COUNCIL AGENDA: 12-09-08
ITEM: 5.2

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

# Memorandum

**TO:** HONORABLE MAYOR AND CITY COUNCIL

**FROM:** Vilcia Rodriguez

**SUBJECT:** **SEE BELOW**

**DATE:** 11-25-08

Approved Deanna Ah | Date 11/25/08

**SUBJECT: Discussion and Recommendation of Proposed Citywide Inclusionary Housing Ordinance: [Community and Economic Development Committee – Item (b)] and [Neighborhood Services & Education Committee – Item (a)]**

On November 24 and 25, 2008, staff presented the attached report on Discussion and Recommendation of Proposed Citywide Inclusionary Housing Ordinance to the Community and Economic Development Committee and Neighborhood Services & Education Committee, respectively.

At both Committees' direction, this item is being cross-referenced to the December 9, 2008 Council Agenda for full Council consideration. The Committees' recommendation and minutes are available online on the City Clerk's Office's website.

Gloria Schmanel /for
VILCIA RODRIGUEZ
Senior Executive Analyst

Attachment

CED COMMITTEE AGENDA: 11-24-08
ITEM: 4b

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

# Memorandum

**TO:** COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE

**FROM:** Leslye Krutko

**SUBJECT:** CITYWIDE INCLUSIONARY HOUSING ORDINANCE

**DATE:** November 14, 2008

Approved [signature] Date 11/14/08

**COUNCIL DISTRICT:** Citywide
**SNI AREA:** All

## RECOMMENDATION

It is recommended that the Community and Economic Development Committee: (1) review the recommendation contained herein for an inclusionary housing ordinance; (2) review alternatives for an inclusionary housing ordinance (Attachment A) that were considered and are not recommended; and (3) approve staff's recommendation to the City Council for the adoption of an ordinance for an inclusionary housing requirement on residential development Citywide.

## OUTCOME

Proceeding with the development of a Citywide inclusionary housing ordinance, as recommended, will increase the production of affordable housing in San Jose by an estimated 450 units annually for the foreseeable future.

## EXECUTIVE SUMMARY

In June, the City Council directed the Administration to return to the City Council in the fall with an inclusionary housing proposal for Council consideration. The Housing Department, in collaboration with the Redevelopment Agency (RdA), the Planning, Building and Code Enforcement Department, and the City Attorney's Office, has worked since that time to respond to this direction. More than 30 one-on-one meetings and more than two dozen stakeholder and public meetings have been held to gather input to frame the recommendations. To get to this point, the Department has also completed significant research and study of existing inclusionary ordinances, and met with cities that have experience with implementing Citywide programs to gather best practices.

Included in this memorandum is a recommendation for the framework of a Citywide inclusionary housing ordinance. The Department's recommendations are listed, along with a rationale for selection. Attached is a detailed discussion of all the alternatives and the related advantages and disadvantages (Attachment A).

## BACKGROUND

The subject of inclusionary zoning has been a discussion point in San Jose for the past 20 years. When the City Council created the Housing Department in 1988, it approved a Mayor's Housing Task Force Report that included a recommendation to explore ways to implement inclusionary zoning. After a task force effort, no consensus was reached on whether to support such a policy, and the City Council was not asked to consider whether inclusionary zoning was desirable.

In 2001, the City Council accepted a report by the Mayor's Housing Production Team which included an action to implement an inclusionary zoning policy for all rental housing in San Jose. This effort, also, did not result in a decision to implement such an action.

In June of 2007, the Mayor and City Council adopted the Five Year Housing Investment Plan, which lays out a series of recommendations and alternatives for addressing the City's affordable housing need. One of the alternatives included in the report was to review the potential to geographically expand the current inclusionary housing program beyond the redevelopment project areas boundaries. Currently, about one-fifth of the City's land area is covered by the redevelopment-area inclusionary policy, including all of the City's 19 Strong Neighborhood Initiative areas.

At a study session on December 11, 2007, the City Council directed staff to proceed with a study of a Citywide inclusionary housing program, including a series of three public meetings with a consultant who was charged with completing an economic feasibility analysis of inclusionary housing in San Jose.

On June 17, 2008, the Mayor and City Council directed the Administration to conduct outreach and return in the Fall of 2008 with an Inclusionary Housing proposal for Council approval that includes a range of alternative elements, as specified. Additionally, the Administration was directed to provide a status report that detailed how the City's affordable housing goals and affordable housing programs had performed over the past two decades and a report that details opportunities and alternatives to increase the supply of affordable housing as identified by the development community.

On November 10, 2008, the City Council met in a Special Session to discuss the process for reviewing this Inclusionary Housing Proposal and whether additional information was needed for the Council to make an informed decision. The Council directed the Administration to proceed with bringing forward a proposal for a Council decision on December 9, 2008. The Council directed the staff to incorporate the recommendations included in Vice Mayor Cortese's November 10, 2008 memo in the alternatives presented. Additionally, the Council requested that the staff bring back additional information that will inform the City Council, including comments received during the outreach process, alternatives to inclusionary programs, and housing production data. Included in this memorandum are those alternatives and the Department's recommendations. Information on the additional information requested – including positive and negative comments received during the outreach process – is forthcoming.

Recommendations in this memorandum accept a number of the recommendations included in Councilmember Cortese's memo, but not all. Please note that the recommendation to take a number of steps related to the Redevelopment Agency will be addressed at a later date.

## ANALYSIS

### Why Should an Expanded Inclusionary Housing Program Be Considered?

There are several important reasons why the City should consider adopting an inclusionary housing proposal. First, although the City has facilitated the production of substantial numbers of affordable housing units through its financing programs, and arguably has exhibited leadership in providing affordable housing opportunities for its citizens that other cities cannot claim, there is still a significant unmet need for affordable housing in San Jose. A report released in 2007 – prepared by San Jose State University and the Local Initiative Support Corporation, entitled "*Housing Silicon Valley: A 20-Year Plan to End the Affordable Housing Crisis*" – found that the County of Santa Clara has a significant current and future need for affordable housing and that insufficient local funding is available to meet this need. The City is currently preparing its Housing Element, as dictated by California State law, which requires that the City plan for the development of 19,000 affordable units between the years 2007-2014.

The City's financing programs have created more than 17,000 units since the creation of the Housing Department 20 years ago. This has been possible largely due to the City's successful Redevelopment Agency, which has allocated a portion of its 80% funding for affordable housing in addition to the required 20% of tax increment that is transferred to the City's Housing Department. However, because this source of funding -- 20% Low and Moderate Income Housing Funds (20% Setaside) -- is limited, the City will need to add to its tool box to ensure that it has the resources available to continue to meet the need for affordable housing in the future.

Given current demand for funding, it is projected that the 20% Set-Aside will be exhausted in the next three to five years. Should the Redevelopment Agency be successful in its efforts to increase its expenditure cap, an effort that is currently underway, the Housing Department would have additional ability to borrow. However, this will be limited by the incremental increase in tax increment each year, which will restrict the amount of money available for new projects each year.

The City strives to be a place where people can both live and work. This is not only key to a healthy economy, but is crucial as we plan to create a sustainable community and the City's ability to meet greenhouse gas emission goals and other environmental priorities. Ensuring that there are affordable choices for the area's low- and middle-wage earners is important to the future success of the City.

Additionally, the City has had a long-standing policy objective of dispersion of affordable housing and socio-economic integration. To the extent that developers incorporate affordable units into their developments, such integration can be achieved.

## Guiding Principles

Feedback from outreach efforts since June 17th led the Housing Department to use the following Guiding Principles in developing a recommendation for a Citywide inclusionary housing policy:

- **Simplicity** – An inclusionary housing policy should be easy for the developers to understand and for the City to administer.
- **Flexibility** – An inclusionary housing policy should give developers as many alternatives as possible for compliance.
- **Consistency and Fairness** – All developers should be treated equally, particularly with respect to projects in the pipeline.
- **Certainty** – Developers, affordable housing advocates and the City should have advanced knowledge of what the impacts and outcomes will be with an inclusionary housing policy. The rules and process of the inclusionary housing policy should be clearly defined.

## Recommended Policy Provisions

The Housing Department, in conjunction with the Redevelopment Agency, has worked diligently over the past several months to meet with stakeholders and the public to gather input as directed by the City Council. In addition to one-on-one meetings and meetings with stakeholders, the public, and Council Commissions and Committees, the Department has completed substantial research to ensure that the proposal it brings forward is comprehensive and meets the Guiding Principles listed above.

In this outreach process, a wide variety of alternatives were suggested on how to craft an inclusionary housing ordinance. Those alternatives, together with advantages and disadvantages of each, are included in Attachment A. After considering all of these suggestions, the Housing Department is recommending the following policies to serve as the basis for a Citywide Inclusionary Housing Ordinance:

**Inclusionary Requirements**

| Issue | Recommendation | Rationale |
|---|---|---|
| Geographic Applicability | Ordinance requirements will apply to all residential development citywide, including redevelopment areas. | Meets the guiding principles of fairness and consistency, and certainty. A developer working outside of a redevelopment project area will have the same requirements as a developer working in an RdA project area. |
| Percent Set Aside and Income Targeting Requirement | Rental—Developer chooses one of two options: 20% or 15% depending on depth of affordability.<br>For-Sale—Developer chooses one of two options: 20% or 15% depending on depth of affordability. | Meets goal of flexibility, and provides options for increased affordability.<br><br>Meets goal of flexibility, and provides options for increased affordability. |
| Partial Units | When an inclusionary obligation results in a fractional unit greater than 0.5, the obligation will be rounded up. The developer can choose to provide the unit or pay the pro rata in-lieu fee for the fractional unit. | Allowing developers to address inclusionary obligations of fractional units by paying a pro rata in lieu fee or providing a full unit if the fraction is 0.5 or above provides more flexibility for developers while ensuring that the Ordinance's affordable housing goals are met. |
| Threshold | Ordinance requirements will apply to developments with 11 or more units. | Applying the inclusionary requirements only to developments of 11 or more units is consistent with current RdA policy. It exempts smaller developments, for which complying with inclusionary obligations may not be economically feasible. |
| Term of Affordability | Rental: Inclusionary units must remain affordable for 55 years.<br>Owner: Inclusionary units must remain affordable for 45 years. | Requiring a 45 year affordability term for ownership units and a 55 year term for rental units is consistent with minimum Redevelopment Law requirements. The units will therefore be counted towards the City's affordable housing production requirements. |
| Type of Resale Restriction for Ownership Units | Inclusionary ownership units must contain a shared-equity provision. | A shared equity provision allows the original buyer of an affordable unit to sell the unit at the market price and earn a portion of the appreciation of the home. Upon resale, the City recaptures the difference between the market price and the affordable price of the unit plus a portion of the appreciation. The City then uses these funds to assist another buyer to purchase a home anywhere in the City. This provision is consistent with current RdA policy and provides for more choice and flexibility for homebuyers. It also may make it easier to find willing buyers of affordable units, as they have the |

| **Inclusionary Requirements** | | |
|---|---|---|
| Issue | Recommendation | Rationale |
| | | opportunity to earn equity upon resale of the unit. |
| Operative Date of Ordinance | Ordinance takes effect after the customary time of 30 days after final adoption, but does not become operative until the later of: (1) January 1, 2010, or (2) the first day of the month following the first 12-month consecutive period in which building permits for 2,000 units have been issued, as certified by the Housing Department Director or his/her designee. | By tying the Ordinance's operative date to building permit activity, this provision allows the market to recover to a certain level before the inclusionary requirement is imposed. Over the last 20 years, the number of building permits has fallen under 2,000 three times and this correlates with down economic periods in the City. This delayed operative date will provide sufficient time for developers to adjust their financial and development assumptions to accommodate the Ordinance's requirements. |
| Grandfathering/Pipeline | Developers meeting the following requirements will be exempt from the requirements of the Ordinance:<br>a) Within three months of the effective date of the ordinance, the developer submits an applications for a planning permit (CUP, site development, or PD permit) and environmental clearance that are deemed substantially complete by the City pursuant to the provisions of the Zoning Ordinance and the Environmental Clearance Ordinance, and<br>b) Within twenty-one months after the effective date of the ordinance, the developer receives an approved planning permit; and<br>c) Within twenty-seven months after the effective date of the ordinance, the developer receives an approved building permit. | By exempting from inclusionary requirements those developments that have already invested time and resources into planning and predevelopment and that demonstrate continuous progress toward entitlement and permitting, the Ordinance promotes fairness for those developments currently in the pipeline. It also ensures that those exempt developments are verifiably in the development process. |
| | For phased developments, the above timelines apply to the first phase; each subsequent phase must obtain building permits within two years after the issuance of permits for the prior phase. | Developers of large, phased projects have invested funds in planning, and they should be able to lock in development costs and pricing for all phases to be exempt from the inclusionary ordinance if the phases continue to be built on a reasonable schedule. |
| | These times will be extended by the amount of time necessary to resolve delays imposed by non-City environmental or other regulatory agencies. | This exception would provide relief in cases where delays are outside the control of either the developer or the City. |

**Inclusionary Requirements**

| Issue | Recommendation | Rationale |
|---|---|---|
| | Upon passage of the ordinance, developments under the current RdA inclusionary policy may opt to participate with requirement consistent with the Citywide ordinance as long as Building Permits have not been issued. | This will provide additional flexibility to pipeline projects located in redevelopment project areas. |
| Pressure Relief Valve | When the gap between the market price and the affordable price for homeownership units targeting the lowest area median income (AMI) is $10,000 or less, the following requirements will apply:<br>1. No equity share provision will be required.<br>2. The home must be sold to the first buyer at the restricted price.<br>3. No income verification of the buyer will be required.<br>4. The unit must be owner-occupied.<br>5. Developer must certify that the relief is needed every six months. | This provision allows the Ordinance to adjust to periods of demonstrated economic distress in the development community, promoting fairness for developers. |

**Alternative Compliance Options**

| Issue | Recommendation | Rationale |
|---|---|---|
| The following alternatives to providing the affordable units on-site will be available. Specific criteria will be developed that define the parameters under which these options may be exercised. | | The Ordinance provides developers with alternative compliance options for meeting their inclusionary obligation in ways other than providing affordable units on-site. Offering alternative compliance options may offer the City opportunities for more affordable housing development outside of the market rate developments.<br><br>The Ordinance provides for cost-saving offsets for developers that meet their inclusionary requirement by providing affordable units on-site. These offsets will decrease costs for developers and provide an incentive for on-site development of the affordable units, thus increasing the economic integration of developments and neighborhoods. |

| **Alternative Compliance Options** | | |
|---|---|---|
| Issue | Recommendation | Rationale |
| Off-Site Construction | A developer may build affordable inclusionary units off-site, with limitations placed on the off-site location options. Approval will be granted if the off-site location is demonstrated to be consistent with City policies or if the developer partners with an experienced affordable housing provider. | Off-site construction may be a good option, and can often result in more deeply affordable units. Additionally, a separate and distinct project can apply for affordable housing subsidies that can make a project more economically feasible. |
| Credit Trading or Credit Transfer -- General | Developers may transfer and/or trade inclusionary unit credits to pool together and build larger affordable projects off-site. | Some developers have only a small requirement and would benefit by "buying" credits from another developer. Other developers may have the ability to build additional units and would benefit by "selling" units to a developer who needs to meet an inclusionary requirement. |
| Credits for Housing Preservation | An owner of a multi-family project that is subject to a HUD restriction that expires after the date of the ordinance takes effect can receive a credit for one future inclusionary unit for every five HUD contract units that the owner agrees to maintain at affordable levels for as long as HUD provides subsidies, but no less than five years. This benefit is not transferable from the owner to another developer. | This will incentivize owners of HUD-subsidized units to keep the units affordable. |
| In Lieu Fee | The per unit in-lieu fee amount will equal the average per unit City subsidy required for affordable new construction rental housing development in the prior year. The City will use the in-lieu fees to provide funding for:<br>a) at least 30% of the funds collected will be used to develop housing for households earning at or below 30% of the AMI;<br>b) cover reasonable administrative or related expenses associated with the administration of the ordinance, including funding for streamlined planning review. | In order to meet legal requirements, an in-lieu fee must have a rational basis. In the past, the RdA program has used a calculation that relates to the cost of subsidizing a like unit. Because it is most likely that the City will use in-lieu fees to subsidize rental unit construction, it follows that the in-lieu fee should be equivalent to the subsidy required by the City to finance an affordable rental unit.<br>A priority for the expenditure of funds received through the payment of in-lieu fees should be to assist ELI units.<br>To facilitate special handling of those developments that choose to integrate the units in their development, the use of a small amount of in-lieu fees would be used to pay for City staff assigned to this function. |
| Land Dedication | The developer may provide developable land instead of providing units on-site if the site is suitable for residential | In some situations, land dedication can be a favorable alternative and should be an option. |

| **Alternative Compliance Options** | | |
|---|---|---|
| Issue | Recommendation | Rationale |
| | development and the land value is sufficient to meet the inclusionary requirement without additional City funding. | |
| Acquisition and Rehabilitation | The developer may comply with the inclusionary obligation by acquiring and rehabilitating market-rate apartment units and converting them to affordable units. Developer must meet requirements that are stated in the ordinance for the timing of commencement of rehabilitation work and completion of the rehabilitated units.<br>Developers who acquire and rehabilitate existing housing units and market the units with deeded affordability restrictions shall receive one future inclusionary credit for every four units rehabilitated. | While the City needs new construction of affordable housing, it is also important to maintain the existing housing stock. By acquiring and rehabilitating market-rate development and restricting rents, the results include an increase in affordable housing opportunities and neighborhood improvement.<br>However, since these units do not count one-for-one toward the City's housing goals, it is appropriate that a developer be required to acquire and rehab four units for every inclusionary unit required. |
| Combination | The developer may comply by combining alternative compliance options. | The City and Redevelopment Agency have found, in the implementation of the current RdA policy, that at times a combination of options is desirable. This will also reduce the potential to revise the ordinance each time a new situation presents. |

| **Offsets** | | |
|---|---|---|
| Issue | Recommendation | Rationale |
| The following offsets will be offered to developers who meet their inclusionary obligation by providing affordable units on the same site as the market rate development: | | |
| Density Bonus | The developer that provides the affordable units on-site may receive a density bonus equal to the percentage set aside required by the Ordinance, provided it is consistent with State density bonus law. | Density bonuses are required by State law. While the City is proactive in supporting the highest possible densities, this is an offset that is encouraged to be utilized by developers. |
| Reduction in Minimum Parking Space Requirements for Affordable Units | With the approval of the Planning Department Director, a development that provides the affordable units on-site may be granted reduced parking requirements for the affordable units. | Parking reductions are strongly encouraged for developments in proximity to transit and/or in combination with Ecopasses or car-sharing being made available to residents. Reductions in parking can reduce construction costs. |
| Altered Setback Requirements | With the approval of the Planning Department Director, a development | Setback requirements address neighborhood character and modifications may be |

**Offsets**

| Issue | Recommendation | Rationale |
|---|---|---|
| | that provides the affordable units on-site may be granted altered setback requirements for the affordable units. | appropriate on a case-by-case basis. Reduced setbacks may provide for the construction of additional affordable units. |
| Alternative Product Type | Provided the affordable units are provided on-site and have the same bedroom count distribution as the market rate units, developers may provide affordable units that are a different product type than the development's market rate units. | This option allows the most flexibility for developers, particularly those who are building a high cost, low-density product. |
| Alternative Interior Design Standards | Provided the affordable units are provided on-site and have the same bedroom count distribution as the market rate units, the affordable units may use different interior design, appliances and materials than the market rate units. | Different interior design works well for for-sale housing, and less well for rental housing. Nevertheless, as long as the materials used are of good quality, one way of achieving affordability is by reducing high-cost interior finishes. |
| Expedited Review | A development that provides the affordable units on-site will be offered an expedited review process. | We heard many times that time is money. With this recommendation, developers who choose the on-site option would get expedited review with mutually agreed upon milestones for performance both for the City and the developer. |
| Technical Assistance | A development that provides the affordable units on-site will be offered technical assistance, including assistance with the development review process, financing alternatives, and selling/renting the affordable units to qualified buyers/tenants. | The City will provide additional technical assistance to any developer choosing to incorporate the units on site. This encourages developers to do so, furthering the City's goal of economic integration. |
| Financial Subsidies | The developer may apply for financial subsidies for the affordable units from federal and state funding sources.<br>The developer may apply for City financial subsidy if demonstrated that more units or deeper affordability will be achieved than is required under the Ordinance. | Some cities do not allow inclusionary projects to apply for other sources of government money. Based on feedback received, we are recommending that this be allowed, even though the projects would conceivably compete with City-subsidized developments.<br>In an effort to increase ELI construction, the City will provide a partial subsidy to developers who agree to reduce rents to lower than required levels. |
| Park Fee Exemption | Rental units that are affordable to households earning less than 60 percent of area median income (AMI) are exempt from paying the Park Fee. | This is current City policy and because of the income criteria, it applies only to rental projects. No change is recommended at this time because the policy is under separate review. |
| Property Tax Exemption | Developers who partner with nonprofit housing developers and provide rental | This is current law, and because of the income criteria, it applies only to rental |

| **Offsets** | | |
|---|---|---|
| Issue | Recommendation | Rationale |
| | units affordable to households earning less than 80 percent of AMI are exempt from paying property taxes, provided the nonprofit meets the standards set forth in the California Revenue and Taxation Code Section 214 and has "material participation" and "substantial management duties" in the project, as defined in the California Board of Equalization Rule 140.1. | projects. This property tax exemption is not available for ownership housing. |
| Construction Tax Exemption | Rental units that are affordable to households earning at or below 50 percent of AMI are exempt from paying the Building and Structure Construction Tax, the Construction portion of the Construction and Conveyance Tax, the Commercial-Residential Mobilehome Park Building Tax, and the Residential Construction Tax. | This is current City policy. Because of the income criteria, it applies only to rental projects. No change is recommended at this time. |

## POLICY ALTERNATIVES

In reaching the recommendations spelled out above, the following alternatives were also considered:

*Alternative #1:* ***Do not expand inclusionary housing requirements beyond redevelopment project areas.***

**Pros:** The City's current efforts, including its financial assistance programs and the RdA inclusionary requirement, are producing a significant number of affordable units. Expanding the program would require additional administrative efforts. This is the wrong time to implement such an effort because the economy is at its lowest point in decades.

