C I T Y O F O A K L A N D
AGENDA REPORT

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: April 25, 2006

RE: An Informational Report And Analysis Of The Inclusionary Zoning Policy Recommendations Submitted By The Oaklanders For Affordable Housing Coalition

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SUMMARY

In response to a request from the City Council's Rules Committee, staff has prepared a summary and analysis of a proposal offered by the Oaklanders for Affordable Housing Coalition for an inclusionary zoning policy for the City of Oakland (see Attachment A). Staff has not made any formal recommendations in favor or against this specific proposal. The purpose of this report is to provide an assessment of the proposed ordinance and to highlight policy issues that the City Council may wish to address as part of any proposed inclusionary housing policy.

Given the continued strength of the City's housing market and the pace of new development of market rate housing, it appears that market conditions are conducive to adoption of an inclusionary housing program similar to what is already in place in over 100 California cities and counties. While attention needs to be paid to how such a program is implemented and phased in, over time developers adjust to these requirements and come to view inclusionary requirements as a cost of doing business.

Inclusionary housing programs should be viewed as one component of a city's overall housing strategy. Depending on local circumstances, inclusionary programs might not meet the full spectrum of needs, nor will an inclusionary program produce all the affordable housing that is needed in the City. Inclusionary programs may work well as a complement to other affordable housing efforts, including preservation of existing assisted housing, development of new assisted housing with public subsidies, first-time homebuyer assistance, rehabilitation loans for low income homeowners, and the public housing and Section 8 programs operated by housing authorities and targeted to the very lowest income households. For example, an inclusionary housing program that targets low and moderate income households can serve that segment of the market while allowing the City to target its limited affordable housing dollars to extremely low and very low income households who have the greatest housing needs, but also require the greatest subsidies.

The report includes some suggestions regarding key policy decisions that need to be made and some guidance and recommendations on general considerations for the design and implementation of an inclusionary housing program.

FISCAL IMPACT

This is an informational report. A fiscal impact analysis of an Inclusionary Zoning Policy has not been conducted.

BACKGROUND

The issue of inclusionary zoning and suggestions that Oakland adopt such a policy has come before the City Council on a number of occasions.

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.

On May 15, 2001, staff presented the City Council with an overview of inclusionary zoning programs and the issues associated with the feasibility of implementing such a program in Oakland.

In December 2003, staff provided the City Council with a summary of key findings of a comprehensive survey of inclusionary zoning published by the Non-Profit Housing Association of Northern California (NPH) and the California Coalition for Rural Housing (CCRH). That study is the most thorough study of inclusionary zoning in California conducted in over a decade. While NPH is currently working to update the data, it remains the most definitive source of information regarding existing inclusionary policies and programs in cities and counties throughout the state. Attachment B to this report is a table from the NPH/CCRH report summarizing inclusionary programs in a number of jurisdictions throughout the state.

Recently, a number of community organizations have advocated for a City policy to require that market-rate housing developments include housing units affordable to low and moderate income households. The Oaklanders for Affordable Housing Coalition is a group of community based organizations that includes Oakland Community Organizations, the Alameda County Central Labor Council, East Bay Alliance for a Sustainable Economy, ACORN, East Bay Asian Youth Center, Asian Pacific Environmental Network, the Green Party, Public Advocates, Just Cause, Urban Strategies Council, the Greenbelt Alliance, and the Non-Profit Housing Association. The Coalition has developed a proposed policy framework for an inclusionary zoning policy for Oakland. This report provides a summary and analysis of that policy framework.

KEY ISSUES AND IMPACTS

The City faces a number of inter-related affordable housing issues that could be addressed in part by an inclusionary housing program.

Unmet Housing Needs
The City's Consolidated Plan for Housing and Community Development identifies substantial housing needs of existing residents, particularly those with very low, low and moderate income. Over 30,000 very low and low income households experience housing problems including overcrowding, substandard conditions and overpayment (housing costs greater than 30 percent of household income).

Housing to Accommodate New Growth
The City's Housing Element identifies projected housing needs for the period 1999 through 2006 (the state has recently extended the time frame by an additional two years through mid-2008). The City's Regional Housing Need Allocation calls for production of over 7,700 units. Over 3,000 of these units must be affordable to very low and low income people. While the State's Housing Element law does not require the City to build these units, it does require that the City ensure that there are adequate sites with appropriate zoning to meet this need, and it requires that the City remove public policy barriers and develop and implement affirmative programs to meet its housing needs, including the need for affordable housing.

Redevelopment Law Requirements
Under California Redevelopment Law, redevelopment project areas adopted after 1976 are subject to a requirement to include affordable housing in the project areas. These requirements mandate that 15 percent of all housing units newly constructed or substantially rehabilitated in the project area must be affordable and targeted to low to moderate income households, with at least 6 percent of units targeted to very low income households and 9% targeted to moderate or low income households. The law requires that affordable units be built within the project area, but not necessarily within the market rate projects (it is possible to provide the units outside the project area, but twice as many units are required in that case). Oakland has a number of redevelopment project areas subject to these requirements: Coliseum, Broadway/MacArthur/San Pablo, Oakland Army Base, West Oakland, Central City East and Oak Knoll. Many jurisdictions use inclusionary housing programs to meet this requirement.

