

CITY OF OAKLAND
COUNCIL AGENDA REPORT

TO: Office of the City Manager
ATTN: Robert C. Bobb
FROM: Community and Economic Development Agency
DATE: May 15, 2001
RE: INFORMATIONAL REPORT ON INCLUSIONARY ZONING FOR
AFFORDABLE HOUSING

SUMMARY

This informational report summarizes the key issues associated with adoption of an inclusionary zoning program to require the provision of a minimum percentage of affordable housing units as part of new residential developments in Oakland. Following direction from the Council, staff from CEDA and the City Attorney's office could begin work on developing an inclusionary zoning ordinance during the next fiscal year. Staff estimates that \$50,000 in funding would be needed for a consultant study to analyze the impacts of inclusionary zoning requirements on project feasibility and determine alternative thresholds and affordability requirements for an inclusionary program in Oakland.

Staff has also outlined several other key options for increasing the provision of affordable housing in Oakland, such as granting density bonuses for affordable projects, requiring secondary units in new single-family subdivisions and utilizing development agreements to require affordable units in larger scale projects.

Staff recommends that the Committee accept this informational report and provide direction to staff as whether to hire a consultant and pursue development of an inclusionary housing program in Oakland.

FISCAL IMPACTS

Staff estimates that \$50,000 in funding would be needed for the consultant study. A request for that funding has been included in the 2001-2003 budget request. It is proposed to be funded from Mortgage Revenue (fund 2999, project P05320).

BACKGROUND

The Final Report of the Housing Development Task Force, which was adopted by the City Council in July 2000, included a recommendation to establish an inclusionary zoning ordinance. Council has directed staff to implement the Task Force's recommendations. This report is intended to provide the Council with information about inclusionary zoning and to seek direction regarding preparation of such an ordinance.

Inclusionary zoning could also serve as a component of the City's Housing Element policies. As part of the State-mandated update to the General Plan Housing Element, the City must demonstrate that effective programs and regulations are in place to facilitate the provision of Oakland's "fair share" of affordable housing in the region. The Association of Bay Area Governments (ABAG) has determined that Oakland's fair share of the regional housing need for the period from January 1, 1999 to June 30, 2006 will require a total of 7,733 new housing units, of which at least 3,207 units should be affordable to lower income residents who earn less 80 percent of the area median income. Existing programs administered by the City, Oakland Housing Authority and local nonprofits are expected to provide only a portion of the required lower income housing units.

KEY ISSUES AND IMPACTS

Inclusionary zoning is a tool used by many cities to require that a minimum percentage of new housing units be made affordable to targeted income groups. For example, a typical inclusionary program might require that for any new residential development of 10 or more units that at least 10 percent of the units shall be made affordable to lower income residents.

Many inclusionary programs also include an alternative compliance mechanism, such as an in-lieu fee option based on the cost of construction for small projects of less than 10 units or for projects in which a developer is unable to provide the required affordable units. However, allowing an in lieu fee option fails to create the desired mix of income groups within new development that is typically a key goal of inclusionary programs. Additionally, in lieu fees must be set at a high enough level to be effective.

Types of Inclusionary Programs

Inclusionary programs vary widely in the amount of affordable housing required and the income levels to which the housing must be made affordable. Setting the threshold for triggering the inclusionary requirement and determining the appropriate affordability levels involves making decisions on a number of policy issues including:

1. Percentage of affordable units required, defined as a percentage of the total units in the project. Other cities with inclusionary zoning ordinance require that anywhere from five percent to 66 percent of units be affordable.
2. Target populations for the below-market units, defined as a percentage of area median family income, adjusted for family size. *Low-income housing* refers to housing units that are affordable to families earning between 50 percent and 80 percent of the area median income. *Very low income housing* refers to housing that is affordable to families earning less than 50 percent of the area median income. *Moderate income housing* refers to housing that is affordable to families earning between 80 percent and 120 percent of the area median income

The current income limits for these categories, for a family of four, are as follows:

Moderate Income	\$85,900
Low Income	\$53,850
Very Low Income	\$35,800

Income limits are adjusted upward or downward for larger or smaller household sizes.

3. Definition of affordable housing expense, as a percentage of annual gross household income. Typically, housing is defined as affordable if gross housing costs, including utilities, do not exceed 30 percent of household income.
4. Setting sales prices or rents for different size units. Typically this involves an assumed household size depending on the number of bedrooms. The assumed household size is used to select the appropriate income limit on which to base the calculation.
5. Term of affordability of the affordable units. A typical inclusionary program might require that affordable units be rented or resold at affordable rates for a period of at least thirty years.
6. Size of projects subject to the inclusionary requirement; typically small projects are exempt from the inclusionary zoning requirement, but may still be subject to the in-lieu fee requirement. The thresholds of other cities range from five to thirty units.