**Cons:** Despite the City's efforts, a large number of San Jose residents do not have adequate or affordable housing. Additionally, the City's 20% funds are limited, and will not allow the level of past production or meet the future production needed. The recommendation recognizes the current market conditions, and waits until the market has stabilized before developers are required to comply. An estimated 450 units will not be produced each year if a Citywide inclusionary program is not adopted.

**Reason for not recommending:** The City Council has directed the Housing Department to return with a proposal that expands inclusionary housing requirements beyond redevelopment areas based on the City's need to have all the tools in the toolbox to address the affordable housing crisis. Inclusionary housing programs are used by the majority of cities in Santa Clara County and by neighboring cities and counties in Santa Cruz, San Mateo, and Alameda Counties.

*Alternative #2:* ***Adopt a Citywide inclusionary housing program with different detailed requirements than those recommended by staff.***

**Pros:** The City Council may prefer certain options over others for a variety of reasons. While there are dozens of inclusionary programs in the Bay Area, they are all different, so there is no right or wrong programmatic design.

**Cons:** City and Redevelopment Agency staff have spent a great deal of time researching effective inclusionary programs and meeting with developer and advocate stakeholders. The recommendations included in this memo take into account what we heard during those one-on-one and public meetings.

**Reason for not recommending:** The recommendations represent a thoughtful effort to respond to concerns raised by stakeholders and to implement the four Guiding Principles.

## PUBLIC OUTREACH/INTEREST

☐ ***Criteria 1:*** *Requires Council action on the use of public funds equal to $1 million or greater.* ***(Required: Website Posting)***

☑ ***Criteria 2:*** *Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City.* ***(Required: E-mail and Website Posting)***

☐ ***Criteria 3:*** *Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach.* ***(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)***

The recommended action meets the Criteria #2 above. E-mail notification of the Committee's meeting and subsequent consideration of the issue by the full City Council will be sent to the Department's list serve of over 700 names and this report will be posted to the Committee's agenda posted on the City's website.

Other public outreach efforts have included the following:

| | |
|---|---|
| January – March 2008 | Three developer stakeholder meetings with the consultant preparing the economic feasibility analysis of inclusionary housing. |
| May – June 2008 | Four open public forums throughout the City to share the results of the economic feasibility analysis. |

| | |
|---|---|
| August – October 2008 | 35 one-on-one meetings with developers, other business interests and affordable housing advocates. |
| September 2008 | One stakeholder meeting of affordable housing advocates. |
| September – October 2008 | Two stakeholder meetings of developers and related business interests. |
| October – December 2008 | Eight open public forums throughout the City to discuss potential parameters of a Citywide inclusionary housing policy. |
| June-November 2008 | Twelve City Council Commission and Committee meetings where inclusionary housing was discussed. |

## COORDINATION

Preparation of this memorandum was coordinated with the Department of Planning, Building and Code Enforcement, the Redevelopment Agency, and the Office of the City Attorney.

## CEQA

CEQA: EIR Resolution No. 65459 and Addendum thereto, PP08-258

LESLYE KRUTKO
Director of Housing

ATTACHMENT A—Analysis of Alternatives Considered

The following attachments will be delivered with a Supplemental Memorandum:

ATTACHMENT B—Comments Received During the Outreach Process (July to Date)
ATTACHMENT C—Alternative Policies and Funding Sources for Affordable Housing
ATTACHMENTS D1 – A&B — Survey of Inclusionary Housing in Santa Clara County
ATTACHMENTS D2 – A&B – Survey of Other Cities with Inclusionary Housing
ATTACHMENT E—Map of Inclusionary Housing
ATTACHMENT F—Analysis of Past and Future Housing Production and Inclusionary Requirements
ATTACHMENT G—Literature Review of Inclusionary Housing Programs

For questions, please contact Leslye Krutko, Director of Housing, at 535-3851.

## ATTACHMENT A

### Analysis Of Alternatives Considered

The following discussion provides an analysis of the Inclusionary Housing Ordinance policy alternatives that were considered in determining the proposed recommendations. Each issue is presented below, with a discussion of the possible policy alternatives for addressing each issue, and the advantages and disadvantages of each alternative.

**Part A: Inclusionary Housing Requirements**

**A-1. Geographic Applicability**

This issue refers to the scope of the proposed Ordinance. The alternatives are as follows.

a) Applies only to areas outside of Redevelopment project areas, with the Redevelopment Agency (RDA) policy continuing to apply to the project areas.

   *Disadvantages:* May be unfair to have different inclusionary housing obligations apply to different areas of the City. This may cause confusion for developers in determining which inclusionary requirements apply to their projects, unless the same standards as the RDA policy are adopted citywide.

b) Applies citywide, including RDA project areas. In this alternative, the City's Ordinance supersedes the RDA inclusionary requirements within RDA project areas.

   *Advantages:* While it depends on the specifics of the Ordinance adopted, an Ordinance that applies to the entire City may provide more certainty, consistency and fairness to developers.

   *Disadvantages*: If the Ordinance is implemented citywide and the set-aside percentage required is lower than Redevelopment Law requirements, production may fall below the amount required by State law and the RDA may not be able to meet its State affordable housing production requirement.

c) The Ordinance applies citywide but excludes low-income neighborhoods.

   *Advantages*: This will ensure that affordable housing is dispersed outside of low-income neighborhoods and ensures the equitable distribution of low income housing citywide.

   *Disadvantages*: First, it is important to note that inclusionary housing programs, by their nature, integrate affordable units in market-rate projects. A mixed-income development should be a positive in lower-income neighborhoods. Several lower-income areas, like the Mayfair SNI neighborhood, have embraced the development of affordable housing and even requested deeper affordability than developers originally planned. In addition, the development of affordable housing can assist in the revitalization of lower-income neighborhoods

## A-2. Set Aside and Income Targeting Requirements

This issue refers to the percent and level of affordability of a development's inclusionary obligation under the Ordinance. The inclusionary obligation is determined as a specified percentage of the development's total units. For example, the Ordinance may require a higher percentage of units that are affordable to moderate-income households and/or a lower percentage of units that are affordable to lower-income households. By combining a higher percentage of required units with moderate affordability levels and a lower percentage of required units with deeper affordability, the economic impact on the developer may be equalized.

Staff presented the options below to the public and stakeholder meetings and solicited comments and feedback on the correct combination of the percentage of units and income targeting requirements. The combinations may differ for homeownership and rental developments.

Staff has analyzed options for implementing these alternatives. Under California law, moderate-income households are those earning over 80 percent and up to 120 percent of area median income (AMI), adjusted for household size. For homeownership, to ensure that units are affordable to most households within that income range, affordable sales prices are calculated using a household income ranging from 95 percent to 110 percent of AMI. For rental units, income ranges are calculated from 40 percent to 60 percent of the AMI. In order to ensure there are willing renters and buyers for affordable units, the affordable rents and sales prices in this income category must be sufficiently below market rents and sales prices. Staff has therefore analyzed the effects of pricing the rents and sales prices for this income category at 40, 50, 60, 90, 95, 100 and 105 percent of AMI, in addition to 110 percent of AMI.

a) High percentage, twenty percent (20%) of affordable units required; homeownership units targeted at moderate- income households; rental units targeted at moderate to lower income households.

   *Advantages:* Requiring a higher number of affordable units will result in more affordable units being produced through the Ordinance. A higher set aside obligation is moderated by requiring the units to be affordable to moderate- or lower-income households. Targeting homeownership units to moderate-income households is prudent and may avoid the difficulties in meeting mortgage payments that lower-income households may face.

   *Disadvantages:* While more overall units are produced under this alternative, no units with deeper affordability will be produced. The City therefore may miss an opportunity to produce extremely-low, very low- and low-income units through the Ordinance. The City's need for units affordable to these income levels is substantial, especially for renter households. Meeting the need for units with deeper affordability would then fall to the City, requiring substantial public subsidy.

b) Medium percentage, fifteen percent (15%) of units required; homeownership units targeted at moderate to median income households; rental units targeted to lower- to very low-income households.

*Advantages*: Allows for additional affordability without imposing an unreasonable burden on the developer. For homeownership units, can make the units easier to market by enabling a larger group of households to qualify to purchase. Fifteen percent is the minimum percentage required by state Redevelopment Law.

*Disadvantages*: The financial effect of requiring deeper affordability is tempered by requiring fewer overall affordable units.

c) Low percentage, ten (10%) of units required; homeownership units targeted at median to low-income households; rental units targeted to very low- to extremely low-income households.

*Advantages:* The financial effect of requiring deeper affordability is tempered by requiring fewer overall affordable units. Requiring rental units affordable to extremely low- and very low-income households will assist the City in meeting a priority affordable housing need.

*Disadvantages:* Fewer overall units will be produced under this alternative. Targeting homeownership units to median and low-income households may be risky, as these households are often less financially stable and may have a higher risk of foreclosure. Prudent underwriting standards are important.

**A-3. Partial Units**

This issue addresses the cases when a development's inclusionary percentage requirement results in a partial unit obligation. The alternatives for addressing this issue are:

a) The inclusionary obligation is rounded up for any fraction of a unit. If an in-lieu fee payment is allowed under the Ordinance, the developer can choose to provide the full unit or to pay a pro rata in-lieu fee equal to the fraction of the unit that is required.

*Advantages:* By rounding up for any fraction of a unit, more affordable units will be produced under the Ordinance. Provides flexibility by allowing developers to produce the unit or pay the in-lieu fee.

*Disadvantages:* The economic effect of the inclusionary obligation on developers whose obligation results in a partial unit will be increased.

b) The inclusionary obligation is rounded up only when the requirement results in a fraction of a unit that is 0.5 or higher. In this case, if an in-lieu fee payment is allowed under the Ordinance, the developer could chose to provide the full unit or to pay a pro rata in-lieu fee equal to the fraction of the unit that is required.

*Advantages:* Reduces the economic burden on developers whose inclusionary obligation results in small fractions of units. Provides flexibility by allowing developers to produce the unit or pay an in-lieu fee.

*Disadvantages:* Fewer overall units will be produced.

**A-4. Threshold**

This provision determines to which developments the actual construction of inclusionary units pursuant to the Ordinance would apply. Because an inclusionary obligation may present insurmountable financial hardship on very small developments, the Ordinance should contain a threshold to exempt small developments from the inclusionary requirements. The following alternative thresholds have been presented and discussed.

a) Developments with 5 or fewer units will be exempt from the Ordinance.

*Advantages:* This is a reasonable threshold, in that it is unlikely to be economically feasible for developments with fewer than 5 units to be able to comply with the Ordinance.

*Disadvantages:* This threshold may be too low. Developments with more than 5 units may also find it infeasible to comply with the Ordinance. It also may be administratively burdensome to implement.

b) Developments with 10 or fewer units will be exempt from the Ordinance.

*Advantages:* This threshold is consistent with the current policy in RDA areas, proving that developments with 10 units can comply with the RDA's inclusionary obligation.

*Disadvantages:* If the threshold is set too high, the City may be missing an opportunity to produce more affordable units.

c) Developments with 25 or fewer units will be exempt from the Ordinance.

*Advantages:* This threshold will reduce the financial impact on smaller developments.

*Disadvantages:* This threshold may be set too high, causing the City to miss an opportunity to produce more affordable units. Because many developments are on infill sites and are smaller than 25 units, this may result in fewer units being produced and may encourage lower-density development.

d) Developments with 50 or fewer units will be exempt from the Ordinance.

*Advantages:* This threshold will reduce financial impact on smaller developments.

*Disadvantages:* This threshold may be set too high, causing the City to miss an opportunity to produce more affordable units. It may provide an incentive for developers to build smaller less dense developments. Because many developments are on infill sites and are smaller than 50 units, this may result in fewer units being produced and may encourage lower-density development.

**A-5. Term of Affordability**

This provision refers to the length of time affordable units produced under the Ordinance must remain affordable at the required income levels. The term of affordability may be different for homeownership and rental units. Redevelopment law requires a minimum term of 45 years for homeownership and 55 years for rental units.

a) Shorter term: 30 years for rental and ownership units.

*Advantages:* A shorter term of affordability has less of an economic effect on developers.

*Disadvantages:* A 30 year term of affordability is not compliant with California Redevelopment Law. Units produced under the Ordinance will not be counted towards meeting the City's affordable housing production requirements. A shorter term of affordability does not provide for meeting future affordable housing needs.

b) Medium term: 55 years for rental and 45 years for ownership units.

*Advantages:* A longer term of affordability maintains the City's stock of affordable housing to meet future housing needs. These terms meet minimum Redevelopment Law requirements and therefore units produced under the Ordinance will be counted towards the City's affordable housing production requirements.

*Disadvantages:* A longer term of affordability increases the economic effect on developers. A term of affordability that is not permanent does not provide for meeting future affordable housing needs.

c) Long term: 99 years or permanent for rental and ownership units.

*Advantages:* A longer term of affordability maintains the City's stock of affordable housing to meet future housing needs. The units produced under the Ordinance will be counted towards the City's affordable housing production requirements.

*Disadvantages:* A longer term of affordability increases the economic effect on developers.

**A-6. Type of Resale Restriction**

This issue refers to homeownership units only. It establishes the mechanism by which affordability of ownership units is maintained over time, as well as determines how an affordable unit can be resold when the initial buyer chooses to sell.

a) Resale Restriction –the initial homeowner must resell the unit at a price that is affordable to a household at the same income level for which the unit was initially priced, adjusted for inflation. Subsequent buyers of the unit must be income eligible.

   *Advantages:* This preserves the affordability of units produced under the Ordinance without necessarily requiring additional public subsidies in future years. Under this provision, assisted units will be preserved for the length of the term of affordability required in the Ordinance. The initial homeowner earns limited equity upon resale, based on the increase in AMI.

   *Disadvantages:* Resale restrictions focus on ensuring that a unit remains affordable, not that a first-time homebuyer has an opportunity to purchase a home. The owner earns limited equity upon resale, thus limiting the ability of homeownership to be an effective wealth accumulation strategy. If the affordable units are sold at a price that is too close to market price, it may be difficult to find buyers willing to agree to a resale restriction.

b) Shared Equity – the initial homeowner can resell the unit at market price. The City recaptures the difference between the market sales price and the affordable purchase price of the unit, as well as a portion of the appreciation earned at resale. The City can then use these funds to subsidize a replacement affordable ownership unit.

   *Advantages:* The owner earns more equity upon resale of the unit, thus this may be a successful wealth accumulation strategy. With shared equity rather than a resale restriction, it may be easier to find willing buyers for affordable units, even when they are priced close to the market price of comparable units. The funds captured from the sale of the unit can be used to assist another first-time homebuyer, who will have a choice of where he/she wants to live.

   *Disadvantages:* This provision does not preserve the City's stock of affordable homeownership units over the long term.

**A-7. Delayed Operative Date of Ordinance**

This issue establishes when the Ordinance will be implemented. Ordinances generally take effect 30 days after the final reading and adoption of the Ordinance by City Council.

a) Ordinance should become operative one year after the effective date of the Ordinance by City Council.

*Advantages:* Including a date certain for the Ordinance to become operative provides certainty for developers and is easy to administer. A one year time period after effective date of the Ordinance may provide enough time for the market to recover from the current economic conditions. In addition, one year provides sufficient time for developers to adjust their financial and development assumptions to accommodate the Ordinance's requirements.

*Disadvantages:* A one year period after adoption of the Ordinance may not provide enough time for the market to recover from the existing economic condition and therefore may place more economic hardship on developers currently facing financial instability. A delayed effective date will result in fewer affordable units produced.

b) Ordinance would be operative the later of (1) January 1, 2010 or (2) the first day of the month following the first 12 consecutive month period in which 2,000 building permits have been issued, as certified by the Housing Department Director or his/her designee.

*Advantages:* Historically, over the last 20 years, the number of permits has fallen under 2,000 permits three times and this correlates with down economic periods in the City. Should the market not be healthy in a year's time, this option would delay the implementation of the Ordinance until building permits have reached a reasonable level. However, if the market has recovered, the Ordinance would go into effect in January of 2010.

*Disadvantages:* By not adopting a date certain for operation of the Ordinance, this increases uncertainty for developers in planning future developments. Delaying the operation of the ordinance will result in fewer affordable units produced.

c) Ordinance would be operative when the calendar year in which building permits for unsubsidized housing as at least equal to 50% of the number of permits for unsubsidized housing issued in a rolling average of the past ten years.

*Advantages*: Tying the effective date to building permit activity in the City may allow the market to recover before inclusionary requirements are operative. By only counting market-rate production, this is a better measure of economic recovery.

*Disadvantages*: Because this rolling production number is so low, it may not allow for sufficient time for the market to recover. A delayed effective date will result in fewer affordable housing units produced. This would be more difficult to administer because the permit tracking system does not distinguish between unsubsidized and affordable units.

## A-8. Grandfathering/Pipeline

To impose new requirements on a developer who has already invested substantial time and resources into purchase, pre-development and planning for a development may increase the developer's costs and the uncertainty of the development process. For this reason, inclusionary ordinances often exempt developments that are in the development pipeline from the inclusionary requirements. This provision specifies the step in the pre-development process that developments must have completed in order to qualify for this exemption. Establishing the cut-off point too early in the process will exempt developments that have completed initial planning but could still adjust to the inclusionary requirements without incurring high additional costs. Establishing the point too late in the development process can impose an unfair financial burden on developments that have invested sufficient resources into planning the project without inclusionary requirements.