At present a number of large residential development projects are either underway or proposed in all of these areas. These projects collectively contain over 7,500 housing units, and will generate an obligation for production within these redevelopment areas of over 1,000 units of affordable housing, including nearly 500 units for very low income households.

Promotion of Mixed-Income Development

Inclusionary requirements are specifically designed to encourage residential development that includes housing for a range of income levels. Inclusionary requirements for redevelopment areas are applied to the entire redevelopment area, and inclusionary zoning laws require income mixing within individual developments. Inclusionary housing can serve as an important mechanism for providing fair housing opportunities for minorities outside areas of racial concentration and can help promote a deconcentration of low income people by providing opportunities to live in neighborhoods that would otherwise consist largely of middle- and upper-income households.

Inclusionary Housing Programs in California

Inclusionary housing programs have been in place in California for over 30 years. As of March 2003, 107 jurisdictions had some kind of inclusionary housing program, and the rate of adoption has increased over the past ten years as cities and counties have sought innovative ways to meet their affordable housing needs.

Many jurisdictions, particularly the larger cities, use inclusionary housing programs to complement and augment their other housing efforts. Typically, inclusionary programs do not meet the full spectrum of needs. Other programs and funding sources, such as Federal grant funds and redevelopment agency housing set-aside funds, are used to provide deeper subsidies to develop and preserve housing affordable to income levels lower than are feasible to reach through inclusionary programs.

While there is considerable variation in these programs, some general features can be described:

- Half of all programs require at least 15 percent of units to be affordable; including roughly one-fourth that require 20 percent or more.

- Most programs target low income (50% to 80% of median income, or between $38,000 and $60,000 for a three-person household) and moderate income (80% to 120% of median income, or between $60,000 and $90,000 for a three-person household). Just under half of all programs provide some targeting to very low income households (30% to 50% of median income, or between $23,000 and $38,000 for a three-person household). Targeting to extremely low income households (less than 30% of median income, or less than $23,000 for a three-person household) is not commonly found.

- Rental housing is generally targeted to very low and low income, while ownership housing is generally targeted to low and moderate income.

- Most jurisdictions require long-term affordability covenants. Many cities have amended their programs to ensure that projects remain affordable for at least as long as required for affordable housing under California Redevelopment Law (45 years for homeownership, 55 years for rental).

- Many jurisdictions exempt smaller projects (ranging from 3 to 10 units) from inclusionary requirements, while others require in-lieu fees to be paid for smaller projects. Some jurisdictions require larger percentages of affordable housing for larger development projects.

- Many jurisdictions require that affordable units be built at the same time as market rate units.

- Most programs provide for alternatives to on-site construction within the market-rate project. Common alternatives include off-site construction, land dedication, and payment of in-lieu fees.

- Most jurisdictions provide incentives to developers to help offset the cost of providing affordable units. The most common incentive is density bonuses that allow projects to exceed the allowable density in order to provide affordable units by reducing the per unit costs of development. Other incentives include fast track processing; direct subsidies; design flexibility and relaxation of development standards; and fee waivers, reductions or deferrals. In some jurisdictions, inclusionary units may be of a smaller size or may require only standard grade finishes and features to reduce their cost. Some larger cities, such as San Diego and San Francisco, do not provide incentives.

DESCRIPTION OF PROPOSED POLICY

The proposal advanced by the Oaklanders for Affordable Housing Coalition provides a basic framework for an inclusionary zoning program. A full summary of their recommendations is included as Attachment A to this report. The OAHC proposal provides the following components:

1. The policy would apply to all residential development with 5 or more units.

2. Projects subject to the ordinance would be required to provide 20 percent of the units at affordable levels, as follows:

	Extremely Low Income (less than $22,650)	Very Low Income ($22,650 to $37,700)	Below 60% AMI (less than $45,240)	Low Income ($37,700 to $59,600)	Up to 100% of AMI ($59,600 to $75,400)
Rental (alternative)	5% 9%	10%		5%	
Owner (alternative)			5% 9%	10%	5%

Note: All income limits are for 3-person households. Limits are higher for larger households and lower for smaller households.

Projects developed by non-profit developers, in which 100 percent of the units are affordable (no level specified) would be exempt.

3. Units would be required to remain affordable for 55 years

4. Developers could also meet the requirement by building a higher percentage of units (30 percent) offsite, provided that the off-site units are in the same school attendance area as the project generating the inclusionary obligation.

5. Developers could also dedicate land to be used for development of affordable housing.

6. Developers could choose to pay an in-lieu fee equal to the full amount of the “financing gap” between development cost and affordable rent/price, assuming no other sources of subsidy are used. The fee would be set based on the average subsidy required for projects assisted by the City in the previous year.

7. In-lieu fees would be earmarked only for housing affordable to households at or below 30 percent of median income and housing affordable to households at or below 50 percent of median income.

8. Developers would be entitled to incentives such as a fast-tracking of permit approvals; other incentives would be considered.

9. The policy would not apply to any projects already in the pipeline, defined as projects with development agreements and planning approvals in place or with approved building permits.

10. Targeting requirements could not be amended by City Council action during the first two years of implementation.

ANALYSIS AND DISCUSSION OF PROPOSED POLICY

The OAHC proposal poses a number of policy issues that would need to be addressed to develop a program that is both meaningful in its accomplishments and feasible to implement. These issues are discussed below.

