



# Memorandum

**TO:** Mayor and City Council

**FROM:** Vice Mayor Dave Cortese  
Councilmember Kansen Chu  
Councilmember Nancy Pyle

**SUBJECT:** Citywide Inclusionary  
Housing Ordinance

**DATE:** December 5, 2008

---

**RECOMMENDATION**

1) It is recommended that the City Council direct staff to draft an inclusionary zoning ordinance based on the Housing Department staff's proposed requirements as stated in the supplemental memo of November 26, 2008 with the following modifications:

a) Geographic Applicability

In low income neighborhoods, inclusionary zoning requirements should be limited to the 15% level required by state law in RDA project areas. Because market rate housing is often difficult to build, finance, and market successfully in these areas, staff should be directed to evaluate strategies including incentives that encourage more market rate, owner occupied housing in low-income neighborhoods.

b) Threshold

Ordinance requirements will apply to developments of 20 units or more.

c) Type of Resale Restriction for Ownership Units

Under a shared-equity provision, the share available to the buyer shall increase the longer the buyer retains ownership of the home.

d) Operative date of the Ordinance

The ordinance will become operative following a 12 month period in which building permits for 2,500 units have been issued as long as 50% or more of these permits have not been issued in a specific San Jose Planning Area. (e.g. North San Jose)

The ordinance will become operative no later than January 1, 2013 if the City Council passes a motion at least a month prior to that date authorizing the ordinance to become effective.

e) Grandfathering/Pipeline

Developers meeting the following requirements will be exempt from the requirements of the ordinance:

i.) All Units: Within 6 months of the operative date of the ordinance, the developer submits a signed application, pays all required fees, and submits data required on a planning permit check list that was in place at time of ordinance adoption, for a planning permit (General Plan Amendment, Zone Change, CUP, site development, or PD permit) and environmental clearance pursuant to the provisions of the Zoning Ordinance and the Environmental Clearance Ordinance, and

ii.) Projects 749 units or less: Within 24 months after the operative date of the ordinance, the developer receives an approved planning permit. Within 30 months after the operative date of the ordinance the developer receives an approved building permit.

- iii.) Projects of 750 units or greater: Within 30 months after the operative date of the ordinance, the developer receives an approved building permit. Within 40 months after the operative date of the ordinance, the developer receives an approved building permit.
- iv.) Projects requiring phasing: The builder shall have 24 months from the pulling of the first building permit to pull the permits for the final phase.

These times will be extended by the amount of time necessary to resolve delays imposed by city policy or regulations as well as non-city regulations.

f) Off Site Construction

Off site construction of affordable units may be in any planning area as long as the project is compatible with the city's affordable housing dispersion policies.

g) In Lieu Fees

The per unit in-lieu fee amount will equal the amount stated in the staff recommendation except that fees for rentals, condos, and townhouses will be set at 15% less than the staff recommendation.

The fee level will be reviewed on a biannual basis and readjusted by Council if a disproportionate number of projects pay fees rather than construct inclusionary units.

Fees shall be collected immediately prior to the issuance of certificates of occupancy; failure to pay fees shall delay the issuance of certificates.

2) Direct staff to prepare a draft administrative procedures manual for implementation of the inclusionary zoning ordinance and circulate for review of interested parties at least 6 months prior to the operative date of the ordinance

3) Council shall direct staff to return within 6 months following the adoption of the Inclusionary Housing Ordinance with a report and recommendations on the following issues associated with the development of affordable housing:

- a) The generation of park fees.
- b) The dispersion of affordable housing throughout the City of San Jose.
- c) Sources of funds over several years which could provide offsets and/or incentives for the construction of multi-family rental housing. (e.g. Housing Trust Fund, State and Federal assistance etc.), along with affordable housing performance measures to be considered for incorporation into the annual budget process.
- d) Source of funds for security deposits for tenants and down payment assistance for otherwise qualified homebuyers.
- e) A full analysis, in matrix form, of status of all residential projects within the City of San Jose. The matrix would include completion date, absorption rate as well as other important benchmarks for Council to be proactive in dealing with problems of occupancy (tenants) and sales (owners). This will be provided every six months.