In addition to establishing the cut-off point for the grandfathering provision, the Ordinance can require that developments that qualify for the exemption actually begin construction within a reasonable amount of time. This ensures that developments in the pipeline do not receive their exemption and then stall their construction timeline and delay building their units.

The grandfathering provision can exempt those projects that meet all of the following criteria on or before the Effective Date of the Ordinance:

a) The developer has purchased land within one year prior to the adoption date and has submitted a preliminary review application to the City or has negotiated a purchase agreement within one year prior to the adoption date involving the payment of a substantial consideration to either the landowner or the City and has submitted a preliminary review application to the City.

   *Advantages:* Ordinance would have no financial impact on developers that have already purchased land.

   *Disadvantages:* This will be difficult to administer because the City can not efficiently or effectively monitor transactions in the private market. This alternative may exempt a large pipeline of projects, thus resulting in fewer affordable units produced. Without requiring the exempt developments to demonstrate continued progress toward completion, projects may be deemed exempt and then stall in building in order to escape inclusionary requirements.

b) A landowner has owned the land for at least one year prior to the adoption date, has submitted a preliminary review application to the City, and submits an additional entitlement application within one year following the submittal of the preliminary application. The requirement for an additional entitlement application will be waived if the City prohibits submittal of such applications.

   *Advantages:* Would exempt developers that have invested time and resources in land purchase, planning and predevelopment, thus promoting fairness for developers. This option requires demonstrated progress toward entitlement and permitting.

   *Disadvantages:* This will be difficult to administer because the City can not efficiently or effectively monitor transactions in the private market. This alternative may exempt a large pipeline of projects, thus resulting in fewer affordable units produced. The City does not have a mechanism for tracking private land transactions.

c) The developer has submitted a "substantially complete application" for a planning permit.

*Advantages:* This alternative avoids placing new requirements on developments that have invested substantial time and resources into planning and pre-development, thus promoting fairness in the development process. It also provides for more certainty of costs and revenue for developments in the pipeline.

*Disadvantages:* Exempting these developments will result in fewer affordable units being produced. In addition, without requiring the exempt developments to demonstrate continued progress toward completion, projects may be deemed exempt and then stall in building in order to escape inclusionary requirements, thus resulting in fewer affordable units being produced.

d) The developer has received a building permit before the Effective Date of the Ordinance.

*Advantages:* This alternative avoids placing new requirements on developments that have invested substantial time and resources into planning and pre-development, thus promoting fairness in the development process. It also provides for more certainty of costs and revenue for developments in the pipeline.

*Disadvantages:* This may be difficult to administer and monitor. Exempting these developments will result in fewer affordable units being produced. In addition, without requiring the exempt developments to demonstrate continued progress toward completion, projects may be deemed exempt and then stall in building in order to escape inclusionary requirements, thus resulting in fewer affordable units being produced.

e) The developer meets one of the above requirements (a) and/or (b) and demonstrates that continued progress is made towards completion of the development. Continued progress is demonstrated by: a) receiving an approved planning permit (entitlement) within 18 months after the application filing and b) receiving an approved building permit within 24 months after applying for the planning permit.

*Advantages:* This alternative avoids placing new requirements on developments that have invested substantial time and resources into planning and pre-development, thus providing more certainty of costs and revenue for developments in the pipeline. It also ensures that only those developments that are legitimately in the process of being built are exempt from inclusionary requirements. This may result in fewer projects being exempt and more affordable units being produced. The requirement to demonstrate continued progress toward completion would also apply to exempt master planned developments. Those sections of exempt master planned developments that do not receive an approved building permit within one to two years of entitlement would lose their grandfather status. This ensures that large, master planned developments that have begun planning, but are delaying in starting construction must make progress towards construction or comply with the inclusionary requirements. This may increase the number of affordable units produced.

*Disadvantages:* Administering this exemption and monitoring the exempt projects may increase the workload of the Housing and Planning Departments. Can require 24+ months before exemption from the inclusionary obligations is verified.

### A-9. Pressure Relief Valve

This provision would waive elements of the inclusionary requirements in times of economic downturns to promote development during these times. The issues to consider in drafting this provision include determining when the pressure relief valve comes into effect, how long it lasts, and what manner of relief it will provide.

a) The pressure relief valve will be activated when fewer than 2,000 building permits have been issued in any consecutive 12 month period.

   *Advantages:* This allows the Ordinance to respond to periods of demonstrated economic distress in the development community.

   *Disadvantages:* This mechanism may be difficult to administer. By its nature, it will be very difficult to anticipate this pressure relief valve being activated, thus it may increase uncertainty and unpredictability in the application of the Ordinance and in the development process in the City. It causes continuous uncertainty in the applicability of the Ordinance.

b) The pressure relief valve will be activated for homeownership units only when the gap between a unit's market price and its affordable price for households in the lowest income category targeted by the homeownership provisions of the Ordinance is $10,000 or less. When this occurs, the unit will still be required to be sold at the affordable price to an income-qualified household, but will not be required to carry an equity share and/or resale restriction provision. For this provision, "market price" will be defined as the price, within three months of the proposed date of sale of the affordable unit, of market-rate units actually sold in the same development that are comparable in bedroom count to the affordable unit.

   *Advantages:* This allows the Ordinance to respond to periods of demonstrated and current home price declines and is easier to administer and monitor. Because it is difficult to sell units with resale restrictions when the affordable price approaches the market price of comparable units, this pressure relief valve will make it easier for developers to sell their affordable units, while still meeting the current demand for affordable homeownership units. This may reduce carrying costs for developers.

   *Disadvantages:* By waiving the equity share and/or resale restriction requirement, the City loses its ability to collect funds upon the resale of the affordable unit, thus losing funds that can be used to subsidize replacement affordable homeownership units, resulting in the loss over time of affordable homeownership units.

**Part B: Alternative Compliance Options**

The Ordinance may stipulate that developers can only comply with their inclusionary requirements through building affordable units on the same site as their market-rate units or may offer developers alternatives to building the required affordable units on-site. Alternative compliance options may reduce the cost to the developer of complying with the inclusionary requirements. These options may be offered through the Ordinance by-right, only when specified conditions are met, or only upon approval of the Housing Department Director. The issues to consider in offering alternative compliance options include: should alternative compliance options be offered; if so, what options should be offered; under what conditions should developers be allowed to use the alternative compliance options; should the Housing Department Director's approval be required; and should developers be required to provide more affordable units if they choose to use an alternative compliance option.

a) Developers are only allowed to comply with inclusionary requirements through building affordable units on-site.

   *Advantages:* Affordable units will be dispersed within market-rate developments and economic integration of developments and neighborhoods will be achieved. Lower-income households will have more housing options throughout the City. Increases the simplicity of the Ordinance.

   *Disadvantages:* May be a financial burden for developers, depending on the type of construction and characteristics of the site. Does not offer developers flexibility in complying with inclusionary requirements.

b) Developers are allowed by-right to comply with inclusionary requirements through any alternative compliance option.

   *Advantages:* Provides maximum flexibility for developers. May reduce the cost of compliance for developers.

   *Disadvantages:* May result in fewer units being built on-site, thus the City may lose the opportunity to achieve economic integration of developments and neighborhoods. May result in developers choosing compliance options that do not require units to be produced, thus resulting in fewer affordable units. May cause the outcome of the Ordinance to be less predictable.

c) Developers can use alternative compliance options when specified conditions are met and the approval of the Housing Department Director is granted.

*Advantages:* Provides flexibility for developers while ensuring that the Ordinance's goals are met. May reduce uncertainty and costs for some developers in complying with inclusionary requirements.

*Disadvantages:* More staff intensive to implement and less predicable for developers. May result in fewer affordable units being produced if many developers are allowed to comply through alternative compliance options that do not require the production of units. If many developers are allowed to comply by building affordable units off-site, the City may lose the opportunity to achieve economic integration of developments and neighborhoods.

**B-1. Off-site Construction**

a) Developers can use the off-site construction alternative compliance option if it is demonstrated that another site would be a more appropriate site for affordable housing or if more units or deeper affordability would be achieved off-site. Approval for building off-site must be granted by the Housing Department Director.

*Advantages:* Provides flexibility for developers while ensuring that the Ordinance's goals are met. If the off-site land is less expensive, this option may reduce costs for some developers in complying with inclusionary requirements. It also may result in more affordable units being produced if developers opt for building off-site by offering more units or deeper affordability. Developers building off-site may be able to produce a different type of housing that is better suited for affordable housing than they would produce on-site. Developers can access State and federal funding to achieve this deeper affordability, something that wouldn't be possible if the units were integrated. By placing the burden of proof on the developer to demonstrate financial hardship, this provision may lead to less prevalent use of the off-site alternative compliance option, thus promoting economic integration of developments.

*Disadvantages:* The City loses the opportunity to achieve economic integration of developments and neighborhoods. It may be difficult to ensure that the affordable units are built at the same time as the market-rate units if the affordable units are built off-site. Building affordable units off-site may lead to in neighborhood opposition issues.

b) Developers can use the off-site alternative compliance option by-right if they will partner with an experienced affordable housing developer. The Housing Department Director must approve the financing plan of the proposed affordable housing development. A more flexible timeline for building the affordable units may be permitted.

*Advantages:* Promotes partnerships between market-rate and affordable housing developers. May reduce the cost of providing the affordable housing units and allows for the leveraging of State and federal funds. Provides for more flexibility for developers in meeting their inclusionary obligations.

*Disadvantages:* By allowing by-right compliance through building affordable units off-site, the clustering of affordable housing may result and the City may lose the opportunity to achieve economic integration of developments and neighborhoods. Building affordable units off-site may lead to in neighborhood opposition issues.

c) Developers using the off-site alternative compliance option are required to produce more affordable units than they would be required to produce on-site.

*Advantages:* Provides an incentive for building affordable units on-site, thus promoting economic integration. May result in more affordable units being produced, if the off-site option is used.

*Disadvantages:* May increase the cost of compliance for developers choosing to build the affordable units off-site.

**B-2. Credit Trading**

This alternative compliance option allows developers to transfer credits of affordable units to other developers, thus allowing developers to pool their credits and meet their inclusionary obligations together in larger affordable developments.

a) The developer is allowed to trade credits rather than build affordable units on-site, provided specified conditions are met and approval of the Housing Department Director is granted.

*Advantages:* Allowing credit transfers provides more flexibility for developers in meeting inclusionary obligations. If developers pool their credits and produce larger affordable developments, these projects may be more economically feasible and may represent lower cost of compliance for the developers. The resulting developments may be easier to manage than scattered affordable housing units.

*Disadvantages:* Allowing credit transfers may result in fewer affordable units produced on-site, thus the City may lose an opportunity to achieve economic integration of developments and neighborhoods. It also may be difficult to ensure that affordable units produced through credit transfers are produced at the same time as the market-rate units. Thus, the development of affordable units may be delayed.

**b) Credit Transfer for Housing Preservation**

An owner of a multi-family project that is subject to a HUD restriction that expires after the date of the ordinance takes effect can receive a credit for one future inclusionary unit for every five HUD contract units that the owner agrees to maintain at affordable levels for as long as HUD provides subsidies, but for no less than five years. This benefit is not transferable from the owner to another developer.

*Advantages:* This will incentivize owners of HUD-subsidized units to keep the units affordable for a longer period of time.

*Disadvantages:* Requiring that the expiring units are maintained for a five year period of affordability is only a short-term affordability restriction. This option will not create new units in the City, thus it will not help the City to meet the growing need for affordable housing.

**B-3. In-Lieu Fee Option**

An in-lieu fee alternative compliance option allows the developer to pay a per-unit in-lieu fee rather than producing affordable units. The City can then use the funds collected through the in-lieu fee to subsidize future affordable housing projects. The in-lieu fee option can be offered by-right to all developers, can be allowed only if certain conditions are met, or can only be allowed in cases when a developer's inclusionary obligation results in a partial unit.

a) The in-lieu fee option is offered by-right to all developers.

*Advantages:* An in-lieu fee provides for flexibility for developers in complying with inclusionary requirements and is easy to administer. Requiring developers to build affordable units on-site in low density developments may be an unfair economic burden on developers. For these developments, an in-lieu fee option may be more appropriate. If the amount of the in-lieu fee is less than the cost of providing the affordable unit, this will be a less costly compliance option for developers. If the amount of the in-lieu fee is equal to the cost of providing the affordable unit, the City will collect funds sufficient to provide the number of affordable units required by the Ordinance. The City can then target the uses of these funds to meet a variety of affordable housing goals.

*Disadvantages:* Allowing an in-lieu fee option by-right may not produce affordable units as quickly as requiring them to be built on-site. The City also may miss the opportunity to promote economic integration since fewer affordable units will be produced on-site. With the in-lieu fee, the City has the responsibility for providing the affordable units, including assembling the land and finding a developer. In addition, if the in-lieu fee amount is less than the cost of providing the affordable unit, the funds collected by the City will not be sufficient to produce the number of units that would otherwise be achieved through the Ordinance. Thus, fewer affordable units will be produced and/or additional City funds will be required to build the number of units that would otherwise be required by the Ordinance. If the in-lieu fee is set too low, it will always be selected, so possibilities for economic integration or nonprofit-partnerships will be eliminated.

b) The in-lieu fee option is offered only in certain circumstances.

*Advantages:* This may provide for flexibility for developers while ensuring that the Ordinance's goals are met.

c) The in-lieu fee option is allowed only when a developer's affordable housing obligation results in a partial unit.

*Advantages:* By allowing an in-lieu fee option only for partial units, more affordable units will be produced by developers, without the City's involvement. The City will collect some in-lieu fee revenue that can be used to fund affordable housing.

*Disadvantages:* Does not provide for flexibility for developers in meeting inclusionary requirements. The City will likely not collect sufficient funds to produce many units from an in-lieu fee on partial units only.

**B-4. In-Lieu Fee Amount**

The manner in which the per unit in-lieu fee is calculated will determine how widespread the use of this option is, how many units are produced through the Ordinance, and whether the fee revenue collected by the City will be sufficient to construct affordable units.

a) The in-lieu fee will equal the average amount of public subsidy required to produce the affordable unit, assuming leveraged public financing is used.

*Advantages:* For some unit types, this would be a higher fee than is currently required under the RDA policy. Assuming public financing is secured, this fee amount may be sufficient to provide the number of units otherwise required through the Ordinance. Simple to administer and calculate.

*Disadvantages:* Unless the in-lieu fee is an amount at least equal to the affordability gap of the unit, the developer will always choose to pay the in-lieu fee rather than produce the unit. This will result in fewer affordable units produced and the City will not collect fee revenue that is sufficient to provide the affordable units otherwise required by the Ordinance.

b) The in-lieu fee amount will equal the cost to construct the unit.

*Advantages:* This would likely be a higher fee than is currently required under the RDA policy. A fee amount equal to the cost of constructing the affordable unit will provide fee revenue to the City that will be sufficient to provide the number of units otherwise required through the Ordinance. Setting the in-lieu fee amount equal to the cost of constructing the unit may lead to more affordable units being built.

*Disadvantages:* Setting the in-lieu fee amount equal to the cost of constructing the unit may represent a financial hardship to the developer, potentially resulting in fewer in-lieu fee funds collected by the City.

c) The in-lieu fee amount will equal the "affordability gap," the gap between the cost of constructing the unit and the revenue collected from selling or renting the unit at the affordable sales price or rent.

*Advantages:* This would likely be a higher fee than is currently required under the RdA policy. Unless the in-lieu fee is an amount at least equal to the affordability gap of the unit, the developer will always chose to pay the in-lieu fee rather than produce the unit. By setting the in-lieu fee equal to the affordability gap, more affordable units may be produced. In addition, the in-lieu fee revenue collected by the City will be sufficient to construct the number of units otherwise required by the Ordinance. Additional City funds will not be required.

d) The in-lieu fee will be established at the following amounts:

| | |
|---|---|
| Rental units | $75,000 |
| Condominium units | $90,000 |
| Townhomes | $100,000 |
| Single family detached | $200,000 |
| High Rise (not downtown) | $200,000 |

*Advantages:* A set fee is easy to understand and administer.

*Disadvantages:* There is no rationale regarding how the fee is set and may be indefensible if disputed by the development community. The amount of the fee is insufficient to replace the on-site units for rental, condominium and townhome units.

**B-5. Land Dedication**

Under this alternative compliance option, developers can donate land to the City instead of building affordable units on-site. The issues to consider in drafting this provision include: translating the developer's inclusionary obligation into a required minimum value of land to be donated and determining the value of the donated land.

a) Land dedication is not allowed as an alternative compliance option.

*Advantages:* More affordable units will be produced on-site, thus promoting economic integration of developments and neighborhoods.

*Disadvantages:* Provides less flexibility for developers in complying with inclusionary obligations. By not allowing land dedication in any case, the City may be missing an opportunity to receive developable land for future affordable housing projects.

b) Land dedication is allowed as an alternative compliance option, per the approval of the Housing Department Director.

*Advantages:* Allowing land dedication in cases approved by the Housing Department Director may result in the City receiving land that can be used for future affordable housing projects. It also provides flexibility for developers in complying with inclusionary housing obligations.

*Disadvantages:* Allowing land dedication may result in fewer affordable units produced on-site, thus the City may lose the opportunity for achieving economic integration of developments and neighborhoods. Allowing land dedication will likely delay the construction of affordable units, may result in neighborhood opposition issues, and does not ensure that affordable units will be built. Additional public subsidy will likely be required to produce affordable units on land received through the land dedication option, as free land may be insufficient to subsidize the development of affordable units. With this option, the City may be responsible for ensuring that affordable housing is completed on the dedicated land and will also be responsible for the costs of holding and/or disposing of the land. If the value of the land is not equal to the cost to the developer of providing the affordable units, the developer will likely opt to donate the land.

**B-6. Acquisition / Acquisition & Rehabilitation**

This alternative compliance option allows developers to meet their inclusionary requirements by acquiring and rehabilitating market-rate units and converting them to affordable units. The issues to consider in drafting this provision include: what requirements should be placed on the acquired and rehabilitated units to ensure that they are comparable to the developer's on-site inclusionary obligation; should more units be required if developers choose this option; how can the City ensure that the units produced under this option are produced at the same time as the market-rate units; and should the inclusionary obligation under this option be calculated by bedroom count or by number of units.

a) Developers should be allowed to comply with the inclusionary obligation through acquiring and rehabilitating units, provided specified conditions are met and approval of the Housing Department Director is granted.

*Advantages:* Allowing this option provides flexibility for developers in meeting inclusionary obligations and may provide a lower cost option for compliance. It also may promote partnerships between market rate and affordable housing developers. In reviewing requests for using this option and granting approval, the Housing Department Director can target acquisition and rehabilitation projects in certain geographic areas of the City, such as Strong Neighborhood Initiative areas or areas that are suffering from disinvestment. This may have revitalizing effects in these areas and may improve the City's deteriorating housing stock.

*Disadvantages:* Acquisition and rehabilitation projects may require public subsidies, thus resulting in fewer affordable units being produced without public subsidy. This option will not result in affordable units being provided on-site, thus the City may miss the opportunity to achieve economic integration of developments and neighborhoods. Acquisition and rehabilitation projects may lead to clustering of affordable housing and may result in neighborhood opposition issues. It may be difficult to ensure that acquired and rehabilitated units are produced at the same time as the market-rate units, thus resulting in a delay in production of affordable units. In addition, acquisition and rehabilitation projects may displace current tenants and may lead to relocation issues. Allowing acquisition/rehabilitation may be difficult to administer because standards will have to be developed regarding what types of units will be acceptable for meeting the inclusionary obligation. Unit sizes may be different in the new market-rate development and the acquisition/rehabilitation project, thus resulting in smaller affordable units produced than would be if built on-site. Additionally, this option will not create new units in the City, thus it will not help the City to meet the growing need for affordable housing.

b) The developer is allowed to comply with the Ordinance through acquisition and rehabilitation of market-rate units, provided that the total number of bedrooms in the resulting affordable units are equal to the total number of bedrooms contained in the affordable units that would be required if the developer complied by building the units on-site.