Targeting
The OAHC proposal requires that 20 percent of all new housing units be made affordable to a range of incomes. For rental projects, that range is 30% to 80% of median income. For homeownership projects, the range is 50% to 100% of median income. These targets are intended to ensure that inclusionary units are made available to the range of income levels with the greatest need for affordable housing. Compared to other jurisdiction, these ranges are lower than average.

The effect of these affordability levels on the financial feasibility of development projects can be quite dramatic. Like the rest of the Bay Area, Oakland is characterized by a substantial affordability gap between market rents and sales prices compared to the ability of residents to pay for housing (using the accepted standard of 30 percent of gross income). Inclusionary requirements will reduce the income received by developers. These costs must be absorbed through a combination of three factors: (a) rents and sales prices for market rate units may be increased, if the market is strong enough to support such increases, (b) developers may receive lower rates of return on their investment, and (c) development costs would need to be reduced (for example, over time land prices may fall as developers seek to offset the cost of inclusionary housing by offering less for development sites).

In rental projects, inclusion of affordable units will reduce the rental income generated by a project. Using the OAHC proposal's targeting requirements, rents on the affordable units would require reductions of approximately $600 to $1,200 per unit per month below market rate (depending on the size of the unit and the market rents). Rents on the market rate units would then need to be increased by approximately $125 to $250 per month to make up for this lost income. In a situation of rapidly increasing rents, this might be possible. However, where market rents are not increasing rapidly, the lost rental income would require developers to reduce development costs (presumably by paying less for land) or take a lower rate of return. If the losses are too great, developers may decide that the project is not feasible compared to other investment opportunities.

Similarly, in ownership projects, the OAHC targeting requirements would require reducing sales from market prices of $450,000 (or more) to affordable prices that range from $100,000 to $250,000. This would necessitate increasing sales prices on market rate units by approximately $44,000, or nearly 10 percent. When market prices are increasing rapidly, this might be easily absorbed; in a slow or stagnant market it would be difficult to pass on these increases to homebuyers. Alternatively, as in the case of rental housing, developers would seek to pay much less for land, or accept a lower rate of return.

It should be noted that the substantial cost impacts of the OAHC proposal are due primarily to the deep targeting to extremely low income renters and very low income homebuyers. With more modest targeting (such as smaller percentages of affordable units or shallower income targeting), the impact on developer costs would be significantly reduced.

Defining Affordable Housing Costs

The OAHC policy outline does not provide specific formulas for determining affordable rents and sales prices. Cities have considerable leeway in setting these limits. However, a key consideration is whether the City wants inclusionary units to be used to meet the Redevelopment Agency's obligation to ensure production of affordable housing in redevelopment areas. If this is an objective of an inclusionary policy, the rents and sales prices must be set consistent with the formulas required by State law.

In the case of homeownership, the State formula results in sales prices that are much lower than what is actually affordable to households at the target income level. The State formula contains requirements that are not consistent with actual lending policies in the private market, and use factors that assume that purchasers will qualify for mortgages in much lower amounts than they can actually obtain using conventional underwriting guidelines.

The City Council may wish to consider using State law targeting requirements, in order to satisfy the redevelopment area housing production obligations, but with the understanding that units may actually be affordable to even lower income levels. For example, units that meet the State law definition of affordable to households at 120% of median income could very likely be purchased by a range of households with incomes as low as 100 percent of median income because these households will qualify for larger mortgages than the State formula assumes. Similarly, for-sale units targeted to households at 80 percent of median are likely to be available to incomes as low as 60 percent of median.

Threshold Project Sizes

The OAHC proposal would apply to any project containing 5 or more units. This would result in a requirement for fractional units (0.25 or 0.5 units at various income levels). In practice, this would mean that projects with fewer than 10-20 units would meet their obligation through payment of an in-lieu fee.

Inclusionary requirements may be difficult to meet on small projects, which often involve more difficult in-fill sites and have fewer economies of scale. The City Council may wish to consider a higher threshold so as not to discourage infill projects on difficult to develop sites.

Alternatives to Inclusion of Units Within a Project – Offsite Development
As is true for many inclusionary housing programs, the OAHC proposal contains provisions for affordable units to be built offsite. The proposal seeks to discourage such an approach, by requiring a higher percentage of affordable units (30 percent instead of 20) and limiting offsite construction to sites within the same school attendance area as the market rate project.

Whether or not offset construction should be permitted depends on the primary policy objective of an inclusionary housing program. Where the objective is to ensure mixed income communities and opportunities for low income residents to live in new market rate developments, offsite development would be discouraged. Where the objective is focused more on increasing the supply of affordable housing, offsite development may be more easily justified.

One advantage to offsite development is that the offsite units do not have to be the same type as the units in the market rate project. As an alternative to requiring a higher percentage of units for offsite construction, the City Council may want to consider allowing the same percentage if some or all of those units are targeted to large families. Most of the market-rate housing being developed in the City consists of one and two bedroom apartments and condominiums, yet there is a substantial unmet demand for affordable units with three bedrooms. A more flexible standard for offsite development could help meet this need.

Another advantage to offsite development is that affordable housing projects, serving a range of incomes from extremely low income to low or moderate income, could be developed and managed by entities that specialize in this type of housing. Market rate developers may find it more attractive to partner with an affordable housing developer to build and manage housing offsite rather than assuming the added management responsibility for onsite units.