Inclusionary Zoning Ordinances in Other California Cities

Over seventy jurisdictions in California have adopted inclusionary zoning requirements, most of them clustered in the Bay Area and southern California. A 1994 study by the California Coalition for Rural Housing Project evaluated those programs. The key findings were:

- Most inclusionary programs are adopted as part of a city or county zoning ordinance.
- 10% inclusionary requirement is used in 39% of the jurisdictions surveyed.
- Terms of affordability range from ten years to perpetuity. Most programs require affordability restrictions to remain in effect for thirty years.
- Statewide, the vast majority of inclusionary housing programs (87 percent) provide for both low and moderate income households, and 53 percent of inclusionary programs also require housing for very low income households.
- As of 1994, over 23,000 affordable units had been produced over two decades by inclusionary zoning programs in California and over \$24 million of in-lieu fees had been collected as a result of inclusionary programs.

A variety of different inclusionary options have been adopted by other Bay Area cities. The following table provides an overview of inclusionary programs in selected cities:

City	Inclusionary program?	Affordability requirement (% by income group)	For projects with how many units?	In lieu fee option?
Alameda	NO			
Albany	NO			

City	Inclusionary program?	Affordability requirement (% by income group)	For projects with how many units?	In lieu fee option?
Benicia	YES	10% very low income; 5% low income	10	High; seldom used
Berkeley	YES	10% very low income	5	Seldom used
Cupertino				
Dublin	YES	5% moderate income	20	\$1 per sq. ft single family; \$0.75 per sq. ft multi-family
East Palo Alto	YES	5% very low, low, moderate	10	If less than 10 units: \$4.66 per sq. ft
El Cerrito	NO			
Emeryville	YES	20% moderate income	30	No
Fremont	PROPOSED			
Hayward				
Larkspur	YES	15% (half low, income, half moderate income)	10	Cost of construction
Livermore	YES	10% low income	0	If less than 10 units: 10% of difference in valuation to 10K
Menlo Park	YES	10% moderate income	10	No
Moraga	PROPOSED			
Mountain View	YES	10% low income (rental); 10% moderate (for sale)		For high-end units: 3% of sale price
Napa	YES	10% low or very low income (rental); moderate income (for sale)		2% of building cost
Palo Alto	YES	10% low income	10	Sometimes, cost of unit
Piedmont	NO			
Pleasant Hill	YES	10% low income, or 5% very low income; or 25% senior citizens	5	Sometimes
Pleasanton	PROPOSED		15	\$2888 single family; \$963 multi-family
Richmond	PROPOSED			
San Francisco	YES	10% (60% of median for rental); or 10% moderate (for sale)		Case-by-case
San Jose	NO			
San Leandro	NO			
San Rafael	YES	10% low income		
Sunnyvale	YES	10% moderate income		
Tiburon	YES	5% moderate or low income	10	If units are infeasible or if project is less than 10 units
Union City	NO			
Walnut Creek	NO			
Yountville	YES	10% median income	10	Case-by-case

Inclusionary Requirements for Redevelopment Areas

State law requires that for projects located within redevelopment areas established after 1975, 15% of units developed by public or private entities other than the redevelopment agency must be made affordable to low and moderate income households (40 percent of the inclusionary units must be affordable to very low income households), and 30% of units developed by the redevelopment agency must be affordable (50 percent of the inclusionary units must be affordable to very low income households). In Oakland, the downtown redevelopment area is exempt from this requirement, but the Coliseum Redevelopment Area, as well as the proposed West Oakland Redevelopment Area, are subject to this requirement.

Legal Standing of Inclusionary Programs

The State Legislature has on many occasions made it clear that the provision of affordable housing is a matter of critical and statewide importance. Although the Planning and Zoning Law of the state provides no explicit authority for inclusionary zoning, a City's "police power" is broad enough to require that all housing developments provide some reasonable amount of low and moderate income housing. Some cities' inclusionary zoning ordinances have been challenged, but to date, no California city's inclusionary zoning ordinance has been successfully challenged in any reported legal decision.

Density Bonus

State law requires the City to adopt a procedure for awarding a twenty-five percent density bonus for housing projects creating five or more housing units in which either (1) twenty percent of housing units are affordable to low income households; or (2) ten percent of housing units are affordable to very low income households; or (3) fifty percent of housing units are affordable to senior citizens. Additionally, the City is required to offer an "incentive" in the form of relaxed zoning standards for utilization of the density bonus, subject to certain findings. An ordinance to amend the Oakland Planning Code that would establish density bonus and incentive procedures for affordable housing was reviewed by the Community & Economic Development Committee on May 1, 2001.

Following adoption of the ordinance, density bonuses of up to twenty-five percent and related incentives would be permitted with overall project design still subject to the design review process required for residential projects. "Incentives" in the form of relaxed zoning requirements (i.e. reduced setbacks or parking requirements, etc.) could be granted subject to a finding that the project would be economically infeasible without the requested incentive or that design constraints would preclude provision of affordable units without the incentive. Based upon the Planning Commission's direction, design review standards are not among the standards that could be waived or reduced.