   *Advantages:* Calculating a developer's inclusionary obligation for acquisition and rehabilitation units by bedroom count ensures that developers do not meet their inclusionary obligation under this option by providing smaller units than they would otherwise be required to provide on-site. This may produce more affordable units overall. It also may provide an incentive for developers to produce larger affordable units, thus helping to meet the City's need for affordable housing for families.

c) Developers who acquire and rehabilitate existing housing units and market the units with deeded affordability restrictions shall receive one future inclusionary credit for every four units rehabilitated.

   *Advantages:* May provide an incentive for acquiring and rehabilitating market-rate units as affordable units. By offering a four-to-one credit, more affordable units will be produced.

**B-7. Combination**

Combining alternative compliance options allows developers to meet their inclusionary obligations through any combination of the allowed alternative compliance options.

a) The developer is allowed to combine any allowed alternative compliance options rather than build affordable units on-site, provided specified conditions are met and approval of the Housing Department Director is granted.

   *Advantages:* Allowing combinations of alternative compliance options provides developers with maximum flexibility in meeting their inclusionary obligations. This may result in a reduced cost of compliance for developers. Through experience, staff has realized that sometimes it works best to allow for developers to meet their obligation through a variety of methods (such as building an off-site project that meets most of the obligation and paying a small in-lieu fee to meet the rest, or building VLI units offsite and integrating LI units on-site).

*Disadvantages:* Allowing combinations of alternative compliance options may be difficult to administer and monitor. Depending on which options are allowed to be combined, this may result in fewer affordable units produced through the Ordinance.

**Part C: Offsets**

The Ordinance may include a series of incentives and offsets in order to reduce the cost to developers of producing the affordable units required. The potential offsets that the Ordinance can include are explained below.

**C-1. Flexibility with Exterior Design Standards**

These offsets offer developers flexibility with the exterior design standards that apply to the affordable units.

a) Developers will be provided with a density bonus equal to the percentage of the development's total units that are required to be affordable.

   *Advantages:* By allowing developers to include more units in developments that provide affordable units on-site, the per-unit cost of the development may be reduced and the revenue the developer can generate with the market-rate units may be increased. This may provide an incentive for developers to build the affordable units on-site, thus achieving economic integration.

   *Disadvantages:* Increasing the density of a development may be met with neighborhood resistance. In addition, due to market, neighborhood and design considerations, developers may not seek to increase the density of their developments, thus reducing the value of this offset. Increasing density may also have a fiscal impact on the City, as more housing units will increase the demand for City services.

b) Developers will be provided with reduced parking requirement for the affordable units that are built on-site in proximity to transit and/or in combination with Encompasses or char sharing when made available to residents.

   *Advantages:* Because of the high cost of constructing structured parking, this offset may substantially lower the cost of providing affordable units. This offset will not likely have a fiscal impact on the City.

   *Disadvantages:* In neighborhoods where parking is already impacted, developers may not seek a reduced parking requirement, as fewer parking spaces may present marketing challenges for their units. When the reduced parking requirement offset is used, it may lead to impacted parking in neighborhoods and may be met with neighborhood resistance.

c) Developers will be offered offsets for the affordable units including: reduced lot size and set back requirements, altered landscaping requirements, reduced minimum side yard requirements and reduced floor area ratio requirements.

*Advantages:* Altering these exterior design standards for affordable inclusionary units may reduce the cost of compliance for developers and will not likely have a fiscal impact on the City.

*Disadvantages:* Altering exterior design standards may raise neighborhood concerns. It also may result in affordable units that are visibly different from the market rate units in the same development.

**C-2. Alternative Interior Design Standards / Alternative Product Type**

This set of potential offsets offer developers alternative interior design standards for affordable units as well as the option of providing affordable units that are a different product type than the market-rate units in the development, in order to reduce the cost of providing the affordable units.

a) Developers of single family units can provide affordable units that are of a different product type on site. The bedroom count distribution of the affordable units must be comparable to that of the market rate units in the development.

*Advantages:* This offset provides developers with flexibility in meeting inclusionary requirements. It also reduces the per unit cost of construction for affordable units, thus offers developers a more cost effective way to comply with the Ordinance. The offset will not likely have a fiscal impact on the City.

*Disadvantages:* Providing affordable units that are a different product type than the market-rate units may not be feasible or desirable for all developments or sites, thus reducing the value of this offset to developers. If the product types of the affordable and market-rate units in a development are different and the affordable units are clustered together, this offset may create segregation within the development.

b) The developer is allowed to provide alternative interior materials, appliances and/or design for the on-site affordable units.

*Advantages:* May reduce the per unit construction costs for the affordable units, thus reducing the cost of compliance for developers.

*Disadvantages:* For rental developments, it may be inconvenient and administratively prohibitive to offer different interior finishes for affordable and market-rate units, because the developer would not be able to easily substitute market-rate units for affordable units when tenants are no longer income eligible for the affordable units.

### C-3. Deferral of Impact Fees

Payment of impact fees is required prior to the issuance of a building permit. This offset would allow the developer to defer the payment of impact fees for the affordable units, thus reducing the up-front costs of the development as well as financing costs.

a) The developer can delay payment of impact fees for the affordable units.

*Advantages:* Allowing delayed payment of impact fees for affordable units is consistent with current City policy and may reduce the cost to the developer of complying with inclusionary obligations.

*Disadvantages:* Requiring the payment of impact fees at different times for different units within the same development may be complicated to administer. Delaying payment of impact fees will have a fiscal impact on the City.

### C-4. Expedited Review

This offset is offered to developers who provide affordable units on-site. It provides for a shorter planning review process for these developments.

a) The developer is offered an expedited review process that includes mutually agreed upon milestones for both the City and the developer, provided the affordable units are provided on-site.

*Advantages:* An expedited review process may provide more certainty for developers and may reduce development costs. This incentive may result in more affordable units being provided on-site, thus achieving economic integration.

*Disadvantages:* If many developers provide affordable units on-site, it may be difficult to provide them all with expedited review processes. This may result in the need for additional staff to effectively implement this offset. Because the review process is uncertain and it is difficult to achieve consensus on the "normal" process timeline, it may be difficult to achieve consensus on an expedited timeline.

### C-5. Technical Assistance

The Housing Departments can offer technical assistance to developers who will meet their inclusionary obligation by building affordable units on-site.

a) Developers who provide affordable inclusionary units on-site will be offered technical assistance with the development review process, financing alternatives for affordable units, and assistance in selling or renting the affordable units.

*Advantages:* This incentive may lead to more affordable units being built on-site, thus increasing economic integration of developments and neighborhoods. The technical assistance may allow developers to access financing for affordable units, thus reducing the cost or providing the affordable units.

*Disadvantages:* If all developers build the affordable units on-site and request technical assistance, this may result in significant demand for staff time in offering technical assistance.

**C-6. Ability to Obtain Federal, State and Locally-Controlled Funds**

Developers may be allowed or prohibited from accessing public funds to subsidize the development of the affordable units required under the Ordinance.

a) The developer is allowed to apply for any financial subsidy to finance the development of the affordable inclusionary units.

*Advantages:* Allowing financial subsidy reduces the cost to the developer of providing the affordable units. Makes it easier to achieve greater affordability.

*Disadvantages:* Allowing developers to apply for public financing for the inclusionary units puts those units in competition with other affordable developments for limited funds. This may reduce the funds available for other affordable housing developments in the City.

b) The developer should not be allowed to apply for any public financial subsidy for the required inclusionary units.

*Advantages:* This preserves public funds for other affordable housing projects in the City.

*Disadvantages:* This does not provide developers with the opportunity to reduce the economic effect of the inclusionary requirement.

c) The developer is not permitted to access federal and State financing and is only allowed to obtain local subsidies if deeper affordability is achieved or more affordable units are provided than is required under the Ordinance.

*Advantages:* This provides incentive for developers to improve the affordability or increase the number of affordable units they provide while preserving public funds for other affordable housing projects in the City. This may lead to more affordable units being produced or more units targeted at lower income levels.

*Disadvantages:* This does not provide all developers with the opportunity to reduce the economic effect of the inclusionary requirement.

## Part D: Offsets Currently Offered to Developments that Include Affordable Units

The following fee exemptions and waivers are currently offered to rental developments that include affordable units. Developments that comply with the Ordinance by building affordable units on-site and meet the requirements detailed below will be eligible for the exemptions and waivers.

### D-1. Park Fee Exemption

This offset applies to developments that include affordable units targeted to households earning less than 60 percent of AMI.

### D-2. Property Tax Exemption

This offset applies to rental developers who partner with a nonprofit developer that is a certified 501(c)(3) organization and who provide units that are affordable to households earning less than 80 percent of AMI. To qualify for this exemption, the managing general partner must be a non-profit as defined in the California Revenue and Taxation Code Section 214 and must have "material participation" and "substantial management duties" in the project, as defined in the California Board of Equalization Rule 140.1.

### D-3. Construction Tax Exemption

This offset applies to rental developments that provide units that are affordable to households earning 50 percent of AMI or below. Eligible developments can be exempt from the following construction taxes: Building and Structure Construction Tax, construction portion of the Construction and Conveyance Tax, Commercial-Residential Mobilehome Park Building Tax, and Residential Construction Tax.

CEDC AGENDA: 11/24/08
ITEM: 4b

SUPPLEMENTAL

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

# Memorandum

**TO:** COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE

**FROM:** Leslye Krutko

**SUBJECT:** SEE BELOW

**DATE:** November 19, 2008

Approved [signature] Date 11-19-08

**COUNCIL DISTRICT:** City-Wide
**SNI AREA:** N/A

## SUPPLEMENTAL REPORT

**SUBJECT: ADDITIONAL SUPPORTING INFORMATION REQUESTED IN RELATION TO THE CITY'S CONSIDERATION OF A CITYWIDE INCLUSIONARY HOUSING ORDINANCE**

In the course of discussions regarding the development of a policy recommendation for a Citywide Inclusionary Housing ordinance, the Mayor and City Council requested that the Housing Department provide additional information to help inform the Council as it makes its decision whether to adopt an ordinance and what provisions such an ordinance might contain. Specifically, the Department was requested to provide the following information:

(1) ATTACHMENT B – A Compilation of the Comments Received During the Outreach Process
(2) ATTACHMENT C – Alternative Policies and Funding Sources for Affordable Housing
(3) ATTACHMENT D – A Survey of Other Cities with Inclusionary Housing Programs
(4) ATTACHMENT E – A Literature Review of Studies Completed on the Impact of Inclusionary Housing
(5) ATTACHMENT F – Statistics Regarding Past and Future Production of Affordable, Inclusionary, and Market Rate Housing
(6) ATTACHMENT G – Several Questions Raised at the November 10th Study Session, including the Impact an Inclusionary Program would have on City Revenues.

Attached to this supplemental memorandum are the responses to the first four of the six items above (Attachments B, C, D and E).

The Department is working with the Planning, Building and Code Enforcement Department and the Redevelopment Agency to complete the production projections. While it is an easy assignment to produce information about past performance, projections require substantial effort, including knowledge of individual projects and when it is anticipated that they will move forward. This information, along with responses to the questions raised on November 10th, will be sent under separate cover.

**LESLYE KRUTKO**
Director of Housing

Attachments

For questions, please contact LESLYE KRUTKO, DIRECTOR OF HOUSING, at (408) 535-3851

## ATTACHMENT B

## Comments Received During the Outreach Process (July to Date)

The attached chart summarizes the comments received in the following settings over the course of the past several months:

(1) One-on-One Meetings with Developers, Advocates, and Other Interest Groups—Held from August through November

(2) Stakeholder Meetings—Meetings on September 23rd, September 25th, October 6th

(3) Public Outreach Meetings—Meetings on October 14th, October 23rd, November 3rd, November 6th, November 10th, November 12th

(4) Council, Committee, and Commission Meetings—Meetings on July 10th, August 6th, August 14th, September 11th, October 9th, October 15th, October 29th, November 10th

### PARTICIPATION

The one-on-one meetings were particularly helpful. The developers we met with were pleased to have the opportunity to speak with us and to provide their concerns, opinions, and recommendations. A total of 47 people attended the stakeholder meetings and 72 citizens attended the six public outreach meetings. (These numbers represent unduplicated people; some people attended multiple meetings.) A few written comments were received.

### BASIC FINDINGS

- Experience with Inclusionary Programs-- Developers have lots of experience working with inclusionary housing in the Bay Area. Cities mentioned in the one-on-one meetings included: Santa Clara, Cupertino, Dublin, Walnut Creek, Fremont, Union City, Contra Costa County, Pleasanton, Livermore, San Diego, Oceanside, Santa Cruz, Palo Alto, Sunnyvale, San Mateo, Mountain View, Hayward, Irvine, Sacramento, San Bruno, Redwood City, Los Gatos, and Carlsbad. Many developers have had experience developing housing in San Jose Redevelopment Project Areas, where inclusionary requirements are currently in place. Developers were able to provide information about what worked and what didn't work. Several cities were noted as having particularly problematic ordinances, and others as having ordinances that San Jose should review in considering how to formulate an ordinance.

- Concern About Economy—It was widely acknowledged that this is a particularly difficult economic climate. In fact, for nearly every developer, it is the worst economic climate they have seen in their careers. The City needs to ensure that the ordinance has a lag factor to ensure that the economy is back on track before implementation. There should also be triggers included in any ordinance that respond to situations where the market has dropped.

- Support or Opposition to Inclusionary Programs—While most developers had experience with inclusionary programs, most were clear that they would prefer that the City's program remain confined to the Redevelopment Project Areas. Affordable housing advocates are strongly supportive of expanding inclusionary zoning beyond RdA areas as a way to increase affordable housing opportunities in the City.

- Economic Impact of Inclusionary—There were mixed views on the economic impact of inclusionary programs, and who ultimately pays. If there are adequate offsets, then inclusionary requirements can be cost neutral. Regardless, most developers interviewed indicated that inclusionary programs do not increase the price of housing; rather, market forces dictate the price of housing. Many said they price their land offers to account for inclusionary requirements. Some differed in this opinion and said that land owners won't adjust their prices and that the cost of inclusionary will make building impracticable.

- ELI Housing Need—Advocates feel strongly that San Jose needs to address the need for housing for extremely low-income households. Generally, they understood that this is most practical with alternative compliance options, such as an off-site project with an affordable housing developer or payment of an in-lieu fee. Nevertheless, the provision of housing opportunities for San Jose's most vulnerable residents was their highest priority.

- Guiding Principles— Any ordinance should be structured to meet the following guiding principles:

  (1) **Simplicity** – An inclusionary housing policy should be easy for the developers to understand and for the City to administer.

  (2) **Flexibility** – An inclusionary housing policy should give developers as many alternatives as possible for compliance.

  (3) **Consistency and Fairness** – All developers should be treated equally, particularly with respect to projects in the pipeline.

  (4) **Certainty** – Developers, affordable housing advocates and the City should have advanced knowledge of what the impacts and outcomes will be with an inclusionary housing policy. The rules and process of the inclusionary housing policy should be clearly defined.

- Pipeline—The pipeline is a real concern for those developers who have already committed to land purchases or have taken steps as part of the entitlement process. It is critical that any ordinance have a clear and fair definition of pipeline. At the same time it was acknowledged that there should be some timelines that have to be met to ensure that the project will proceed.

- Alternative Compliance Options—Developers strongly preferred as much flexibility, and as many alternative compliance options as possible. In-lieu fees were considered important, as was the ability to work with a nonprofit developer on an off-site project, and to develop a different product type. Neighborhood residents expressed concern about these alternative compliance options being "by right" and wanted the City to have a say in whether these options could be selected.

- Offsets—Some developers thought offsets worked, and others didn't. By way of example, parking reductions were cited by some as being helpful, since parking spaces can cost upwards of $50,000 a space. However, others stated that the market demands parking, so even if offered, this offset wouldn't have value. Neighborhood residents expressed concerns about offsets, wanting reassurance that they would have a say regarding offsets on any project being proposed in their neighborhoods.

- Homebuyer Selection—Many developers expressed that it is critical that an inclusionary program be designed so that it is easy to find buyers. Concern was expressed that there be a way to be relieved of the affordable requirement if, after a concerted effort, a buyer could not be found.

- Miscellaneous—Several developers building projects in RdA areas inquired about the possibility of opting to participate under the new program with the thought that the program now under development might offer more flexibility than the current Redevelopment inclusionary policy.

## COMMENTS

Attached is a chart that details the comments received to date. There is no weighting of these comments. In other words, some of the statements included in the charts were said one time, and others were said multiple times. The points that were raised most often, however, are noted in the section above.