Finally, the City Council may want to consider whether to distinguish between offsite units that are in close proximity to a market rate project (for example, within a one block radius) and offsite units that are further away. In the former case, the result would still be a mixing of incomes within a single neighborhood. If this is an important policy objective, it may make sense not to require higher percentages of affordable units for those projects.

Alternatives to Inclusion of Units Within a Project – Land Dedication
The OAHC proposal also allows developers to partially or fully meet their obligations by donating land for affordable housing development. Where land dedications are allowed, the land should be capable of supporting the requisite number of units without a change in zoning. An inclusionary housing program should also consider whether the land must already have planning entitlements for housing development, whether environmental remediation and infrastructure must be provided, and when the land needs to be made available and developed. Finally, it would be necessary to establish a reasonable basis for valuing the land contribution to determine if it fully substitutes for not building affordable units on site.

Alternatives to Inclusion of Units Within a Project – In Lieu Fees
Most affordable housing programs include a provision for payment of fees in lieu of production of affordable housing units. Key considerations include how to set those fees and in what circumstance such fees may be used. As is true for offsite production, one advantage of in-lieu fees is that it makes it possible to provide units with greater affordability and to produce units of a different type than the market rate development (such as providing 3 and 4 bedroom units for larger families).

Under the OAHC proposal the in-lieu fee "shall be based on the average subsidy that was required for the previous years affordable two-bedroom/one bath and three-bedroom/two-bath for-sale units and rental units, each with an assumed affordability tenure of at least fifty-five (55) years. Assuming none of the subsidy shall come from federal, state, local or other programs."

The OAHC proposal's terms for in-lieu fees are based on the principle that inclusionary housing programs provide affordable housing without the use of public subsidies. If the affordable units are not provided within the development project, the in-lieu fees should be sufficient to fully fill the financing gap to build those units elsewhere. Otherwise, units built with in-lieu fees would need to compete with other projects for additional subsidies from the City, the State and tax credits.

Based on current conditions, staff estimates that the financing gap to provide rental units at the affordability levels required under the OAHC proposal is roughly $250,000 to $350,000 per unit. If the intent of in-lieu fees is to produce the same number of units that would be required on site, the in-lieu fee would need to be set at this level. This translates into a fee of roughly $75,000 for every market rate unit constructed.

As proposed, the OAHC formula may be difficult to administer. It is not clear if the policy is referring specifically to affordable units assisted under the City's annual Notice of Funding Availability (NOFA) process, but even if it is, there is considerable fluctuation in the kinds of projects that are proposed each year, which could cause considerable fluctuation in the calculation of the fee. It may make more sense to set an initial fee for a specific dollar amount and then index it to some external standard (for example, increases in the median purchase price of houses in Oakland from year to year).

Another issue to consider is whether in-lieu fees can be used instead of all required production, or only a portion of it, in order to ensure that some mixed income development takes place. Some cities limit the use of in-lieu fees only to situations where the targeting formula results in a fraction of a unit being required. For example, a 20 percent inclusionary requirement on an 82-unit project would require 16.4 affordable units. A developer might be required to include 16 units and pay a fee equal to 0.4 times the in-lieu fee for a whole unit. Another alternative would be to limit the payment of in lieu fees to smaller projects but require inclusion of affordable units in projects larger than a threshold size (such as 50 or 100 units).

Finally, the OAHC proposal specifies that in lieu fees can only be used to subsidize development of units for extremely low income and very low income households. This would result in the production of fewer units than would be included onsite, but would ensure that funds are directed to those households that have already been identified by the City as having the most severe housing needs.

Should Public Financing Be Allowed?

A closely related question is whether public financing (particularly City or Redevelopment Agency financing) should be allowed for the inclusionary units. Where the intent of an inclusionary housing program is to produce additional units beyond what is already being produced by the City's affordable housing program, it would make sense not to allow public financing. At the same time, it must be noted that there may be projects where the Redevelopment Agency is already providing financing just to encourage development of market rate units, particularly some of the transit village projects where there are substantial land assembly and infrastructure costs. For these projects, prohibitions on the use of public funds could make the entire project infeasible. Moreover, the source of financing for these projects may be the tax increments generated by the project itself. In this situation, the project would not be competing with other projects for the same resources, because the tax increment in question won't be generated at all unless the project goes forward.

Incentives

As noted above, many jurisdictions offer incentives to developers to make it more feasible to meet inclusionary requirements. By far the most common incentive is the granting of density bonuses, used in over 90 percent of all jurisdictions. Density bonuses, which are required by State law, allow developers to exceed the density allowed by zoning in return for providing a specified proportion of affordable housing units. Density bonuses are especially effective in areas where zoning provides only for low densities; the ability to build more units can significantly reduce the per unit cost of land and thereby make development less expensive. Density bonuses have been less effective in Oakland, where most residential development is below the densities allowed under zoning and the General Plan, and therefore can not benefit from a density bonus.

Other incentives include fast-track processing, design flexibility, waiver, reduction or deferral of permit and development impact fees, and direct subsidies. As a result, in many cases jurisdictions are actually paying at least some of the cost of subsidizing inclusionary units through direct assistance or through foregone revenues.

