any PDR space (unless the permit was for a 100% affordable housing project).

It is significant to note that Proposition I also would allow the moratorium to be extended for 12 months by a mere majority vote of the Board of Supervisors. As a result, the seven supervisors who voted for a moratorium could, on their own, extend it another 12 months once the original 18 month voter-approved period expires. However, we (and other attorneys) doubt that this amendment of a citywide vote by the vote of the Board of Supervisors would be upheld by courts. The usual rule is that a vote by citizens on a subject can only be revised via another vote by citizens.

Proposition I would also require the city to create a Neighborhood Stabilization Plan by January 31, 2017. The plan's goal would be to ensure that 50% of all new housing in the Mission be affordable to low, moderate and middle income households, and to make those units available to Mission District residents only.

Opposition

Mayor Lee and Supervisors Farrell, Wiener, Christensen, and Tang all opposed the moratorium.

Opponents argue that new housing is needed to increase supply, which in turn will bring down prices. The Planning Department and Controller's Office estimate that up to 1,220 proposed units currently in the permitting process could be impacted by a moratorium. Opponents also point out that the exactions required of market-rate developments with ten or more units already keep between 12% and 18% of new units affordable. These percentages vary for certain plan areas and special use districts.

The Board of Supervisors' budget and legislative analyst has also identified 13 sites in the Mission that are appropriate for projects of 100% affordable housing. Opponents of Proposition I argue the city has the resources to purchase these sites and develop affordable housing, but has not put enough focus there; market-rate developers should not be held accountable for delays on the part of non-profit housing developers and the Mayor's Office of Housing in building 100% affordable projects in the Mission.

Rushing to find alternatives

To counter Proposition I, city planners and the Mayor's Office have been seeking a middle ground. The intent is to allow the construction of market-rate housing to continue in the Mission at a higher level of scrutiny and perhaps at a slower pace, while balancing this development with new incentives that encourage affordable housing and prevent tenant evictions. Incentives could allow for greater density or height that is permitted under the zoning. The creation of a fund for displacement and relocation of nonprofits, as well as housing bonds directed at areas with high rates of evictions, have also been discussed.

With the goal of adopting a middle ground, the Planning Commission initiated the development of certain interim controls in July. These interim controls would require developments needing no Planning Commission approval to have Commission Conditional Use approval in cases where said developments would (i) cause the loss of more than one rent-controlled dwelling unit; (ii) create five or more dwelling units; or (iii) cause the demolition or conversion of certain community and arts uses. The interim controls would be in effect for six months. Projects that are currently undergoing city review would be exempted if a planning application was filed before a certain date (likely if filed before December 31, 2014).

In a press release on July 9, San Francisco Planning Director John Rahaim said, "We have listened closely to the residents of the Mission. Increased evictions, loss of small businesses, and a decline of low and moderate income residents and the non-profits serving those residents are diminishing the socioeconomic diversity that is the foundation of this neighborhood. We know more needs to be done, but a truly effective strategy to set permanent solutions in place will not appear overnight. These Controls provide the time we need to further explore our options with the community and establish a comprehensive plan of action so that together we can stabilize the neighborhood, preserve vital community resources, and increase the supply of affordable housing. The Department is committed to working with the community over the next six months to prepare a multifaceted plan that we can all support."

The Planning Commission considered the interim controls at a hearing on August 6, and will make a final decision on them on September 24th. However, in the meantime, a policy statement was passed, which is now in effect. With a policy statement, the Commission has flexibility as to whether or not to apply certain controls. The policy statement states as follows:

1. It is the Commission's policy to give close scrutiny to projects that displace commercial tenants and uses, in particular arts, community-serving nonprofits, PDR and small businesses, and/or residential tenants, and that remove rent-controlled units from the housing stock; and
2. The Commission supports the retention of existing housing and commercial tenants; and in cases where relocation of such uses may be necessary, supports full relocation assistance; and
3. The Commission supports and expects projects to fully mitigate their anticipated negative impacts through positive economic and social contributions to the community; and
4. The Commission supports and encourages replacement of rent-controlled units, above and beyond Below Market Rate requirements when feasible; high affordability within projects or the provision of off-site units or land dedication within the Mission District; and a positive contribution of affordable units towards the Housing Balance/Proposition K and Housing Element affordability needs and goals through both 100% affordable projects and inclusionary units.

These policies will be in place until the development of a plan to stabilize housing and jobs in the Mission, known as the Mission Action Plan 2020, is complete.

The Mayor's Office and market-rate developers hope that if the interim controls pass on September 24th, Proposition I would be less likely to win at the November ballot, because the interim controls offer an

alternative to an outright moratorium. Under the interim controls, housing projects could still continue to be approved if they could withstand the more stringent review process.

For more information, please contact:

M. Brett Gladstone, Partner
415-995-5065
bgladstone@hansonbridgett.com

Susanne B. Kelly, Counsel
415-995-5179
skelly@hansonbridgett.com