## COMMENTS RECEIVED DURING THE PUBLIC OUTREACH PROCESS

**Comments from Developers from One-on-One meetings**

| Issue/Option | Positive Comments/Suggestions Received | Negative Comments/Concerns Expressed | General Comments |
|---|---|---|---|
| General Comments | - Thank you for reaching out. Work all over the country, and no one has ever asked their opinion/for advice before<br>- Really appreciate having the opportunity to meet to discuss our experience and concerns.<br>- Not sure that below market rate (BMR) programs should be compromised by poor economic conditions.<br>- Land markets are resettling. In some ways a downturn is the best time to consider a policy. | - Certainly a bad economic time.<br>- This is a perfect storm. Not doing anything right now due to economy.<br>- VLI rents are close to LI rents, which is a problem<br>- The biggest challenge right now is the economy<br>- Timing is PR Problem. Things are bad now.<br>- Land is not selling because land owners haven't adjusted to new economic reality. There is a bid-ask gap.<br>- Hard to make a land deal right now. Owners are waiting until land values go back up.<br>- Need better participation from the employer sector. | - Developers are looking for clarity.<br>- Extraordinary changes in the planning process are needed.<br>- Drop the PD Permit and keep PD zoning.<br>- Counter to Council report suggested changes that have not yet been implemented.<br>- Have a great relationship with the Planning Department.<br>- Industrially zoned land is now worth more than residential land.<br>- It is more economical to build a lower-density product.<br>- High rise development is difficult, since you can't phase it in.<br>- Permit streamlining is important.<br>- Residential design guidelines work against developers.<br>- Need to consider switching minimums and maximums. Have minimum parking requirements, but instead should have <u>maximum</u>. This reduces development costs and increases the use of other transportation options. |
| General Comments about Inclusionary Policy | - Most developers are already familiar with inclusionary requirements and work in Bay Area cities that require inclusion of affordable units.<br>- Most all development completed recently has been in areas subject to inclusionary. Worked in SNI areas in San Jose.<br>- Used to inclusionary—everyone has it.<br>- We should favor people who live and | - There is a problem when an inclusionary program applies to million dollar homes.<br>- Current RdA inclusionary program is the most onerous in the State because of the income requirements rental developments are required to provide.<br>- The biggest problem with inclusionary programs is that they don't have good policies and procedures in place (excessive | - An inclusionary program will impact the price developers are able to pay for land. Developers will calculate the cost of the inclusionary requirement and adjust their land offer accordingly.<br>- Inclusionary programs do not impact prices, rather they affect land valuation.<br>- In determining options, need to look at the math. Everyone is opting for in-lieu |

| Issue/Option | Positive Comments/Suggestions Received | Negative Comments/Concerns Expressed | General Comments |
|---|---|---|---|
| | work in San Jose.<br>- Policy should be Citywide, not just in RdA areas.<br>- Allow developers currently in RdA areas to choose the new policy.<br>- Don't resist inclusionary programs. When possible, include the units, don't pay a fee.<br>-Experienced partnering with nonprofit developers. This has worked well.<br>- Should require higher inclusionary requirements for industrial land conversions. | reporting as an example).<br>- Not an honest way to go about this. The public as a whole should be involved.<br>- Not supportive of inclusionary policy.<br>- We are social engineering ourselves out of a problem. What's the political will to build housing?<br>- Inclusionary increases the cost of housing.<br>- Business should help pay too. Not fair just to impact one industry.<br>- Prices go up 10-20% as a result of inclusionary.<br>- Problem with land value is that appraisers always look back.<br>- Need to improve current processing under existing inclusionary program. Not always sure what the inclusionary requirement is until later in the process. | fee in North San Jose due to the math.<br>- All cities are different, and all cities that they work with have different policies.<br>- Don't believe that inclusionary requirements will come out of land prices.<br>- We don't have inclusionary discussions in other parts of the country, like Florida and Texas, because they are providing affordable housing in the marketplace. The entitlement process in California/San Jose is really stringent and raises costs.<br>- As long as prices continue to go up, developers can absorb the inclusionary requirement.<br>- Big imbalance between what landowners think their land is worth and what it really is worth.<br>- Developers will gravitate to most economical option.<br>- The larger the project, the easier to implement. |
| Guiding Principles/ Key Elements of Success | - Policy needs to be clear and concise.<br>- The policy needs to be flexible to allow developers to convert units to rental when for-sale units don't sell.<br>- The simpler, the better.<br>- Need flexibility, certainty, and consistency.<br>- Need flexibility to respond to market conditions.<br>- More leadership, clarity, certainty in development and entitlement process.<br>- Efficiency, fairness, flexibility.<br>- Flexibility, choice, control.<br>- The easier to implement and understand, the better.<br>- Any offsets you can include provides relief. | - It is difficult when requirements are so restrictive that you can't change anything.<br>- Difficult when programs have management/paperwork/audit processes that are burdensome. | - Flexibility in the current RdA process is good.<br>- Address asset limits. |

| Issue/Option | Positive Comments/Suggestions Received | Negative Comments/Concerns Expressed | General Comments |
|---|---|---|---|
| | - Need to have flexibility—opportunity to pay a fee.<br>- Flexibility, flexibility, flexibility<br>- Need a clear process for getting people qualified, in contract, and closing escrow.<br>- Certainty is critical. | | |
| Offsets—Parking | - There should be a reduction in parking for affordable units versus market-rate units. | - Concern about adequate parking . Parking reductions aren't really viable.<br>- There is a market accepted parking ratio. Might work, might not.<br>- Don't like parking reductions. | |
| Offsets—Density Bonuses | - There should be like for like density bonus. If you add 24 affordable units, you should be allowed to build 24 more market-rate units. This should be automatic.<br>- Density bonus can help for some, but not all, projects. A lot of this flexibility is already available through the City's Planning process.<br>- Density bonus works. | - Density bonus doesn't work.<br>- Practically, this doesn't always work. A real density bonus would work, however.<br>- Density bonus is a Trojan horse.<br>- Density bonus doesn't help. With more density comes higher construction costs. | |
| Offsets—Design, Height Limitations, Setbacks, Etc. | - There should be automatic height bonuses for all projects that include affordable units.<br>- FAR and other features, like lifting height restrictions can work.<br>- Should have relief from setback and design guidelines. | | |
| Offsets—Fees and Charges | - Affordable units should be exempted from fees.<br>- Should have fee relief for BMR units.<br>- Relief from park fees is an incentive.<br>- Should consider exempting moderate income units from parkland fees. | - The City charges too many fees to developers. We need to check this out.<br>- Fees have gone up at the same time construction costs have risen. | - Paying the fee in NSJ is a no-brainer<br>- Current parks impact fees charged for development are always behind (trail appraisals). |
| Offsets—Planning Processing | - There should be expedited processing of permits.<br>- Expedited processing is great<br>- The narrower the window between starting and finishing the project, the less | - What does priority processing mean? | |

| Issue/Option | Positive Comments/Suggestions Received | Negative Comments/Concerns Expressed | General Comments |
|---|---|---|---|
| | risk. "Time is our enemy".<br>- Projects that include inclusionary units should jump to the front of the entitlement line.<br>- Time is money. But if you offer this, it has to work. May work better with building permit process than planning process. | | |
| Offsets—Other | - Good to be able to build in separate phases. | | |
| Pressure Valve | - When affordable units don't sell, the developer should be able to convert the units to market-rate and pay the inclusionary fee<br>- Should consider starts or starts per type. Look at how many units are for sale each year that are rental and for-sale.<br>- Like the idea of using the market.<br>- When market prices are the same as affordable, then relieve developer of the burden.<br>- Really not an issue. This is developer risk. | - If you implement now, it may shut things down. | |
| Trigger | - Consider building permits (but difficult to administer).<br>- Consider total amount of sales.<br>- Consider median sales prices per product type.<br>- What does a 12-month rolling list of permits look like?<br>- Where in the development cycle does it make sense to have a trigger? At the beginning or at the end?<br>- Should be a different trigger for rental and for-sale. | | - If pipeline is addressed, not sure that a trigger is necessary. |
| Pipeline | - Pipeline issue is very real. Should be determined based on how far along a project is. Tentative Map has a 3-year life. A developer who is under contract or | | - Make definition as liberal as possible. |

| Issue/Option | Positive Comments/Suggestions Received | Negative Comments/Concerns Expressed | General Comments |
|---|---|---|---|
| | has an option should not be subject to the policy.<br>- Should require that developers show progress if they are included in the pipeline.<br>- Should be as early in the process as possible. Selfishly, would like it to be at the time of purchase contract.<br>- Should be the signed purchase and sale agreement, though this might be hard to enforce.<br>- Maybe a legitimate planning process, like PD Zoning Application submitted.<br>- Should be determined when developer has made a significant financial decision.<br>- Concern about planned-unit developments. How will these be handled? Grandfathering in this case is important.<br>- Define as 60-90 days after contract for land is entered into. Prior to developer going hard on land.<br>- Other communities use site development permit. Waiting until PD Zoning is too late.<br>- Should be when a developer agrees to a land price.<br>- Consider when an application is complete for the first application to the City. | | |
| Percentage of Units Required | - The number of units should be reduced from 20% to another number, for example, 10%.<br>- 20% is too high.<br>- 12.5% to 15% is better than 20%.<br>- Consider decreasing the percentage required if more affordability is achieved.<br>- Consider staging—increase the percentage required over time.<br>- Consider 5-5-5, very low, low- and | | |

| Issue/Option | Positive Comments/Suggestions Received | Negative Comments/Concerns Expressed | General Comments |
|---|---|---|---|
| | moderate-income split. | | |
| Homebuyer Selection | - It is helpful when the City maintains and controls the list of eligible homebuyers. City should have a pre-qualified list of buyers.<br>- Like having the ability to market units and not have the City do this. Okay for City to have a list, but people should not have to be pulled off this list.<br>- The City should hold homebuyer education events.<br>- If units don't sell within a specified time period (180 days?), allow developers to sell at market-rate (if City can't find a buyer and active recruitment is documented).<br>- Should have a sunset clause if you can't sell within a certain time frame. | - In some cities (Santa Clara was mentioned) homeownership units are hard to sell.<br>- Some times there is a limited pool of people who qualify. | |
| Alternative Compliance Options- In-Lieu Fee | - Get rid of the current cap and do it by unit size.<br>- | - Current in-lieu fees are too high. | - Developers will pay an in lieu fee when it makes the most financial sense. |
| Alternative Compliance Options- Offsite Development | - You can provide more units if you allow for offsite development with a nonprofit.<br>- Make a larger radius for the development of off-site development (don't require that it be adjacent to the market rate development).<br>- | | |
| Alternative Compliance Options- Credits and Transfers | - Allow developers to exchange affordable units. | | |
| Alternative Compliance Options- Acquisition Rehab | - Had success in a northern California City providing funding to a nonprofit to acquire and rehabilitate a project to meet inclusionary requirement.<br>- It is far more efficient to acquire existing units than to build new. | | |

**Comments from Housing Advocates and Others from One-on-One Meetings**

| Issue/Option | Positive Comments/Suggestions Received | Negative Comments/Concerns Expressed | General Comments |
|---|---|---|---|
| General Comments | - Should consider using City surplus land to build affordable housing.<br>- Consider housing trust funds—raising 20% funds to 30%, looking at a sales tax increase.<br>- Consider inclusionary as a tool box. Inclusionary is one tool in the box.<br>- Maximize City-owned property.<br>- Grow the Housing Trust Fund. Consider new taxes.<br>- Housing production is important.<br>- San Jose is doing a good job. City is doing well with design guidelines.<br>- You can't spend too much time thinking about this. Cycles are not clear. The reality is that its not the policy that is keeping people from building. | - Credit crisis has stopped everything.<br>- Inclusionary programs can work; the challenge is that at the current time it is a disincentive.<br>- Policy needs to address diversity in housing. Not everyone is getting the same chances.<br>- Lots of City policies (e.g., green) are increasing costs.<br>- We under produce housing in San Jose—don't meet need. | - Need to ensure that the program is staffed appropriately so there is not a slow down in homeowner approvals.<br>- Staffing decisions are critical.<br>- Businesses/CEOs don't care about affordable units.<br>- Need affordable units at various affordable levels.<br>- Affordable housing should be considered an extraordinary benefit.<br>- Staffing should reflect the priority.<br>- Should talk to management companies to get input on how inclusionary programs work.<br>- Question—how do we deal with specific planning areas?<br>- It should be a higher priority to provide deeper affordability and special needs housing than it is to provide moderate-income housing.<br>- Balance rental and for-sale housing.<br>- Consider asset limitations.<br>- HOMEBRICKS can help find qualified homebuyers.<br>- Focus on trying to make this as revenue neutral as possible.<br>- How can we bring in above mod? |
| General Comments about Inclusionary Policy | - Devil is in the details.<br>- Choice is important. It's also a legal issue.<br>- Don't try to get this 100% right. There's a big downside to over doing it.<br>- Incentivize developers to partner with nonprofit housing developers.<br>- Consider a policy that says you have to include the units unless another agreement is reached. | - It is difficult for property managers to understand the difference between BMR and market units, so management is more challenging.<br>- Inclusionary programs, as well as other programs and policies, can discourage investment.<br>- If projects don't proceed, inclusionary is cited as reason<br>- Start with a less aggressive program as a | - Inclusionary housing requirement is built into the land price.<br>- Might need to consider downtown differently. |

| Issue/Option | Positive Comments/Suggestions Received | Negative Comments/Concerns Expressed | General Comments |
|---|---|---|---|
| | | nod to the current economic situation. | |
| Guiding Principles/Key Elements of Success | - Should have flexibility like the current RdA policy.<br>- Fair playing field for everyone is the most important concern.<br>- Consistent and clear.<br>- Maximum flexibility is needed.<br>- Keep it simple.<br>- Reasonable and balanced.<br>- Simple administrative procedures, flexible, consistent/certainty.<br>- Need to address these in policy—predictability of costs, certainty, reduction of complexity.<br>- Three important issues: (1) even playing field. Every block should be considered the same; (2) Fairly treat pipeline projects; (3) flexibility and options. Fee is most important of all.<br>- Policy should be cognizant of project size/developer size.<br>- Should have a broad tool box of options. Consider that every development and developer is different. | | |
| Geographic Area | - Should it be citywide or concentrated in areas where we want growth—transit corridors? Different requirements in different parts of the City?<br>- Important that this is Citywide and not limited to certain micro markets. | | |
| Offsets—Parking | | - Reduced parking may work in some cases, but not all. | |
| Offsets—Planning Approvals | - Fast tracking is good. Expedited permitting process, like in Vancouver.<br>- Assign inclusionary deals to an elite team like in San Diego.<br>- Would be helpful to have more flexibility in permitting. | - Timeline certainty could be an offset, but it's not really real.<br>- CEQA is a problem. | |

| Issue/Option | Positive Comments/Suggestions Received | Negative Comments/Concerns Expressed | General Comments |
|---|---|---|---|
| Offsets—Design, Height Limitations, Setbacks, Etc. | - Adjust policies to encourage lower-cost units to be built (carport parking, basic-small units). | | |
| Offsets- Fees and Charges | | - Park fees are a problem. | |
| Trigger | - When permits fall below a certain level (2,800 units in any revolving 12-month period).<br>- Vacancy rates in rental housing. When there is a glut of units—6% or more that aren't renting.<br>- Do you need a trigger for rental? It's easier to meet this requirement given other funding (bond financing).<br>- Planning Department measure—are people building?<br>- Real Estate Market—what is the availability of for sale housing?<br>- Developer should prove economic hardship rather than having a general trigger.<br>- Should consider building permits, vacancy rates, days on market, housing prices. | | |
| Pressure Valve | - Link to building permits for housing—rolling 12 months, drop below a certain number.<br>- Twelve month lag. Three year implementation.<br>- Should have a six month lag. | | |
| Pipeline | - Pre-existing residential zoning or zoning complete prior to 120 days.<br>- Set early in process. Developers lock in price even before submitting to Planning.<br>- Consider when complete application is on file.<br>- If you set the definition too early in the process, everyone will ensure they get | | |

| Issue/Option | Positive Comments/Suggestions Received | Negative Comments/Concerns Expressed | General Comments |
|---|---|---|---|
| | something in. Should be PD zoning or permit.<br>- Be careful to set this right so there isn't a flood of applications. People can then sit on the applications. | | |
| Alternative Compliance | - Strongly support offsite development and in-lieu fees. Stand alone projects are easier for management companies.<br>- Stand alone projects can offer deeper affordability.<br>- Units should be included in each development in order to achieve economic integration. Only okay to pay a partial fee.<br>- Land dedication works well.<br>- Set in-lieu fee based on development cost less restricted sales price. Once a fee is set, have an index that regularly increases it.<br>- Fee shouldn't be set so it is the favored option.<br>- An in-lieu fee is important.<br>- Set fee higher.<br>- If offsite construction is allowed, require it to be within one mile of the project site. | - The City needs to look at how it calculates income. It would be helpful if the City used the State's definition.<br>- Currently, in-lieu fees are too low. Can't cover cost of producing the unit. | - Most cities use equity share concept, not deed restrictions. |
| Homebuyer issues | - Should underwrite to 120% of median income, not 110% to ensure there is a large enough band of qualified buyers. | | - Deed restrictions are a nightmare. Equity share works much better. |
| Percentage of Units Required | - Very important that this stay at the current 20% requirement.<br>- 15% if going Citywide. Targets at 9% Low-Mod and 6% Low Income.<br>- 20% is high. Go down to a slightly lower rate. | | |
| Affordability | - Need to address ELI Housing Need | | |

**Comments Received at Stakeholder and Public Meetings**

| Issue/Option | Positive Comments/Suggestions Received | Negative Comments/Concerns Expressed | General Comments |
|---|---|---|---|
| General Comments | - Improve processing timing. Delays have a financial impact.<br>- ELI needs more consideration.<br>- The City needs affordable housing. | - Make sure the ordinance is precise so that people can't wiggle out of requirements.<br>- Stop landbanking. Take inventory of all publicly held land.<br>- Housing does not pay for required city services. Affordable housing pays less. | - Find the best ways to leverage dollars.<br>- Consider historic preservation earlier in the process.<br>- Define the goal—is it more efficient process and more units?<br>- Do BMR units affect property values? Are neighborhoods informed that housing for lower- and moderate-income people might be built nearby?<br>- Can you visually tell a unit is an inclusionary unit?<br>- Are affordable units exempt from property tax?<br>- Why place affordable housing in high cost areas?<br>- Cheaper housing will hurt property values. |
| General Comments about Inclusionary Policy | - Need to have a way to evaluate effectiveness of any inclusionary program that is implemented.<br>- Inclusionary Programs are great. | - Current market is tough—land prices are still high. Landowners should be a part of the equation.<br>- Don't like inclusionary programs. | - Consider different policies for rental and for sale. |
| Guiding Principles/Key Elements of Success | - Attack the cost side for builders—allow density bonuses, fee credits for building on site. More flexibility.<br>- The City should work with developers regarding location and mix of units. Want a genuine collaboration.<br>- Flexibility is the key.<br>- Ordinance needs to be clearly defined, predictable, flexible and transparent.<br>- Ease of administration. City needs to prioritize staff resources. The unintended consequence of flexibility is increased staff demand. | - Any inclusionary proposal must take into account the current market. | |
| Geographic Area | - If the intent is to build more units, it shouldn't matter where they are located. | - If you limit inclusionary to certain parts of the City (like TOD areas), you provide a | |

| Issue/Option | Positive Comments/Suggestions Received | Negative Comments/Concerns Expressed | General Comments |
|---|---|---|---|
| | - Policy should be Citywide to ensure social equity goals.<br>- Policy should focus on TOD areas. | disincentive for development. | |
| Small Project Definition | - Range of responses was from 0 to 100, with most respondents indicating between 10 and 20. | | |
| Offsets- General | - Should allow developers of off-site projects to compete for State and federal funding. | - Density bonuses don't always work since the City already allows density.<br>- Neighborhoods don't like density. | - No single incentive that works.<br>- Offsets need to be compatible with surrounding community. |
| Offsets—Parking | - Flexibility with parking can be very important. Parking spaces cost $40-$50K to build. | - Market demands parking.<br>- Neighborhood Concerns about reduced parking impacting nearby streets | |
| Offsets—Planning Approvals | - Consider special handling for inclusionary projects.<br>- Streamlined processing of applications would be great if it can be done. | - Not sure streamlining would be achieved. | |
| Offsets—Design, Height Limitations, Setbacks, Etc | - Ability to downsize units or change interior and exterior finishes is important.<br>- Different unit type (duplexes instead of single family homes).<br>- Alternative design is good, but units should be functionally equivalent.<br>- Units should be dispersed throughout the development. | - High density in low-density neighborhoods shouldn't be allowed. Need transition. | |
| Offsets- Fees and Charges | - Defer fees until Close of Escrow.<br>- Exempt inclusionary units from some fees. | - Concern that waiver or delay of fees has a budgetary impact on the City.<br>- Concern about affordable housing not paying park fees. | |
| Trigger | - Should be determined when prices push down to a certain level.<br>- Unit should be released if it doesn't see in a particular time frame.<br>- Consider a "participation agreement" where a developer has to pay a fee if it sells more units than anticipated during a down market. | | |
| Pressure Valve | - Measure by permits—historic average.<br>- Useful for ownership units. Determine a formula for when this goes into effect. | | |

| Issue/Option | Positive Comments/Suggestions Received | Negative Comments/Concerns Expressed | General Comments |
|---|---|---|---|
| Pipeline | - Effective date should be in one year.<br>- When projects have filed their PD Zoning application.<br>- Earlier in the process—when developer contracts with a landowner.<br>- Easiest option is to use a City benchmark that can be easily determined.<br>- Should have a requirement for when pipeline projects start consruction. | | |
| Alternative Compliance | - Consider dividing the City up into quadrants to determine proximity of offsite construction.<br>- Credits and Transfers are good.<br>- In-lieu fees should be offered.<br>- Offsite construction should only be allowed for special needs and senior housing.<br>- In-lieu fees need to be set at the right amount so everyone doesn't choose to pay instead of build.<br>- Allow developers to do a combination—pay fees and build units.<br>- Use in-lieu fees for ELI Housing. | | - Should alternative compliance options be by right? |
| Homebuyer issues | - City should help find buyers | - City should let developer find buyers. | |
| Percentage of Units Required | - 5-10% requirement is more viable. | - Consider the impact of the percentage required to be affordable on lender interest. | |
| Affordability | - Different affordability for for sale and rental housing. Highest need for rental is ELI-VLI-LI. Highest need for for-sale is LI-MOD. | | |
| Other Issues | - Administrative issues are important to consider. Let developers qualify homebuyers. Ensure that there is an out if units don't sell.<br>- | | |