The City already provides fast-track processing for major housing developments. Parking standards for denser multi-family housing are already set at just one space per residential unit, so there is little room for further reductions as an incentive (developers have reported that most lenders will require at least one space per unit even if the City doesn't). The City does not assess any development impact fees on residential projects, so waiver of these fees is not applicable.

Timing of Implementation
OAHC's proposal would provide for a phase-in or delay of implementation by exempting any project that already has a building permit or land use entitlements in place. This would exclude a number of projects, but would also avoid changing rules on developers who have already invested substantial time and money in projects based on a set of assumptions that did not include an inclusionary housing required. If the City Council wanted to implement an inclusionary housing program, one way to cover more units without unfairly penalizing developments already in the pipeline would be to require lower targeting requirements (smaller percentages of units or shallower income targeting) for projects already approved but not yet built.

Administration, Monitoring and Enforcement
Cities that have had inclusionary programs in place for many years report that they continue to experience difficulties administering the program. Implementation of an inclusionary housing program would require staff resources to:

- Review proposed inclusionary housing plans prior to granting planning and building approvals
- Draft and record the necessary documents to record restrictions and place legally binding obligations on the developers
- Ensure that inclusionary units are built on time and as specified
- Perform ongoing monitoring of rental projects to ensure that rents are set correctly, tenants are being properly screened for eligibility, and projects are properly managed and maintained
- Provide loan servicing functions for homeownership units, including monitoring sales and conducting prior review that to ensure new buyers meet the income guidelines.

A successful program could greatly increase the workload for these functions. Staff recommends that the City Council consider including some kind of annual monitoring fee into any inclusionary housing program.

RECOMMENDATIONS AND QUESTIONS TO BE ADDRESSED

It is important to note that the development of any inclusionary housing program should start with a clear statement of the policy objectives of that program. Without resolving these issues, it will be difficult to draft a well-reasoned and workable program.

Staff recommends that the City Council consider the policy questions raised in this report and provide staff with clear guidance that would shape any inclusionary housing program. In particular, staff recommends:

- Clarify the objective of an inclusionary housing program. Different program designs will be called for depending in particular on whether the most important objective is to provide mixed-income developments or to generate new affordable housing units irrespective of location.

- Consider conducting a financial impact analysis. It is typical for jurisdictions considering an inclusionary housing program to hire consultants to perform a detailed analysis that looks at multiple development scenarios and identify what levels can be sustained by market rate projects without discouraging continued development. If an assessment of the impact of inclusionary zoning on market rate development is desired, staff recommends the use of an outside consultant with extensive knowledge and experience with privately financed market-rate development projects in Oakland.

- Staff strongly recommends that any inclusionary program adopt definitions of affordable housing that are consistent with California Redevelopment Law to ensure that units produced under an inclusionary housing program can be counted as satisfying the redevelopment housing production requirement. Because of substantial development now occurring in several of the City's redevelopment areas, the Redevelopment Agency will be responsible for ensuring the development of over 1,000 units of housing affordable to low and moderate income households, including almost 500 units for very low income households, within the Coliseum, Broadway/MacArthur/San Pablo, Oakland Army Base, Central City East, West Oakland and Oak Knoll redevelopment areas. If the Agency were required to subsidize these units, the cost could exceed $150 million over the next 10 years and would require the ability to leverage substantial sums from other non-local subsidy programs.

Inclusionary housing programs should be viewed as one component of a city's overall housing strategy. Depending on local circumstances, inclusionary programs might not meet the full spectrum of needs. Inclusionary programs may work well as a complement to other affordable housing efforts, including preservation of existing assisted housing, development of new assisted housing with public subsidies, first-time homebuyer assistance, rehabilitation loans for low income homeowners, and the public housing and Section 8 programs operated by housing authorities and targeted to the very lowest income households.

Oakland currently invests substantial amounts of money to assist in the development of affordable housing, most of it to very low and low income households. An inclusionary housing program should be used to augment these programs, not supplant or replicate them. For example, an inclusionary housing program that targets low and moderate income homeownership can help address an identified gap in the City's delivery system, but also would then allow the City to target its limited affordable housing dollars to extremely low and very low income households while still maintaining balance across its overall housing program.

SUSTAINABLE OPPORTUNITIES

Economic The economic impact of inclusionary zoning is difficult to gauge. There are no empirical studies, but the experience of other cities that have inclusionary requirements suggests that a well crafted inclusionary housing program does not reduce development activity.

Environmental Inclusionary zoning can serve to further sustainable development and smart growth policies by encouraging higher density development in appropriate locations, when zoning constrains density. This is because inclusionary units are often made feasible through such mechanisms as density bonuses and higher density development. In areas of Oakland, where allowable density is not a barrier, there would be little environmental benefit because inclusionary zoning probably would not lead to higher densities.

Equity Inclusionary zoning promotes greater housing opportunities for economically disadvantaged segments of the population. In addition, by producing mixed income housing, it contributes to a more equitable distribution of affordable housing and may help to reduce concentrations of lower income people while also providing safeguards against displacement caused by development in gentrifying areas.

DISABILITY AND SENIOR CITIZEN ACCESS

To the extent that inclusionary zoning results in production of more affordable housing, it will also produce more affordable housing opportunities for low income seniors and persons with disabilities.