The ordinance would also provide for density bonuses not mandated by State law, such as for moderate-income housing projects or for projects requesting a density bonus of greater than twenty-five percent. These projects could be granted a density bonus subject to approval of a Major Conditional Use Permit that includes discretionary review by the Planning Commission.

Potential Disadvantages of Inclusionary Zoning

In a climate in which public sector housing subsidies are limited and market-based solutions are actively sought, inclusionary zoning is an attractive option. However, inclusionary zoning is affected by changes in the economy and local housing conditions that may affect the overall supply of housing. Development of an inclusionary housing program in Oakland could stifle housing production if inclusionary requirements reduce developers' profit margins to the point at which projects are rendered economically infeasible.

In the recession of the early 1990s, a "cost-offset approach" to inclusionary housing was adopted by some cities. Under this approach, local governments would provide developers with regulatory relief as a way to counter the costs of providing affordable units. Regulatory relief might include density increases, fast-track permit approval, fee waivers or deferral, lower parking requirements or reductions in design review requirements.

One possible mechanism for reducing the impact on development would be to tie the inclusionary program to the density bonus ordinance. For example, under inclusionary zoning, a developer might be required to provide 20 percent of total units at prices or rents affordable to low income households. In return, the developer would be entitled to a density bonus and one other incentive, which could assist in making the affordable units feasible to develop. Alternatively, if a 10 percent inclusionary requirement is adopted, developers could be granted a 10 percent density bonus; however, State law mandates that if the provision of affordable housing is less than required for the State-mandated density bonus, then any density bonus may not exceed the maximum density allowed by the General Plan.

A crucial policy issue will be to balance the inclusion of affordable units with the desire to promote new market-rate development and to continue the Mayor's 10K housing initiative, which aims to bring 10,000 new residents to downtown Oakland by the year 2003. If not drafted carefully, inclusionary requirements may stifle overall production and could impact the 10K program. The Housing Development Task Force recommended that the inclusionary zoning ordinance should not take effect until one year after adoption by the Council so as not to impact projects that are "in the pipeline".

Alternatives to Inclusionary Zoning

In addition to development of an inclusionary housing program, staff has identified several other key options for increasing the provision of affordable housing in Oakland:

Mandatory Second Units

For new single-family residential subdivisions, the City could require the provision of a minimum percentage of secondary or "accessory" dwelling units that would provide affordable rental housing. For example, the City could require that one-fourth of all single family dwellings in any development of four or more single-family dwelling must include an accessory dwelling unit. This requirement has recently been used by several other Bay Area cities.

Development agreements

Standard development agreements could be prepared that require developers of large-scale housing projects to provide a percentage of affordable housing. Development agreements are often requested by developers who seek to have their entitlements remain in effect over several years so they can build in phases over time. In exchange, cities can negotiate for amenities to be included in the project, such as public open space or affordable housing. This would only be relevant to projects that need long-term entitlements to justify their investment in infrastructure. Proposed development on sites such as Leona Quarry might be expected to utilize such an option.

PROGRAM DESCRIPTION

Following direction from the Council, staff from CEDA and the City Attorney's office could begin work on developing an inclusionary zoning ordinance during the next fiscal year. Staff estimates that \$50,000 in funding would be needed for a consultant study to determine the proper threshold and affordability requirement for an inclusionary program in Oakland, by performing economic analysis of the effect on proposed housing projects of different inclusionary requirements. A request for funding the consultant study has been included in the 2001-2003 budget request.

The proposed work program would be to:

1. Hire an economic consultant to perform economic analysis and determine the appropriate threshold, level of affordability required and in-lieu fee option. It is anticipated that the consultant would prepare a range of options. The consultant would analyze the impacts of such requirements on project economics and feasibility for a variety of typical Oakland housing sites.
2. Based on results of consultant study, staff would prepare an informational report for City Council review.
3. Following City Council input, staff would prepare a draft ordinance for review by the Planning Commission and City Council.

ENVIRONMENTAL OPPORTUNITIES

The provision of additional affordable housing would support related efforts aimed at facilitating sustainable development in Oakland.

DISABILITY AND SENIOR CITIZEN ACCESS

The provision of additional affordable housing would be expected to benefit senior citizens' and disabled residents.

RECOMMENDATION AND RATIONALE

As noted above, the Housing Development Task Force recommended that the City adopt an inclusionary zoning ordinance. The Task Force recommendations were adopted by the City Council in July 2000. The adoption of an inclusionary zoning ordinance would be supportive of the City Council's goals of expanding the supply of affordable housing and providing a broader mix of incomes in all the City's neighborhoods. Use of inclusionary zoning could also be an important component of the City's Housing Element update this year, and could assist the City in accommodating its "fair share" of regional housing needs.

Staff recommends that the Council direct staff to proceed with hiring a consultant and developing an inclusionary zoning ordinance.

ACTION REQUESTED OF THE CITY COUNCIL

Accept this informational report and provide direction to staff.

Respectfully submitted,

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CEDA Director

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APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE

ROBERT C. BOBB
City Manager

Attachment A: City of Emeryville inclusionary zoning ordinance