**Comments Received at Special Listening Session on Ways to Produce Affordable Housing**

| Issue/Option | Positive Comments/Suggestions Received | Negative Comments/Concerns Expressed | General Comments |
|---|---|---|---|
| General Comments | - Land is harder to find. The City can help support development.<br>- The City has achieved its housing goals due to political will and RdA monies—both of which may not always be there. | | - The need is for very low-income households.<br>- Concern is for homeowners with declining home values<br>- Focus on homeownership. Use existing land that is available.<br>- The City should review a variety of options.<br>- More training and education is needed for people to stay in their homes.<br>- Need to consider the difference between rental and for-sale housing. |
| General Comments about Inclusionary Policy | -If not Inclusionary Zoning, then what?<br>- The purpose of Inclusionary is important. The City needs ELI and rental housing.<br>- San Jose's program works well. It has to be flexible. | - Inclusionary programs are not effective, efficient or equitable.<br>- Inclusionary programs only impact the development community.<br>- Inclusionary is burdensome and won't produce housing.<br>- There is no incentive for homeowners. | - Need to be clear about what the goal is. The Development community has not bought into the proposal because the goal has not been defined.<br>- Need housing at all income levels. |
| Specific Comments about Inclusionary Components | - Policy should include credits and transfers.<br>- Allow creative and flexible ways to use land.<br>- Santa Clara's program, which uses an equity share model, is a good one.<br>- Better to have an in-lieu fee than to require that for sale units be built on site. | - Deed restriction doesn't work and doesn't help those who need it.<br>- Concern that assisted homebuyers may not be able to afford increases in HOA dues. | |
| Revenue Ideas | - The City should create a Housing Trust Fund.<br>- Use construction taxes to fund this Fund.<br>- A Housing Trust Fund would provide a continuous revenue source.<br>- Support cooperative housing<br>- Create incentives.<br>- Support a permanent source at the State level.<br>- Consider a document recording fee. | - The business sector needs to be part of the solution; this shouldn't be only the responsibility of developers. | - Would require political will, because monies are already allocated to other uses. |

## ATTACHMENT C

### Alternative Policies and Funding Sources for Affordable Housing

Successful housing programs employ a variety of different tools to meet a community's affordable housing needs. The City of San Jose has a comprehensive program that creatively uses available resources and legislative and regulatory measures to offer housing opportunities to the City's residents. These include:

### FUNDING/RESOURCES

The City of San Jose has produced more housing than any other city in the State of California, largely by efficiently and creatively using the resources it has available. Programs include: loans for large rental developments, second mortgage assistance for first-time homebuyers, acquisition/ rehabilitation financing, and loans and grants for single-family rehabilitation projects. Funding for these programs comes from:

- Local Funding— The City issues Tax Allocation Bonds to fully use the City's Low and Moderate Income Housing Fund (20% of Redevelopment Agency Tax Increment Funding). These funds are supplemented by interest earnings, loan repayments, and other miscellaneous revenue. Typically, the City has about $60 million available from this source annually.

- Additional Redevelopment Funding—Over the years, the Redevelopment Agency has allocated additional 80% bond proceeds to supplement the 20% funds, including funding for the development of extremely low-income housing and for projects like the Las Mariposas for-sale development and the Delmas Park Teacher housing development. Additionally, the Agency committed substantial funding to reimburse the Parks, Recreation and Neighborhood Services Department for Parkland Fee exemptions for lower-income housing construction.

- Housing Trust Fund-- The City created a Housing Trust Fund (previously known as the Housing and Homeless Fund) to provide funding for activities that aren't eligible for 20% Redevelopment funding, particularly services to the homeless. This fund is replenished with bond administration fees, tax credit application review fees, and other unrestricted sources. Typically, the City has about $2 million available from this source annually.

- Federal Funding—The City receives federal entitlement funding (Community Development Block Grant, HOME Investment Partnership Program, Emergency Shelter Grant Program, Housing Opportunities for People with Aids, and Neighborhood Stabilization funds). Typically, the City has between $15-20 million available from this source annually.

- Other Competitive Funds—The City applies for and receives funding through competitive efforts as funds are announced. These funds include from the State BEGIN

Homeownership Program, the CalHOME rehabilitation and homeownership program, and the Workforce Housing Investment Fund. The City regularly receives federal earmarks to assist with specific projects and programs.

- Leveraging—The City leverages its funds with other State and federal monies at a rate of two and-a-half to three dollars of outside funding to each dollar of City funds. These funds come from bond financing, tax credits, State funding (such as Proposition 1C and Proposition 46), and HUD funding (such as Section 202 for the elderly and Section 811 for the disabled). In addition, the City leverages private funding from banks, the State Housing Finance Agency, and from smaller sources like the Federal Home Loan Bank's Affordable Housing Program, the County of Santa Clara, and the Santa Clara County Housing Trust. The City typically leverages about $150-180 million annually from outside sources.

- Bonding Authority—The City uses its authority to issue private activity bonds to assist developers who want to provide affordable housing opportunities using tax exempt bonds. Many of these developments provide affordable rents without additional City subsidy.

**PROGRAMS/POLICIES**

- Inclusionary Housing in Redevelopment Project Areas—Currently, the Redevelopment Agency has a policy that requires each residential project in Redevelopment Project Area to either: (1) set aside 20% of its units within the project for lower- and moderate-income households, (2) provide for lower- and moderate-income units in a separate stand alone project, or (3) pay an in-lieu fee at a specified rate. In recent years, the City has created about 2,700 inclusionary units in RdA areas, with 600+ units now in the planning and development stages.

- Fee Waivers and Tax Exemptions—The City waives certain fees and taxes for lower-income housing units (not moderate-income units), including: the Building and Structures Construction Tax, the Construction Portion of the Construction and Conveyance Tax, the Commercial Residential Mobilehome Park Building Tax, the Residential Construction Tax, and Parkland Dedication fees.

- Secondary Units—The City allows for the development of second units in some cases to provide additional housing opportunities, particularly for extended family members.

- Housing Preservation- The City works to preserve existing affordable housing that is subject to reversion to market-rate to keep it affordable by assisting in refinancing debt, providing financial assistance, and providing technical assistance.

- Surplus Lands—The City seeks opportunities to purchase surplus lands from various government entities, including the City itself, the Valley Transportation Authority, the County of Santa Clara, and local school districts. Typically, the City pays fair market value for these sites, as the agencies are selling the properties in an attempt to shore up their own finances, so the housing created is not subsidized through this action.

## NEW AND ONGOING EFFORTS

The Housing Department continually looks for new and creative means to promote and increase affordable housing. The City regularly prepares reports and considers new strategies. These reports include: the annual Consolidated Plan, which is required by the federal government, the Housing Element of the General Plan, which is required by State law to be completed every seven years, and the Five-Year Housing Investment Plan, which outlines the City's action plan for meeting housing needs over a five-year period. The most recent five-year plan, completed in June of 2007, offered a number of recommendations with the help of a stakeholder group.

Listed below are a number of other alternatives that the City can employ to increase affordable housing. As detailed in the 2007-2012 Five-Year Housing Investment Plan:

| **Issue** | **Action** | **Status** |
|---|---|---|
| **Zoning** | - Evaluate all sites planned for housing. Proactively zone sites when feasible.<br><br>- Provide developers with information about sites where the City would like to see housing built to save them money and time. | Underway as part of the Housing Element process |
| **Permanent Funding Sources** | - Protect the Low and Moderate Income Housing Fund ("20% Fund").<br><br>- Support efforts developed by the Blue Ribbon Commission on Ending Chronic Homelessness in Ten Years and Solving the Affordable Housing Crisis in Twenty Years to investigate potential local funding sources that can supplement the City's 20% Tax Increment and that can provide continued funding when redevelopment funding is no longer available.<br><br>- Support federal legislative efforts, including the passage of the National Affordable Housing Program.<br><br>- Support efforts at the State level to identify ongoing funding sources for affordable housing. | Ongoing |
| **Housing Authority** | - Work with the Housing Authority to set aside Section 8 Housing Choice Vouchers for the chronically homeless.<br><br>-Apply for additional vouchers as available. | Ongoing |
| **Increase Federal Entitlement Funding** | - Oppose reductions to federal entitlement programs. Advocate for full funding.<br><br>- Advocate for changes to the federal law formula allocations to ensure that San José receives funding commensurate with its size and community needs. | Ongoing |

| Issue | Action | Status |
|---|---|---|
| **State Redevelopment Law** | - Support efforts to continue the affordable housing set aside beyond the life of Redevelopment Project Areas. | Ongoing |

One of the most important efforts the City is currently undertaking that benefits affordable housing is the effort to increase the cap on Redevelopment Tax Increment in San Jose. While the 20% Fund still has some room to borrow, it is anticipated that, without an increase to the cap, the City will reach its capacity in the 20% Fund in the next five years; as a result, the City's ability to make funding commitments to projects may end within 36 months. Even with a cap increase, however, more needs to be done. A cap increase will allow further borrowing, but the borrowing will be dependent on increases in annual increment.

Additionally, the City has actively participated in sessions with the State Department of Housing and Community Development as it explores options for a Statewide, permanent source of funding. The State's voters have approved a number of bond initiatives since 1990 to finance affordable housing efforts, but these funds have been quickly allocated. The last measure—Proposition 1C, passed by the voters in 2006—is expected to be depleted in upcoming months. The City depends on these funds to leverage local funds. Without these State funds, the amount of City funding to create affordable units is much higher.

*Local Recommendations to Increase Affordable Housing Opportunities*

Recently, the Bay Area Local Initiative Support Corporation (LISC) and San Jose State University teamed up to explore the extent of the housing crisis in Santa Clara County and offer recommendations on how to solve the crisis. The study said that $4 billion in additional <u>local</u> funding over the next 20 years is needed to meet the existing and growing affordable housing demand in Santa Clara County.

The Blue Ribbon Commission on Ending Chronic Homelessness in Ten Years and Solving the Affordable Housing Crisis in Twenty Years (BRC), which completed its work in December of 2007, developed several recommendations, including:

- Pursuing legislation to extend the 20% Program past the sunset of Redevelopment Areas. The remaining 80% of the tax increment would be distributed to cities, counties, and school districts according to the current allocation of property taxes to taxing jurisdictions.

- Seek legislation to increase the per capita allocation for the federal Low Income Housing Tax Credit Program, currently set at $1.95 per person, to a higher amount to increase this funding source.

- Seek legislation to increase the statutory State ceiling for tax credits beyond the $50 million limit.

- Consider incentives for private citizens who donate funding for affordable housing.

- Initiate discussions with local pension funds to interest them in investing locally to support affordable housing

- Consider expanding inclusionary housing and making existing inclusionary housing policies more effective.

*Other Ideas to Increase Affordable Housing Financing*

In addition to the recommendations that came from the LISC, San Jose State University, and the BRC, the Housing Department has completed two studies in recent years to look at options for an ongoing source of revenue to supplement current funds available and to replace redevelopment tax increment funding when it is no longer available. These studies identified a number of potential sources, but all with challenges that make them difficult to implement. It is a particularly difficult time to consider increasing taxes for affordable housing purposes when the State and local governments are looking to increase taxes and fees to cover general operations. The City of San Jose is faced with significant budget challenges; any potential funding source for affordable housing will have to be considered in light of the City's need to fund vital City services.

The attached chart looks at some of these options.

## ATTACHMENT C
# POTENTIAL REVENUE SOURCES

| Revenue Source | Revenue Potential | Nexus to Affordable Housing | Adoption Requirements/Feasibility |
|---|---|---|---|
| Real Property Conveyance Tax | This tax is set at $1.65 per $500 of property value. In FY2007-08, it raised $26.8 million. A .35 increase, bringing the total to $2, would raise $5.7 million. | N/A | Property conveyance taxes are a common source for Housing Trust Funds throughout the nation.<br><br>In San Jose, there is an existing Real Property Conveyance Tax, which is imposed for specific purposes. To increase this tax, a 2/3rds vote of the electorate would be required.<br><br>Real estate transaction taxes are opposed by the Realtors<br><br>Increases to property transfer taxes don't poll well with the voters |
| Document Recording Fee | The Blue Ribbon Commission estimated that, Countywide, a $10 fee/tax per transaction would create about $4 million annually; a $20 fee /tax per transaction would create about $8 million. This amount may be high given current economic climate (fewer sales and fewer documents being recorded). | TBD | Document recording fees are a common source for Housing Trust Funds in other parts of the nation. However, in California, State law limits the imposition of a Document Recording Fee.<br><br>A Document Recording fee is a county fee that is imposed to recover the cost of recording documents in a county recorders' office. SB521 (Torlakson), 2006, would have allowed Contra Costa County to increase its document recording fees. AB239 (De Saulnier), 2007 would have allowed Contra Costa and San Mateo Counties to increase their document recording fees. Neither bill was approved.<br><br>If State legislation was approved, a fee could then be approved by a majority vote of the County Board of Supervisors. This type of fee could be subject to legal challenge.<br><br>Strongly opposed by the Realtors. |
| Residential Construction Tax | The City collected $118,000 from this tax in FY 07-08, a more than 50% reduction from prior years. Should this tax be increased, it is unlikely to result in a significant amount of money for affordable housing. | N/A | The City has an existing residential construction tax that is to be used for specified purposes. Increases to the tax, or a revision to the specified purposes, would require a 2/3rds vote of the electorate.<br><br>The amount of money received from this tax is relatively small given the effort it would take to obtain voter approval. |

| Revenue Source | Revenue Potential | Nexus to Affordable Housing | Adoption Requirements/Feasibility |
|---|---|---|---|
| Building & Structure Construction Tax | Currently set at 1 ¾% of 88% of construction valuation. Over the past year, this tax generated $9.6 million. An increase to 3% would result in an additional $3 million annually. When the economy picks up this amount would increase. | N/A | The San Jose Municipal Code details the eligible uses—improve roadway conditions on major arterials (Fund 429). Increases to this tax, or a revision to the specified purposes, would require a 2/3rds vote of the electorate |
| Business Tax | It is unclear how much revenue this tax increase would generate. Currently, the tax is set at $150 per business for up to eight employees, with an additional charge of $18 per employee up to a maximum of $25,000. | N/A | If the City were to consider increasing the business tax for affordable housing purposes, a 2/3rds vote of the electorate would be required.<br><br>The potential amount of money received from this tax is relatively small given the effort it would take to obtain voter approval |
| 20% Tax Increment | Only Relevant if New Project Areas are Created that would generate additional 20% tax increment. This source is already fully used and committed. | Yes | To create a new project area, blight would need to be determined, and the City would need to take steps to create it, including working with other local entities. This would have an impact on future General Fund revenues as the City's proportionate share of the increased property tax revenue would not be paid to the City's General Fund.<br><br>Some of the ideas included in the BRC report would increase the amount of 20% funding available (see body of report). |
| 80% Tax Increment | Increase the amount of 80% funds available for housing purposes by an unspecified amount, | Yes | The City's 80% Redevelopment Funds are limited at this time, due to the cap on borrowing, and the fact that much of the 80% increment is committed to debt service. Additionally, the State has recently taken funding from the City's Redevelopment Agency, and has indicated that this "take" may be made permanent (i.e., assessed annually). This is a significant impact on the City's Redevelopment Agency, impacting its ability to continue to fund projects that are a priority of the Mayor and City Council. The City would have to determine how spending more redevelopment money on housing will impact its other priorities—including economic development. |
| Linkage Fee | A commercial linkage fee charges a per square foot fee on commercial | Yes | As a fee, would require a vote of the local legislative body. |

| Revenue Source | Revenue Potential | Nexus to Affordable Housing | Adoption Requirements/Feasibility |
|---|---|---|---|
| | development. At $1 per square foot, this would raise an estimated $880,000 annually. | | This fee would need to be analyzed to determine whether it meets the legal requirements for the imposition of a development fee.<br><br>The City is currently incentivizing the development of new commercial space. The imposition of a new fee may serve as a disincentive. |
| Impact Fee for Industrial Land Conversion | A fee imposed when land is converted from industrial use to residential use | Yes | As a fee, would require a vote of the local legislative body.<br><br>This fee would need to be analyzed to determine whether it meets the legal requirements for the imposition of a development fee.<br><br>This could be perceived as an incentive to convert industrial land and may be in conflict with the Employment Lands Framework. |
| Sales Tax Increase | Sales tax is generally set at 8.25%, of which San Jose gets 1% which is paid to the General Fund, and the remaining 7.25% goes to other government agencies or for specified purposes. Last year, this 1% raised $149 million. Using this same number, an increase of .25% would generate $37 million annually. | N/A | This could result in a large amount of funding for affordable housing.<br><br>A tax imposed for affordable housing purposes would require a 2/3rds vote of the electorate.<br><br>The sales tax is a regressive tax, impacting lower-income residents more than people with means. |
| Parcel Tax | Assess a parcel tax | N/A | A tax would require a 2/3rds vote of the electorate.<br><br>The City of San Jose has a parcel tax for libraries, which is set at $27 a year for single-family houses and condominiums (and less for other structures), that is expected to generate about $6.7 million this year.<br><br>This would likely be unpopular with the voters. |
| General Obligation Bond | Issue GO Bonds | N/A | This has been used successfully as a vehicle to fund affordable housing in other cities, like San Francisco. In San Jose, the voters approved several recent GO bond issues, including a $228 million bond for parks in 2000, a $212 million bond for libraries in 2000, and a $159 million bond for neighborhood security in 2004. |

| Revenue Source | Revenue Potential | Nexus to Affordable Housing | Adoption Requirements/Feasibility |
|---|---|---|---|
| | | | GO Bonds are a one-time source of money and may be used only for the acquisition and improvement of real property.<br><br>It would require a 2/3 vote of the electorate. |

## ATTACHMENT D

### Survey of Inclusionary Housing

One-third of California's cities have adopted an inclusionary housing ordinance, and others are in the process of studying the potential for implementation, including San Jose, Los Angeles, and Oakland. Of the State's other large cities, San Diego, San Francisco, and Sacramento all have an adopted inclusionary ordinance. In the Bay Area, 57% of the cities have some form of inclusionary zoning, and in Santa Clara County, ten of 15 cities have working inclusionary zoning ordinances. While Santa Clara County does not have an inclusionary housing ordinance, the neighboring communities of Santa Cruz, Alameda, and San Mateo all do. A significant number of these ordinances were approved since the year 2000.

The publication "*Trends in California Inclusionary Housing Programs*," published by the Northern California Association of Nonprofit Housing in 2007, looked at housing produced through inclusionary programs from 1999 to 2006. This study found that:

(1) More than 80,000 people have affordable housing as a result of inclusionary programs, with more than 29,000 units created between 1999 and 2006.

(2) Most inclusionary housing is integrated into market-rate development, creating socially and economically integrated communities. "As a result, teachers shop in the same grocery stores as the parents of their students, and the elderly are finding safe apartments close to their children and grandchildren."

(3) Inclusionary programs provide housing opportunities for people who are most in need, with more than three-quarters of the units provided serving people with lower-incomes.

As part of the process of studying inclusionary housing, and best practices, staff reviewed inclusionary housing ordinances to gain a better understanding of how other localities have drafted their ordinances. During the course of public outreach, several people suggested that particular jurisdictions had adopted ordinances that worked well, while others had adopted ordinances with provisions that were not favorable.