ACTION REQUESTED OF THE CITY COUNCIL

No action is requested of the City Council at this time. If an inclusionary program is considered for Oakland, Staff recommends that the City Council clarify some of the policy questions in this report and then direct staff to develop a program consistent with those policies.

Respectfully submitted,

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APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE:

OFFICE OF THE CITY ADMINISTRATOR

Attachment A

Inclusionary Zoning Policy Recommendations

Submitted by the **Oaklanders for Affordable Housing Coalition,** a broad coalition of community based organizations that have come together to address the housing crisis. They include: Oakland Community Organizations, the Alameda County Central Labor Council, East Bay Alliance for a Sustainable Economy, ACORN, East Bay Asian Youth Center, Asian Pacific Environmental Network, the Green Party, Public Advocates, Just Cause, Urban Strategies Council, and the Greenbelt Alliance, and the Non-Profit Housing Association

Policy Elements

1. **Policy would apply to all Residential Developments with 5 units or above**

2. **Rental/Ownership Split:** The policy would allow a developer to meets it inclusionary requirements EITHER by building rental units or homeownership units according to the following income requirements

3. **Overall Percentage & Levels of Affordability**

On-Site Inclusionary Requirement for Rental Projects
20% Requirement

5% at < 30% AMI ($24,850 family of four)
10% at < 50% AMI ($41,400 family of four)
5% at < 80% AMI ($66,250 family of four)

OR

Developers have the option of satisfying the affordable unit requirement by providing 9% of the units at 30% AMI

Exemptions: Non Profits Housing Developers who are building projects that are 100% affordable would be exempt from the inclusionary requirement

On Site Requirements for home ownership projects
20% Requirement

5% at < 60% AMI ($49,680 family of four)
10% at < 80% AMI ($66,250 family of four)
5% at < 100% AMI ($82,200 family of four)

OR

Developers will have the option of satisfying the affordable unit requirement providing 9% of the units at 60% AMI

Exemptions: Non-Profit Housing Developers who are building projects that are 100% affordable would be exempt from the inclusionary requirement

Off-Site Inclusionary Requirements for Rental Projects

30% Requirement

5% at < 30% AMI ($24,850 family of four)
15% at < 50% AMI ($41,400 family of four)
10% at < 80% AMI ($66,250 family of four)

Location: If the developer chooses the alternative of building the affordable units off site, the off site units will be required to be in the same school attendance area

Exemption: Non-Profit Housing Developers who are building projects that are 100% affordable would be exempt from the inclusionary requirement

Off-Site Inclusionary Requirements for Homeownership Projects

30% Requirement

5% at < 60% AMI ($49,680 family of four)
15% at < 80% AMI ($66,250 family of four)
10% at < 100% AMI ($82,200 family of four)

Location: If the developer chooses the alternative of building the affordable units off site, the off site units will be required to be in the same school attendance area

Exemption: Non-Profit Housing Developers who are building projects that are 100% affordable would be exempt from the inclusionary requirement

4. **Incentives**: Fast tracking permit process; open to other options suggested by staff and council

5. **Length of affordability**

   Recommended @ 55 years

6. **Provides a phase – in period**
   a. Projects with development agreements and planning approvals in place or with approved building permits shall be exempt from these requirements

7. **Mechanisms of Compliance**

A. In Lieu Fees: the in-lieu fee to be paid for each market-rate dwelling unit shall be 20% of the subsidy needed to create an affordable unit in a typical attached-housing unit. The City Council will set the in-lieu fee annually. The fee shall be based on the average subsidy that was required for the previous years affordable two-bedroom/one bath and three-bedroom/two-bath for-sale units and rental units, each with an assumed affordability tenure of at least fifty-five (55) years. Assuming none of the subsidy shall come from federal, state, local or other programs.

- In lieu fee will apply to rental or homeownership
- In lieu fees paid into the housing trust fund will be earmarked for extremely low and very low income units; they may not be used for low or moderate income housing or for non-housing purposes

- The in lieu fee provision will be insulated from the amendment process so that if city council changes the income targeting the in lieu fee will still be based on the cost of building 20% of the units

B. Off Site Option: if the developer uses the off site option see the increased off site overall percentage listed above

C. Land Dedication: developer can choose to dedicate land from his/her purchased property and partner with a non-profit developer or the city to build the affordable housing

8. Amendment Process

- The city council may not amend the income targets/percentages for 2 years in order to give the initiative a chance to work and establish a track record