Attached are four charts that provide information collected on inclusionary ordinances administered by other jurisdictions. The charts show:

(1) Chart D1A-- Highlights the ten cities in Santa Clara that have adopted inclusionary housing ordinances, and includes the following data: compliance type, incentives provided, developer options allowed, and information about in-lieu fees, if offered.

(2) Chart D1B—Highlights the same ten cities in Santa Clara, but includes the following data: the project size threshold for requiring inclusionary units, the percentage inclusionary required, groups targeted, length of affordability, and miscellaneous provisions.

(3) Chart D2A: Highlights other cities in California, as well as several large cities elsewhere in the country, that have adopted inclusionary housing ordinances, and includes the following data: compliance type, incentives provided, developer options allowed, and information about in-lieu fees, if offered.

(4) Chart D2B: Highlights the same cities as in Chart D2a, but includes the following data: the project size threshold for requiring inclusionary units, the percentage inclusionary required, groups targeted, length of affordability, and miscellaneous provisions.

City staff researched more than 30 ordinances seeking to find a model for pressure relief valve, a feature that had been requested by the City Council. However, no example was found.

ATTACHMENT D1-A

# SURVEY OF CITIES IN SANTA CLARA COUNTY WITH INCLUSIONARY HOUSING

## Ten of the fifteen cities in Santa Clara County have Inclusionary Housing Ordinances

(Jurisdiction, County, Compliance Type, Incentives, Developer Options, In-Lieu Fee Structure)

| Jurisdiction | County | Compliance Type | Incentives | Developer Options | In-Lieu Fee Structure |
|---|---|---|---|---|---|
| Campbell | Santa Clara | Mandatory | Density bonus, flexibility in design and location of units | Off-site, provide financing, land dedication, in-lieu fee, | If project density is six or fewer units per acre, applicant may pay an in-lieu fee. The initial in-lieu fee schedule is set by city council fee resolution so that the fee amounts are not greater than the difference between: (a) the amount of a conventional permanent loan that an inclusionary unit would support based on the affordable rent or sales price for the required inclusionary unit; and (b) the estimated total development cost of prototypical inclusionary units. The City Council adjusts the fee annually. For any year that the City Council does not review the fee amounts, the community development director can adjust the fee based on the construction cost index . In-lieu fees are calculated based on the fee schedule in effect at the time the fee is paid and must be paid prior to issuance of building permits. If building permits are issued for only part of a residential project, the fee amount shall be based only on the number of units then permitted. |
| Cupertino | Santa Clara | Voluntary | Density bonus, fee deferral, fee reduction, fee waiver, flexible design standards, and subsidies | None | No in-lieu fees |
| Gilroy | Santa Clara | Mandatory | Density bonus and flexible design standards | | Fixed per-unit fee |
| Los Altos | Santa Clara | Mandatory | Fast tracking processing, fee deferral, fee reduction, fee waiver, and flexible design standards | Conversion to affordable housing | Fixed per unit fee |
| Los Altos Hills | Santa Clara | *The City of Los Altos Hills does not have an inclusionary housing ordinance.* | | | |
| Los Gatos | Santa Clara | Mandatory | None | In-lieu fee | Fee determined by City Council |

ATTACHMENT D1-A

SURVEY OF CITIES IN SANTA CLARA COUNTY WITH INCLUSIONARY HOUSING

Ten of the fifteen cities in Santa Clara County have Inclusionary Housing Ordinances

(Jurisdiction, County, Compliance Type, Incentives, Developer Options, In-Lieu Fee Structure)

| Jurisdiction | County | Compliance Type | Incentives | Developer Options | In-Lieu Fee Structure |
|---|---|---|---|---|---|
| Milpitas | Santa Clara | *The City of Milpitas does not have an inclusionary housing ordinance, however, it has a policy that "the City of Milpitas will continue to target the provision of at least 20 percent affordable units within new multifamily residential projects."* | | | |
| Monte Sereno | Santa Clara | *The City of Monte Sereno does not have an inclusionary housing ordinance.* | | | |
| Morgan Hill | Santa Clara | Voluntary | Density bonus, fast track processing, fee deferral, fee reduction, fee waiver, flexible design standards | In-lieu fee | Fixed per unit fee |
| Mountain View | Santa Clara | Mandatory | Density bonus | Conversion to affordable housing, in-lieu fee, land dedication | In-lieu fees will be based on a formula involving the difference between the price of market-rate units and the price of below-market rate units |
| Palo Alto | Santa Clara | Mandatory | Density bonus and other | In-lieu fee, off-site construction, conversion to affordable housing | The fee formula is based on a reasonable estimate of the amount of housing necessary to satisfy ten percent of the demand for low- to moderate-income housing based on the average number of low- to moderate-income employees generated per average household by the average commercial and industrial development. |
| San Jose | Santa Clara | Mandatory in RdA | None | In-lieu fee, offsite, credit transfers, dedication of land, or combination | An in-lieu fee may be paid as long as it is paid after the issuance of the development permit, but prior to the initial occupancy of the unit. Fee amounts are established in the City Council's annual resolution of fees and charges or as established otherwise by resolution of the City Council. |
| Santa Clara | Santa Clara | Voluntary | Density bonus, flexible design standards, subsidies, and other | None | No in-lieu fees |
| Saratoga | Santa Clara | *The City of Saratoga does not have an inclusionary housing ordinance.* | | | |

ATTACHMENT D1-A

SURVEY OF CITIES IN SANTA CLARA COUNTY WITH INCLUSIONARY HOUSING

Ten of the fifteen cities in Santa Clara County have Inclusionary Housing Ordinances

(Jurisdiction, County, Compliance Type, Incentives, Developer Options, In-Lieu Fee Structure)

| **Jurisdiction** | **County** | **Compliance Type** | **Incentives** | **Developer Options** | **In-Lieu Fee Structure** |
|---|---|---|---|---|---|
| Sunnyvale | Santa Clara | Mandatory | Density bonus, flexible design standards, subsidies, and other | Conversion to affordable housing and in-lieu fee | The in-lieu fee for for-sale units is equal to the difference between the fair market value of the below market rate unit and the below market rate unit price. The in-lieu fee for rental units is calculated as the difference between the market rent for the units and the established below market rent capitalized over fifty-five years. The Consumer Price Index is used to establish the inflation rate and the rental rates from the Sunnyvale vacancy and rent survey are used to calculate the estimated increase in rental rates. |

ATTACHMENT D1-B

# SURVEY OF INCLUSIONARY HOUSING ORDINANCES IN SANTA CLARA COUNTY

## Ten of the fifteen cities in Santa Clara County have Inclusionary Housing Ordinances

(Jurisdiction, IH Requirement Threshold, % Production Required, Targeted Groups, Length of Affordability, Miscellaneous)

| Jurisdiction | IH Requirement Threshold | % Production Required | Targeted Groups | Length of Affordability | Miscellaneous |
|---|---|---|---|---|---|
| Campbell | **Rental/Ownership:** 10 or more units | **Rental/Ownership:** 15% | **Rental/Ownership:** Low- and Moderat- income households | **Rental:** 55 years<br>**Ownership:** 45 years | |
| Cupertino | **Rental/Ownership:** 5 units | **Rental/Ownership:** fixed formula 10-50% | **Rental/ Ownership:** Very low- and low-income and seniors | **Rental/Ownership:** 10-30 years | A density bonus and an additional concession are available to all housing developments greater than five units if they include at least: 20% of the units to low-income households; or 10% of the units to very low-income; or 50% of the units for senior citizens. City helps set home prices, which must be affordable to households at 120% of area median income, and contracts management of the waitlist and sale of units to a nonprofit. |
| Gilroy | **Rental/Ownership:** Any project | **Rental/Ownership:** Fixed formula 15% | **Rental/Ownership:** Very low-, low-, and moderate-income | **Rental:** 55 years<br>**Ownership:** 30 years | Neighborhood District proponents receive the following benefits for on-site construction:<br>▶ More points are awarded to projects with higher percentages of affordable units.<br>▶ Density bonuses<br>▶ Reduction in City development standards (e.g. zero-lot line developments, clustered housing on smaller lots, and smaller unit sizes)<br>▶ Reduction in road widths.<br>The City helps with the sale of the IZ units |
| Los Altos | **Rental/Ownership:** 1 units or 1 lots | **Rental/ Ownership:** Variable formula 10-40% | **Rental/Ownership:** Very low-income, low-income, and moderate-income | Not available | |
| Los Altos Hills | *The City of Los Altos Hills does not have an inclusionary housing ordinance.* | | | | |
| Los Gatos | **Rental/Ownership:** 5 units | **Rental/ Ownership:** Variable formula 10-20% | **Rental/Ownership:** Moderate-income | Not available | Sale of IZ units administered by Santa Clara County |

ATTACHMENT D1-B

SURVEY OF INCLUSIONARY HOUSING ORDINANCES IN SANTA CLARA COUNTY

Ten of the fifteen cities in Santa Clara County have Inclusionary Housing Ordinances

(Jurisdiction, IH Requirement Threshold, % Production Required, Targeted Groups, Length of Affordability, Miscellaneous)

| Jurisdiction | IH Requirement Threshold | % Production Required | Targeted Groups | Length of Affordability | Miscellaneous |
|---|---|---|---|---|---|
| Milpitas | *The City of Milpitas does not have an inclusionary housing ordinance, however, it has a policy that "the City of Milpitas will continue to target the provision of at least 20 percent affordable units within new multifamily residential projects".* | | | | |
| Monte Sereno | *The City of Monte Sereno does not have an inclusionary housing ordinance.* | | | | |
| Morgan Hill | **Rental/Ownership:** 16 units | Fixed formula 5% | **Rental/Ownership:** VL, LI, MOD | **Rental/Ownership:** 45 years | The City sets the sales prices and maintains a waitlist (LI, MOD, Med) |
| Mountain View | **Rental:** 5 units<br>**Ownership:** 3 units | **Rental:** fixed formula 10%<br>**Ownership:** fixed formula 10% | **Rental:** low-income<br>**Ownership:** moderate-income | **Rental:** 55 years<br>**Ownership:** 55 years | The Below Market Rate requirement applies to new or converted residential developments with three or more ownership units; five or more rental units; or mixed projects of six or more residential units. The City works with developers to set price. Interested list of buyers maintained by Housing Authority |
| Palo Alto | **Rental/Ownership:** 10 units | **Rental/Ownership:** fixed formula 15% | **Rental/Ownership:** Low- and Moderate-income | **Rental/Ownership:** 59 years | City works with developers. The units must be affordable to 80-100% of area median income. Program administered by Palo Alto Housing Corporation. |
| San Jose | **Rental/Ownership:** 10 units | **Rental:** 20%<br>**Ownership:**20% or 15% | **Rental:** 8% Very Low-Income, 12% Low-Income<br>**Ownership:**20% Moderate or 15% (6% very low-income, 9% low- or moderate-income) | **Rental:** 55 years<br>**Ownership:** 45 years | |
| Santa Clara | **Rental/Ownership:** 5 units | **Rental/Ownership:** variable formula 10-50% | **Rental/Ownership:** Very low- and low-income and seniors | **Rental/Ownership:** 10-30 years | Neighborhood Housing Silicon Valley sells the units for the City. |
| Saratoga | *The City of Saratoga does not have an inclusionary housing ordinance.* | | | | |

ATTACHMENT D1-B

SURVEY OF INCLUSIONARY HOUSING ORDINANCES IN SANTA CLARA COUNTY

Ten of the fifteen cities in Santa Clara County have Inclusionary Housing Ordinances

(Jurisdiction, IH Requirement Threshold, % Production Required, Targeted Groups, Length of Affordability, Miscellaneous)

| Jurisdiction | IH Requirement Threshold | % Production Required | Targeted Groups | Length of Affordability | Miscellaneous |
|---|---|---|---|---|---|
| Sunnyvale | **Rental/Ownership:** 9 units or 9 lots | **Rental/Ownership:** variable formula 10-50% | **Rental/Ownership:** Very low-, low-, moderate-income, and seniors | **Rental:** 55 years **Ownership:** 30-55 years | The City sets the unit prices and maintains a waitlist. Buyers must be between 70-120% AMI. |

ATTACHMENT D2-A
SURVEY OF OTHER CITIES WITH INCLUSIONARY HOUSING
(Jurisdiction, County, Compliance Type, Incentives, Developer Options, In-Lieu Fee Structure)

| Jurisdiction | County | Compliance Type | Incentives | Developer Options | In-Lieu Fee Structure |
|---|---|---|---|---|---|
| Boston | | Mandatory | Incentives are subject to negotiation. City provides projects located in the financial district with a height bonus, no cost offsets are provided to covered developments. | In-lieu fee, design flexibility, off-site construction (if units are built off-site the percentage set-aside increases to 15%). | In-lieu fee set at $97,000 per unit for 15% of proposed units. This fee is defined as "the average total public subsidy per new construction affordable housing unit permitted by the City of Boston for the previous calendar year." The fee is adjusted annually to reflect changes in market conditions although it has only been updated once since 2000 (the fee was originally set at $52,000 but was increased to $97,000 in February 2005). |
| Burlingame | San Mateo | Mandatory | Flexible design standards | Conversion to affordable housing | No in-lieu fees |
| Chicago | | Mandatory | Floor area bonuses | Payment of in-lieu fees | Fee set at $100,000 per required unit. |
| Colma | San Mateo | Mandatory | Clustering of IH units | In-lieu, land dedication, off-site construction | In-lieu fees are determined annually by the City Manager. At a minimum, they cover the difference between the anticipated affordable sales price or rent and costs of construction. |
| Denver | | Mandatory | Density bonus, $5,000 reimbursement, parking reduction, expedited processing | Off-site, in-lieu fee | Fee structure is based on the cost to replace the unit. |
| Dublin | Alameda | Mandatory | Fee deferral, flexible design standards, and other. | Credit transfer, in-lieu fee, land dedication, and off-site construction | While the Regulations require that 12.5% of the units in the project be Inclusionary Units, they permit the developer to meet 40% of this obligation by paying an in-lieu fee. The amount of the in-lieu fee is set by resolution of the City Council and is adjusted annually to reflect the greater of the percentage change either in a) the Bay Area Urban Consumer Price Index (CPI) as of March of each year, or b) the United States Department of Housing and Urban Development (HUD) Fair Market Rent limits for the Oakland Primary Metropolitan Statistical Area (PMSA) that are in effect at the time. The fee as of July 1, 2004 is $82,466 per Inclusionary Unit. The entire in-lieu fee amount for the project is due and payable at issuance of first building permit in the project. |

ATTACHMENT D2-A

SURVEY OF OTHER CITIES WITH INCLUSIONARY HOUSING

(Jurisdiction, County, Compliance Type, Incentives, Developer Options, In-Lieu Fee Structure)

| Jurisdiction | County | Compliance Type | Incentives | Developer Options | In-Lieu Fee Structure |
|---|---|---|---|---|---|
| East Palo Alto | San Mateo | Mandatory | None | In-lieu fee and off-site construction | If the residential development contains four or fewer units, an in-lieu fee is collected. The fee is paid upon issuance of building permits for market-rate units or secured at that time by a contract, as determined by the City Manager. If building permits are issued for only part of a residential project, the fee amount is based on the number of permitted market-rate units. The amount of the fee is a per square foot fee established by the Master Fee Schedule and applied to the aggregate building area of all the market-rate homes in question, including the building footprint, plus additional square footage provided by additional stories and a porch/deck minus any garage or other parking area. In the event the fee required by this provision has not been adopted, a fee of $10.60 per square foot of such building area shall be required. |
| Foster City | San Mateo | Mandatory | Density bonus, fee deferral, fee reduction, fee waiver, flexible design standards, and subsides | Off-site construction | No in-lieu fees |
| Fremont | Alameda | Mandatory | Density bonus, fee deferral, fee reduction, and fee waiver | In-lieu fee, land dedication, off-site construction | Fixed per-unit fee<br>Established by resolution of City Council. |
| Irvine | Orange County | Mandatory | Density bonus, fast-track processing, fee reduction, fee waiver, flexible design standards | Conversion to affordable housing, credit-transfer, in-lieu fee, land dedication, off-site construction | Fee structure not available |
| Livermore | Alameda | Mandatory | Density bonus and other. | Credit transfer, in-lieu fee, land dedication, and off-site construction | Fee structure not available |
| Los Angeles (City and County) | Los Angeles | *The City and County of Los Angeles do not currently have an inclusionary ordinance, however, the City is currently considering undergoing a similar effort as San Jose to create an inclusionary ordinance.* | | | |

ATTACHMENT D2-A

SURVEY OF OTHER CITIES WITH INCLUSIONARY HOUSING

(Jurisdiction, County, Compliance Type, Incentives, Developer Options, In-Lieu Fee Structure)

| Jurisdiction | County | Compliance Type | Incentives | Developer Options | In-Lieu Fee Structure |
|---|---|---|---|---|---|
| Menlo Park | San Mateo | Mandatory | Density bonus | In-lieu fee, off-site construction | Fee determined by number of units. |
| Novato | Marin | Mandatory | Density bonus, fee deferral, fee reduction, fee waiver, flexible design standards, subsidies, other | credit transfer, in-lieu fee, land dedication, and off-site construction | The amount of in-lieu fees is established by resolution of the council and is adjusted to reflect changes in the Consumer Price Index (CPI), and may additionally be adjusted for changing conditions in the City. |
| Oakland | Alameda | *The City of Oakland does not currently have an inclusionary housing ordinance. The City is currently considering an inclusionary ordinance.* | | | |
| Orange County | Orange County | Orange County has a voluntary program. The County previously had a mandatory ordinance. The County attempts to negotiate for affordable housing units on the few remaining vacant parcels in the County that receive development proposals. According to a report produced by the California Coalition for Rural Housing in 1994, this switch in enforcement led to a dramatic drop in the production of affordable housing. The mandatory program produced 6,389 units of affordable housing in four years (1979-1983), while the voluntary program has produced just 952 units over eleven years (1983-1994). | | | |
| Pleasanton | Alameda | Mandatory | Fee deferral, fee reduction, fee waiver, flexible design standards, and other. | Credit transfer, in-lieu fee, land dedication, and off-site construction. | Fixed per-unit fee- Lower Income Housing Fee Option. |
| Sacramento | Yolo | Mandatory | Credit Transfer, land dedication, and off-site construction. | Density bonus, fee deferral, fee reduction, fast tracking, fee waiver, flexible design standards, subsidies, and other | No in-lieu fees |
| San Carlos | San Mateo | Mandatory | Density bonus, flexible design standards, subsidies, and other. | Off site construction | No in-lieu fees |
| San Diego | San Diego | Mandatory | Density bonus, fast-track processing, fee reduction | Credit transfer, in-lieu fee, off-site construction | The amount of the in-lieu fee is the sum of the applicable per square foot charge multiplied by the aggregate gross floor area of all of the units within the development. |

ATTACHMENT D2-A
SURVEY OF OTHER CITIES WITH INCLUSIONARY HOUSING
(Jurisdiction, County, Compliance Type, Incentives, Developer Options, In-Lieu Fee Structure)

| Jurisdiction | County | Compliance Type | Incentives | Developer Options | In-Lieu Fee Structure |
|---|---|---|---|---|---|
| San Francisco | San Francisco | Mandatory | Conversion to affordable housing, in-lieu fee, and off site construction. | Flexible design standards | In-lieu fee methodology provided for on-site and off-site developments. |
| San Mateo | San Mateo | Mandatory | Conversion to affordable housing and off-site construction. | Density bonus, flexible design standards, and other | No in-lieu fees |

ATTACHMENT D2-B
SURVEY OF OTHER CITIES WITH INCLUSIONARY HOUSING
(Jurisdiction, IH Requirement Threshold, % Production Required, Targeted Groups, Length of Affordability, Miscellaneous)

| Jurisdiction | IH Requirement Threshold | % Production Required | Targeted Groups | Length of Affordability | Miscellaneous |
|---|---|---|---|---|---|
| Boston | **Rental/Ownership:** 10 units | **Rental/Ownership:** 13% | **Rental/Ownership:** 1/2 at 80% AMI (below $66,000), 1/2 at 80% to 120% AMI ($66,000 to $99,000) | **Rental/Ownership:** Perpetuity | Ordinance applies to developments: seeking zoning relief built on property owned by the City, or financed by the City. |
| Burlingame | **Rental/Ownership:** 4 units | **Rental/Ownership:** Fixed formula 10% | **Rental/Ownership:** Very low-, low-, and moderate-income | **Rental/Ownership:** 10-30 years | No density bonus because the City does not have density limits within the areas the policy applies to. Policy also applies to condo conversions. |
| Chicago | **Rental/Ownership:** 10 units | **Rental/Ownership** 10% or 20% if City assistance provided | **Ownership:** 100% of median-income<br>**Rental:** 60% of median-income and below | **Rental/Ownership:** 30 years | Ordinance applies to developments where there is a zoning change, that are built on City-owned land, that are planned unit developments (except for development outside of the downtown area that do not obtain residential density increases), and those projects receiving financial assistance from the City. |
| Colma | **Rental/Ownership:** 5 units | **Rental/Ownership:** Fixed formula 20% | **Rental/Ownership:** Very low-, low-, and moderate-income | **Rental:** 55 years<br>**Ownership:** 45 years | |
| Denver | **Ownership only:** Rental is illegal 30 units | **Ownership:** 10% | **Ownership:** Low-income but goes up to 95% for high rise developments | **Ownership:** 15 years | |
| Dublin | **Rental/Ownership:** 20 units | **Rental/Ownership:** Fixed formula 12% | **Rental/Ownership:** Very low-, low-, and moderate-income | **Rental/Ownership:** 55 years | Inclusionary Units must be constructed concurrently with the market-rate units, have a similar range of bedrooms, be indistinguishable by design or materials, and be reasonably dispersed. Inclusionary Obligations must be finalized prior to recordation of a final map for the development. Assistance is provided with selling the units. |
| East Palo Alto | **Rental/Ownership:** Any project | **Rental/Ownership:** Fixed formula 20% | **Rental/Ownership:** Extremely low-, very low-, and low-income | **Rental:** 59 years<br>Ownership: 99 years | Affordable units shall be comparable to market-rate units in size, number of bedrooms, exterior appearance, interior features, overall quality of construction and all other respects. Affordable units shall be dispersed throughout the project in a manner acceptable to the City. |

ATTACHMENT D2-B
SURVEY OF OTHER CITIES WITH INCLUSIONARY HOUSING
(Jurisdiction, IH Requirement Threshold, % Production Required, Targeted Groups, Length of Affordability, Miscellaneous)

| Jurisdiction | IH Requirement Threshold | % Production Required | Targeted Groups | Length of Affordability | Miscellaneous |
|---|---|---|---|---|---|
| Foster City | **Rental/Ownership:** 10 units | **Rental/Ownership:** Variable formula 10-50% | **Rental/Ownership:** Very low-, low-, moderate-income, and seniors. | **Rental/Ownership:** 35 years | Developers sell for-sale units. |
| Fremont | **Rental/Ownership:** 7 units or 7 lots | **Rental/Ownership:** Fixed formula 15% | **Rental/Ownership:** Very low-, low-, and moderate-income | **Rental:** life of project/unit **Ownership:** 30 years | The City sets the sales price of the IZ units |
| Irvine | **Rental/Ownership:** Any project | **Rental/Ownership:** 15%, fixed formula. | **Rental:** Very low, Low-, and Moderate-income, seniors **Ownership:** Very-low, Low, and moderate income | **Rental/Ownership:** 30 years | |
| Livermore | **Rental/Ownership:** 1 unit | **Rental/Ownership:** Variable formula 10-20% | **Rental:** Very low- and low-income **Ownership:** Low and moderate-income | **Rental/Ownership:** 30-55 years | |
| Los Angeles (City and County) | *The City and County of Los Angeles do not currently have an inclusionary ordinance, however, the City is currently considering undergoing a similar effort as San Jose to create an inclusionary ordinance.* | | | | |
| Menlo Park | **Rental/Ownership:** 5 units or 1 lot | **Rental/Ownership:** 10-15% | **Rental/Ownership:** VL, LI, MOD | Not available | City maintains a wait list and sets sales price |
| Novato | **Rental/Ownership:** 1 unit | **Rental:** 10-50% **Ownership:** 5-50% | **Rental:** VL, LI, Senior **Ownership:** VL, LI, MOD, Senior | **Rental/Ownership:** In perpetuity | Units sold by Hamilton Housing. |
| Oakland | *The City of Oakland does not currently have an inclusionary housing ordinance. The City is currently considering an inclusionary ordinance.* | | | | |

ATTACHMENT D2-B

SURVEY OF OTHER CITIES WITH INCLUSIONARY HOUSING

(Jurisdiction, IH Requirement Threshold, % Production Required, Targeted Groups, Length of Affordability, Miscellaneous)

| Jurisdiction | IH Requirement Threshold | % Production Required | Targeted Groups | Length of Affordability | Miscellaneous |
|---|---|---|---|---|---|
| Orange County | Orange County has a voluntary program. The County previously had a mandatory ordinance. The County attempts to negotiate for affordable housing units on the few remaining vacant parcels in the County that receive development proposals. According to a report produced by the California Coalition for Rural Housing in 1994, this switch in enforcement led to a dramatic drop in the production of affordable housing. The mandatory program produced 6,389 units of affordable housing in four years (1979-1983), while the voluntary program has produced just 952 units over eleven years (1983-1994). | | | | |
| Pleasanton | **Rental/Ownership:** 15 units | **Rental/Ownership:** Variable formula 15-20% | **Rental/Ownership:** Very low-, low-, and moderate-income | **Rental/Ownership:** In perpetuity | City helps set sales price, Sale of units is handled by Tri-Valley Housing Opportunity Center. |
| Sacramento | **Rental/Housing:** 10 units | **Rental/Ownership:** Fixed formula 15% | **Rental/Ownership:** Very low- and low-income | **Rental/Ownership:** 30 years | Sacramento Housing Redevelopment Agency manages the affordable housing program. |
| San Carlos | **Rental/Ownership:** 7 units | **Rental/Ownership:** Fixed formula 15% | **Rental/Ownership:** Very low-, low-, and moderate-income | **Rental/Ownership:** Life of project/unit | City sets sale price |
| San Diego | **Rental/Ownership:** 2 units | **Rental/Ownership:** fixed formula, 10% | **Rental units:** low-income **Ownership units:** moderate-income | **Rental units:** 55 years **Ownership:** not available | |
| San Francisco | **Rental/Ownership:** 5 units | **Rental/Ownership:** Variable formula 10-17% | **Rental/Ownership:** Very low-, low-, and moderate-income | **Rental/Ownership:** Life of project/unit | The City partners with several agencies to help sell the IZ units. |
| San Mateo | **Rental/Ownership:** 11 units or 11 lots | **Rental/Ownership:** Fixed formula 10% | **Rental:** Low-income **Ownership:** Moderate-income | **Rental:** in perpetuity **Ownership:** 45 years | The density bonus language is out of compliance with the new density bonus law and thus is overridden by the new language. Pricing of for-sale units are set at 110-120% of area median income; buyers can't spend more than 30-35% of gross income on their mortgage. |

## ATTACHMENT E

### Literature Review of Inclusionary Housing Programs

There have been few studies that have looked at the economic effects of inclusionary housing. This in large part is due to the fact that it can be difficult to control for all the factors that affect a housing market, or to attribute the outcome of such things as housing prices or housing starts to one factor. In addition, it is difficult to obtain accurate data on the adoption and characteristics of inclusionary zoning programs across jurisdictions and over time, and to track the number of units produced under these programs.

Housing Department staff has identified 58 studies related to inclusionary housing that have been produced since 1998. The State Department of Housing and Community Development's website, http://www.hcd.ca.gov/hpd/inclusion.html, contains a thorough compendium of these studies. Only a few of the 58 studies looked at the production and economic impacts of inclusionary housing policies or programs, and even fewer looked at programs in California. Rather, most studies examine or analyze best practices and compare attributes of various inclusionary policies.

Most of these studies have been completed or were financed by advocates in favor of inclusionary housing or those opposed to inclusionary housing, so the stated findings have tended to favor ideological positions. Advocates praise inclusionary for the production that ordinances have achieved and eschew any findings that inclusionary programs have an impact on prices or home values. Opponents argue that inclusionary programs have produced few units, that they result in increased prices for market-rate housing, and that they unfairly target one industry.

One thing that is certain is that all inclusionary programs are not the same, and the design of an ordinance can determine whether it is successful or not. While some communities have adopted "inclusionary" programs that are actually exclusionary, and intended to deter development, the majority of communities have adopted ordinances to provide an additional tool to meet their need for increased affordable housing.

The publication that we have used in our efforts to design an ordinance for the City of San Jose is called "*On Common Ground*," a July 2005 publication released by the Nonprofit Housing Association of Northern California (NPH) and the Home Builders Association of Northern California (HBANC). This report sought to highlight best practices and key principles for jurisdictions considering the adoption of inclusionary ordinances.

While NPH and HBANC hold different views about the merits of inclusionary programs, they did agree on a number of important issues:

(1) Increasing the housing supply is critical to addressing the current lack of affordable housing in the Bay Area;

(2) A broader commitment from the public and private sectors is needed to ensure that housing is affordable to people with modest incomes;
(3) There is a need to maximize limited resources that are currently available to produce affordable housing opportunities;
(4) A successful and effective program is flexible and adaptive to local market forces;
(5) Market-rate builders should be provided a choice of several options for meeting the inclusionary requirement; and
(6) Local governments should provide offsets to the development community to compensate for this requirement.

Of those studies that have examined the economic impacts of inclusionary housing, only a few have focused on California and the Bay Area. Highlighted below are seven studies that focus on the production and economic impacts of inclusionary zoning policies in California, and in particular the Bay Area.

**HOUSING MARKET IMPACTS OF INCLUSIONARY ZONING** / Knaap, Gerrit-Jan; Bento, Antonio; Lowe, Scott -- College Park, MD: National Center for Smart Growth Research and Education, 2008, 21 p.
Available full text via the World Wide Web:
http://www.smartgrowth.umd.edu/research/pdf/KnaapBentoLowe-InclusionaryHousing.pdf

This study looks at the effects of inclusionary on housing prices and starts. It estimates the effects of inclusionary zoning policies on single family housing prices, single family and multifamily housing starts, including the size of single family housing units in California over the period from 1988 to 2005.

The study finds inclusionary zoning policies in cities with existing or new programs during the study period did not experience a significant reduction in the rate of single-family housing starts, but did experience a marginally significant increase in multifamily housing starts. More specifically, the study found that in municipalities with inclusionary housing programs, the share of multifamily housing starts increased seven percent. The study further concludes that housing prices in cities that adopted inclusionary zoning increased about 2-3 percent faster than cities that did not adopt such policies. In addition, the study indicates that housing price effects were greater in higher priced housing markets than in lower priced markets. Lower priced markets (homes selling less than $187,000) decreased by 0.8 percent while housing that sold for more than $187,000 increased by 5.0 percent. The study opines that housing producers did not in general respond to inclusionary requirements by slowing the rate of single family housing construction but did pass the increase in production costs on to housing consumers. Finally, the study states that the size of market rate houses in cities that adopted inclusionary zoning increased more slowly than in cities without such programs. The study finds that houses in cities with inclusionary zoning programs were approximately 48 square feet smaller than in cities without inclusionary programs.

**AFFORDABLE BY CHOICE: TRENDS IN CALIFORNIA INCLUSIONARY HOUSING PROGRAMS** / Jacobus, Rick; Hickey, Maureen -- San Francisco, CA: Non-Profit Housing Association of Northern California (NPH), 2007, 45 p.
Available for purchase via the World Wide Web:
http://www.nonprofithousing.org/knowledgebank/publications/default.aspx

The study looked at housing produced through inclusionary programs from January 1999 through June 2006. The study found that nearly one-third of California jurisdictions now have inclusionary programs. In all, the study identified 170 jurisdictions with inclusionary programs, a significant number of which were adopted in the past few years.

The authors claim that success of inclusionary housing in the Bay Area is evidenced by the fact that more than 80,000 Californians have been housed through inclusionary programs. Since 1999, inclusionary programs have created an estimated 29,281 affordable units Statewide. The study additionally identifies that a majority of housing created through inclusionary policies is built along with market-rate units. Additionally, the study indicates that nearly three-quarters of the housing produced through inclusionary programs is affordable to people with some of the lowest incomes.

**THE EFFECTS OF INCLUSIONARY ZONING ON LOCAL HOUSING MARKETS: LESSONS FROM THE SAN FRANCISCO, WASHINGTON DC AND SUBURBAN BOSTON AREAS** / Schuetz, Jenny, et al. / Furman Center for Real Estate and Urban Policy -- Washington, DC: National Housing Conference, November 2007, 102 p.
http://www.nhc.org/pdf/pub_chp_iz_08.pdf

The study addressed two empirical questions—(1) have inclusionary programs had the effect of restricting the supply of market-rate housing and increasing housing costs in the jurisdictions adopting inclusionary; and (2) have inclusionary programs been successful at producing affordable units?

The study compared the effects of inclusionary in three regions—the San Francisco Bay Area, suburban Boston, and the Washington D.C region. The three regions had significant differences. The inclusionary programs in the San Francisco region were established earlier, were more likely to be mandatory, and were more broadly applicable to different types and sizes of developments than the programs in suburban Boston and the Washington D.C region. Additionally, the study found that jurisdictions were more likely to adopt an inclusionary program when they were larger and more affluent; had a larger number of neighboring jurisdictions with inclusionary; and had adopted other land use regulations.

Additionally, the study found that in the San Francisco area almost all jurisdictions produced some affordable units. As for the region as a whole, inclusionary programs produced 9,154 affordable units (as of 2004).

Additionally, the study concluded that inclusionary impacted production and prices of market-rate housing in the three regions differently. In the San Francisco area, there was no evidence that inclusionary impacted either the prices or production of single-family houses. Finally, the study suggested a number of considerations that jurisdictions should explore when debating whether or not to adopt inclusionary.

**THE BUILDER'S PERSPECTIVE ON INCLUSIONARY ZONING** / Tombari, Edward A. -- Washington, DC: National Association of Home Builders, 2005, 19 p. (Smart Growth, Smart Choices Series)
Available full text via the World Wide Web:
http://www.nahb.org/fileUpload_details.aspx?contentID=50726

The study examines inclusionary programs in the San Francisco, Los Angeles, Washington, D.C., Boston and Denver metropolitan regions. Related to San Francisco, the study finds that based on the jobs created by the expanding Bay Area economy, approximately 24,217 "affordable" housing units per year are needed to house workers who have been added to the economy. In 30 years, the study indicated that 27 participating municipalities in the Bay Area created 6,840 affordable units through inclusionary zoning requirements, or roughly 28% of the annual affordable housing need. At the same time, the study provided a calculation that theorized that due to inclusionary zoning requirements, the San Francisco Bay area lost a total of $2.2 billion in home value equity (lost home value equity equals the market value price less the below market value price set by government) that could have been taxed by local government for the social good or created additional wealth among the residents of San Francisco Bay.

**HOW DOES INCLUSIONARY HOUSING WORK?: A profile of seven Southern California cities** / Los Angeles, CA: Southern California Association of Non-Profit Housing, December 2005, 10 p.
Available full text via the World Wide Web:
http://www.scanph.org/files/IZ.Guide_.pdf

The Southern California Association of Non Profit Housing (SCANPH) researched seven Southern California cities that have implemented inclusionary programs (Brea, Irvine, Oxnard, Pasadena, Port Huemene, San Clemente, and Santa Paula) to get information about the productivity of their policies. The study analyzed the inclusionary zoning codes for each of these cities, and spoke directly to city planners and local developers to get an in depth understanding of the specific planning, landuse, and political factors that influence the productivity of the inclusionary housing ordinance in each city. The study also looked at how population, land availability, and overall housing development influence the productivity of the inclusionary housing in these cities. The study arrives at three major findings: 1) inclusionary has not reduced overall housing construction in the cities studied. 2) Inclusionary housing policies are effective in producing affordable units that would not otherwise be developed and in providing funding for affordable housing that would not otherwise be available. 3) Factors that influence the effectiveness of a jurisdiction's inclusionary policy include: growth in population and development, land availability, land use trends, the contents, stringency, clarity and accessibility of an inclusionary housing policy, staff support, and political will.

**HOUSING SUPPLY AND AFFORDABILITY: Do affordable housing mandates work?/** Powell, Benjamin; Stringham, Edward -- Los Angeles, CA: Reason Public Policy Institute (RPPI), 2004, 48 p. (RPPI Policy Study No. 318)
Available full text via the World Wide Web: http://www.rppi.org/ps318.pdf

The authors of this study looked at 50 jurisdictions throughout the Bay Area and conclude that inclusionary zoning has failed to produce a significant number of affordable homes. The authors find that even the few inclusionary zoning units produced have cost builders, homeowners, and governments by restricting the supply of new homes and driving up the price of both newly constructed market-rate homes and the existing stock of homes. Additionally, they state that inclusionary zoning makes housing less affordable. Specifically, the study indicates that the 50 Bay Area cities with inclusionary zoning have produced fewer than 7,000 affordable units. The study found that in one fourth of the jurisdictions, the cost is greater than $500,000 per unit, and the cost of inclusionary zoning in the average jurisdiction is $45 million, bringing the total cost for all inclusionary units in the Bay Area to date to $2.2 billion. The study estimated that inclusionary zoning causes the price of new homes in the median city to increase by $22,000 to $44,000. In high market-rate cities such as Cupertino, Los Altos, Palo Alto, Portola Valley, and Tiburon the cost was more than $100,000 to the price of each new home. The authors further note that in the 45 cities where data was available, new housing production decreased by 31% the year after cities adopted inclusionary zoning programs.

In conclusion, the study suggests because inclusionary zoning restricts resale values for a number of years, the loss in annual tax revenue lost to Bay Area governments would equal about $553 million.

**POLICY CLAIMS WITH WEAK EVIDENCE: A critique of the Reason Foundation Study on Inclusionary Housing Policy in the San Francisco Bay Area /** Basolo, Victoria; Calavita, Nico -- Irvine, CA: University of California at Irvine, 2004, 15 p.
Available full text via the World Wide Web:
http://www.nonprofithousing.org/actioncenter/campaigns/download/IH_countering_critics.pdf

This study analyzed the Reason Foundation study mentioned above and concluded that the study had a narrow scope of research, flawed research design, severe data limitations, and several weaknesses in the analysis of inclusionary housing ordinances. The purpose of this critique was to assess the quality of the research and note its major weaknesses, consider the reasonableness of claims based on the research results, and recommend a different path for empirical work on Inclusionary Housing policies.

Specifically, the reasearchers concluded that the research design only looked at cities with inclusionary housing ordinances and therefore did not compare this data with cities without ordinances. As a result, it was impossible to make any conclusions whether any decline in housing production in localities with inclusionary housing ordinances was due to the policy itself or part of an overall downward trend in housing production due to other economic factors. The researchers found that the Reason study utilized incomplete information for 17 of the 50 cities listed and used the average of the remaining 33 cities to fill in the incomplete information.

Also, the researchers found that, in determining the cost of Inclusionary Housing, the Reason study only looked at homeownership, though a large number of units created through inclusionary ordinances are rental units. Other factors the authors found to be problemmatic included: an assumption that in all cases the developer would incorporate the units in a development; that the affordable units will cost the same as the market units to build; that there are no incentives and subsidies available to the developer; and that developers do not access any options that might reduce their costs.