Appendix A

Summary of Inclusionary Housing Survey

Jurisdiction	County	Year Adopted	Minimum Project Size	% Units Required	Target Population	Alternatives to Construction	Units Produced	Length of Affordability
Agoura Hills	Los Angeles	1987	11	10	MI	OSA ILF	50	N/A
Alameda County	Alameda	2000	0	N/A	N/A	N/A	N/A	N/A
Arroyo Grande	San Luis Obispo	1993	5	10	LI	OSA ILF LDA	1	30
Benicia	Solano	2000	10	10	VLI LI	OSA ILF LDA DCT	N/A	30
Berkeley	Alameda	1986	5	20	VLI LI MI	None	75	P
Brea	Orange	1993	20	10	VLI LI MI	OSA ILF	278	30
Calistoga	Napa	1990	5	20	LI MI	None	78	N/A
Carlsbad	San Diego	1993	0	15	LI	OSA ILF	1142	N/A
Chula Vista	San Diego	1981	50	10	VLI LI MI	OSA ILF LDA DCT	1172	55 to Permanent
Clayton	Contra Costa	1995	10	10	VLI LI	OSA ILF LDA	84	N/A
Contra Costa County	Contra Costa	N/A	0	15-25	MI	LDA	756	15-30
Coronado	San Diego	1982	2	20	LI MI	ILF	N/A	N/A
Corte Madera	San Mateo	1989	10	10	MI	None	43	P
Cotati	Sonoma	1985	5	15	MI	ILF	N/A	N/A
Cupertino	Santa Clara	1983	N/A	15	VLI LI MI	ILF	160	99
Danville	Contra Costa	1999	8	10-15	MI	OSA ILF DCT	70	20
Davis	Yolo	1974	5	25-35	VLI LI MI	OSA ILF LDA DCT	1453	N/A
Del Mar	San Diego	N/A	10	10	LI	ILF	N/A	30

Jurisdiction	County	Year Adopted	Minimum Project Size	% Units Required	Target Population	Alternatives to Construction	Units Produced	Length of Affordability
Dublin	Alameda	1996	20	12.5	VLI LI MI	OSA ILF LDA DCT	59	30-55
East Palo Alto	San Mateo	1994	2	20	VLI LI MI	OSA ILF	115	50-59
Emeryville	Alameda	1990	30	20	MI	OSA	463	45-55
Encinitas	San Diego	1990	10	10	VLI	ILF	56	55
Fairfax	Marin	N/A	0	N/A	N/A	N/A	N/A	N/A
Fremont	Alameda	2002	7	15	VLI LI MI	OSA ILF LDA	N/A	30-99
Gonzales	Monterey	N/A	0	N/A	N/A	N/A	N/A	N/A
Half Moon Bay	San Mateo	1996	10	20	VLI LI MI	OSA ILF	12	P
Healdsburg	Sonoma	1993	0	15	LI MI	OSA ILF LDA	N/A	10
Hercules	Contra Costa	1997	10	10	MI	OSA	N/A	N/A
Hesperia	San Bernardino	1991	5	**	N/A	LDA	202	30
Huntington Beach	Orange	2001	3	10	LI	ILF LDA	313	30-60
Irvine	Orange	1977	0	5-15	VLI LI MI	OSA ILF LDA DCT	4469	N/A
Isleton	Sacramento	2000	N/A	15	VLI	OSA ILF DCT	N/A	10
Laguna Beach	Orange	1985	3	25	VLI LI MI	OSA ILF	139	30-55
Larkspur	Marin	1990	10	10-15	LI MI	ILF LDA	85	N/A
Livermore	Alameda	1986	N/A	10	LI	OSA ILF LDA	217	55-99
Lompoc	Santa Barbara	1992	10	10	VLI LI MI	OSA ILF	3	30
Long Beach	Los Angeles	N/A	5	N/A	N/A	ILF	N/A	N/A
Los Altos	Santa Clara	1990	2	10-20	N/A	None	50	30
Los Gatos	Santa Clara	N/A	5	10	MI	ILF	N/A	55
Mammoth Lakes	Mono	2000	0	10	LI MI	OSA ILF DCT	2	50
Marin County	Marin	N/A	10	15	LI MI	OSA ILF LDA DCT	N/A	N/A
Menlo Park	San Mateo	1980s	5	10-15	LI MI	OSA ILF	28	55
Mill Valley	Marin	1988	2	10-15	VLI LI MI	OSA ILF	319	case by case

Jurisdiction	County	Year Adopted	Minimum Project Size	% Units Required	Target Population	Alternatives to Construction	Units Produced	Length of Affordability
Monrovia	Los Angeles	1990	0	20	MI	None	280	30-Permanent
Monterey	Monterey	1981	10	15	MI	OSA LDA	438	30
Monterey County	Monterey	1980	7	10-15	N/A	OSA ILF DCT	1388	30-Permanent
Morgan Hill	Santa Clara	1977	0	10	LI MI	ILF	302	45-55
Morro Bay	San Luis Obispo	N/A	0	10	LI MI	ILF	N/A	30
Mountain View	Santa Clara	1999	4	10	LI MI	ILF	N/A	55
Napa	Napa	1999	0	10	VLI LI MI	OSA ILF LDA	56	30-Permanent
Napa County	Napa	1992	0	10	VLI LI MI	OSA ILF LDA DCT	N/A	40
Nevada County	Nevada	1995	20	10	MI	OSA	N/A	10-30
Novato	Marin	1999	0	10-15	LI	ILF DCT	40	P
Oceanside	San Diego	1991	3	10	LI MI	ILF	N/A	55
Oxnard	Ventura	1999	10	10	VLI LI	ILF	15	20
Palo Alto	Santa Clara	1973	5	15-20	LI MI	OSA ILF LDA	274	59
Pasadena	Los Angeles	1991	10	15	LI MI	OSA ILF LDA	14	30-Permanent
Patterson	Stanislaus	1995	5	10	LI MI	ILF	5	P
Petaluma	Sonoma	1984	5	15	LI MI	OSA ILF LDA	1442	P
Pismo Beach	San Luis Obispo	2001	5	10	MI	OSA ILF LDA	N/A	30
Pleasant Hill	Contra Costa	1991	5	5-25	VLI LI	OSA ILF LDA DCT	5	P
Pleasanton	Alameda	1978	0	15-20	VLI LI MI	OSA ILF LDA DCT	300	P
Port Hueneme	Ventura	N/A	10	25	LI MI	ILF	20	N/A
Portola Valley	San Mateo	1991	0	15	LI MI	ILF	N/A	N/A
Poway	San Diego	1993	0	15	VLI LI	OSA ILF	N/A	N/A
Rancho Palos Verdes	Los Angeles	1997	5	5-10	VLI LI	OSA ILF	N/A	variable
Richmond	Contra Costa	2001	10	10-17	VLI LI MI	OSA ILF	N/A	30
Rio Vista	Sacramento	2002	400	10	LI	None	N/A	N/A

Jurisdiction	County	Year Adopted	Minimum Project Size	% Units Required	Target Population	Alternatives to Construction	Units Produced	Length of Affordability
Ripon	San Joaquin	2001	5	10	LI	ILF LDA DCT	N/A	P
Rohnert Park	Sonoma	2002	5	15	VLI LI MI	OSA ILF LDA DCT	N/A	30-50
Roseville	Placer	1988	0	10	VLI LI MI	ILF LDA DCT	2000	30-Permanent
Sacramento	Sacramento	2000	10	15	VLI LI	OSA LDA	92	30
Salinas	Monterey	1992	10	12	LI MI	None	453	30
San Anselmo	Marin	1995	10	10	LI MI	OSA ILF LDA	N/A	P
San Benito County	San Benito	1997	0	20	N/A	None	N/A	variable
San Carlos	San Mateo	1991	0	10	LI MI	OSA ILF	40	N/A
San Clemente	Orange	1980	6	4	VLI	OSA ILF LDA	627	N/A
San Diego	San Diego	1994	0	20	LI	OSA LDA	537	N/A
San Francisco	San Francisco	1992	10	10-17	LI MI	OSA ILF	302	N/A
San Juan Bautista	San Benito	2000	6	16.7	VLI LI MI	OSA ILF	1	55
San Juan Capistrano	Orange	1995	2	30	VLI LI	ILF	196	10 - 30
San Leandro	Alameda	1980	20	10	LI	OSA	312	15-55
San Luis Obispo	San Luis Obispo	1999	5	15	VLI LI MI	OSA ILF LDA	N/A	30
San Mateo	San Mateo	1992	11	10	LI MI	OSA	102	30-Permanent
San Mateo County	San Mateo	1994	5	20	VLI LI	None	124	variable
San Rafael	Marin	1988	10	10	VLI LI MI	OSA ILF	611	N/A
Santa Barbara County	Santa Barbara	1993	5	5-20	VLI LI MI	OSA ILF	2244	30
Santa Clara	Santa Clara	1992	10	10	MI	None	N/A	N/A
Santa Cruz	Santa Cruz	1980	5	15	VLI MI	OSA ILF LDA DCT	640	N/A
Santa Cruz County	Santa Cruz	1978	3	15	LI MI	OSA ILF	750	P
Santa Monica	Los Angeles	1985	2	10-20	VLI LI	OSA ILF LDA	N/A	N/A
Santa Rosa	Sonoma	1992	0	15	VLI LI	OSA ILF LDA	385	30

Jurisdiction	County	Year Adopted	Minimum Project Size	% Units Required	Target Population	Alternatives to Construction	Units Produced	Length of Affordability
Sebastopol	Sonoma	1994	3	20	LI	ILF	9	15
Solana Beach	San Diego	1997	4	10	LI	OSA ILF	N/A	30
Sonoma	Sonoma	1995	5	10	VLI MI	None	11	30-45
South San Francisco	San Mateo	2001	4	20	LI MI	ILF	N/A	N/A
Sunnyvale	Santa Clara	1980	10	10	LI MI	ILF	749	20
Sutter County	Sutter	1995	10	5	LI MI	OSA ILF LDA DCT	N/A	N/A
Tiburon	Marin	1988	0	10	LI MI	OSA ILF	19	N/A
Union City	Alameda	2001	2	15	VLI LI MI	OSA ILF	N/A	N/A
Vista	San Diego	N/A	0	6	LI	ILF LDA	N/A	N/A
Watsonville	Santa Cruz	1991	N/A	20	VLI LI MI	OSA ILF	11	40
West Hollywood	Los Angeles	1986	2	20	LI MI	OSA ILF	13	P
Winters	Yolo	1994	5	15	VLI LI MI	ILF LDA	76	55
Woodland	Yolo	N/A	10	10-20	VLI LI	OSA ILF LDA	N/A	40
Yolo County	Yolo	1996	10	10	VLI LI	ILF	N/A	30
Yountville	Napa	1992	5	15	VLI LI MI	OSA ILF LDA	19	N/A

* Voluntary Policy

** City encourages through a modified version of state density bonus law.

Key:

OSA	Off-site Allowance
ILF	In-Lieu Fees
LDA	Land Dedication Allowance
DCT	Developer Credit Transfer
VLI	Very Low-Income
LI	Low-Income
MI	Moderate-Income
N/A	Not Available
P	Permanent