

City of Oakland  
Blue Ribbon Commission on Housing  
Summary Notes of Meeting on June 14, 2007

**-DRAFT-**

The City of Oakland Inclusionary Housing Blue Ribbon Commission (BRC) scheduled a series of workshops in a retreat format for in-depth discussion of potential policy recommendations. These recommendations will be forwarded with the intent of assisting the City Council with establishing components of an Affordable Housing program that *may* include Inclusionary Zoning (IZ) and Condominium Conversion (CC). (It is important to note that these meetings are to allow in-depth discussion of the topics and potential implementation. It is not a given that the recommendations from the BRC will result in an actual policy. The possibility remains that the recommendation could be not to have a policy).

Each workshop was a noticed meeting with a posted agenda and an opportunity for public comment. The discussions were facilitated by Surlene Grant, Principal, Envirocom Communications Strategies.

The following presents a summary of the discussion and decisions made at the workshop on June 14, 2007.

The two key topics on the agenda for the June 14 workshop were Inclusionary Zoning and Alternate Funding Sources for Affordable Housing.

The meeting started with procedural matters such as roll call and approval of minutes from the June 7, 2007 meeting. After the initial commission business and the approval of the Minutes from June 7, 2007, Linda Hausrath of the Hausrath Economics Group made a presentation regarding the feasibility of IZ.

## **I. ECONOMIC PRESENTATION**

Hausrath Economics studied various scenarios with the implementation of IZ in Oakland. Linda Hausrath made a presentation on the findings through various handouts and charts. The information looked at various income mix, property types, geographic distribution and more. Jeff Levin, CEDA's Housing Policy and Program Coordinator, contributed to the report.

Several questions were asked throughout the presentation.

After Ms. Hausrath's presentation, Surlene Grant, the facilitator, asked the commissioners *what did you hear?* - *what didn't you hear?* Responses are below:

- (I heard that) It is not feasible to build rental properties with IZ.
- (I heard that) In a bad market, IZ will only permit a few units.
- (I heard that) Given market conditions, sometime no housing can be built. Different market conditions can impact IZ.

- (I didn't hear) Any indication or report on what the market will be like in 10 years.
- (I didn't hear) That social (socio?) and land use aspects need to be considered along with economic aspects.
- (I didn't hear) What the cost is to the community from the delays caused by IZ to the housing stock.

During the course of the questions, there was a complex discussion regarding price and the formulas applied. Ms Hausrath's analysis shows that the feasibility of IZ increases significantly if the affordable sales prices are adjusted upwards. Jeff Levin with CEDA noted that the original proposed ordinance used State definitions because one purpose of the ordinance is to help the Redevelopment Agency meet its affordable housing production obligations. Because of the way that State Redevelopment Law calculates affordable prices, prices that are nominally targeted to one income level are in actuality affordable to people with lower incomes. If sales prices are set according to State Law (Redevelopment) formula for households at 120% of AMI, the sales prices would be calculated with total housing costs (as defined by the State) at 35% of 110% of median income, but using conventional mortgage underwriting standards, could serve someone with an income of 84% of AMI. These prices were used in Ms. Hausrath's analysis of "120% AMI" sales prices.

Copies of the material prepared and distributed by Ms. Hausrath were made available at the meeting and are available through the Planning Department. The presentation lasted approximately two hours.

There were no public comments provided at this point of the meeting.

## **II. DISCUSSION OF INCLUSIONARY ZONING**

To start this discussion, Surlene Grant reviewed some of the notes regarding group interaction and agreements that were established in the first meeting on June 7.

### **Principals of Engagement**

Listen for understanding

-Ask clarifying questions

-Speak one at a time

Speak without blame/judgments

-Use "I" statements

Be an active participant

-Stay focused

Welcome all ideas

-Allow other voices

-Limit lectures

Be respectful of differences

-Disagree=OK; Attacks≠Not

Work to find Common Ground

Remain open to process

**Agreement**

Ms. Grant reviewed the “agreement for agreement” or consensus. She presented that at the previous meeting the group determined that that “consensus” would be when 2/3 of those present agreed and that would move a recommendation forward. Not everyone in the group recalled the decision as Ms. Grant presented it. Discussion was held regarding agreement. Individuals in the group stated that “consensus” was 2/3 of those present. They would take a vote to see if an item should move forward, with a majority prevailing. It was suggested that instead of spending lots of time on terms of agreement, the group would move forward from this point and see if we needed to make changes later. In the immediate, when 2/3 stood in favor of an idea, suggestion or concept, the group would move forward with it; if not we would discuss it more.

Following this discussion, BRC members were given red, green and other colored dots and asked to place them on a grid that highlighted components of the Fall 2006 Proposed Ordinance for Inclusionary Housing policy originally brought to the City Council. This variation of the policy is the one that City Council previously could not find agreement with. The facilitator wanted to separate those components with which just about everyone agreed from those in which there were questions, dissent or discrepancy.

By each commissioner assigning a “dot” to an item, it would be easy for the group to visualize where there is agreement, where consensus needed to be reached and what ideas were not acceptable at all. In addition, it would help prioritize which items to discuss first. Green dots meant yes, red dots meant no, and any other color meant that there was some other concern, more information needed or some tweaking needed that a commissioner wanted address before s/he could agree or disagree. Not everyone voted on each component, and one commissioner voted “no” on all components.

The following is a summation of the distribution of the dots.

Element	Fall 2006 Proposed Ordinance	Dot Count
Threshold to Trigger Ordinance	Projects that create <u>20 or more new</u> residential units	1 green 4 red 3 other
Rental vs. Ownership Thresholds	Same for rental and ownership	4 green 1 red 1 other
Number of Inclusionary Units Required	15% of total units if built on-site	4 green 3 red 2 other
	20% of total units if built off-site	5 green 2 red 2 other
Target Households	Rental: Maximum of 80% of AMI, with average of 60% AMI	3 green 2 red 1 other

	Ownership: Maximum 120% of AMI, with average of 100% AMI	4 green 3 red 2 other
<b>Trigger Date</b>	All projects except those that have vested rights on or before May 1, 2007 or if project qualified for exemption.	7 red 2 other
<b>Exempt Projects</b>	Certain specified transit village projects	3 green 2 red
	Reconstruction of units destroyed or damaged by natural disaster (within certain time limits)	3 green 1 red
	Projects subject to recorded restrictions imposed in conjunction with City's affordable housing funding process	6 green 3 red
<b>Exempt Projects, Continued</b>	Rental projects that contain at least 40% of units affordable at 60% of AMI for at least 55 years (tax credit projects)	6 green 1 red
	Rehabilitation of existing units when cost of rehabilitation is less than 75% of estimated replacement cost after rehabilitation ("moderate rehabilitation")	6 green 2 other 1 red
<b>Prior or Concurrent Production of Inclusionary Units with Market Rate Units</b>	Inclusionary units must be constructed no later than the market rate units in project.	6 green 1 red
	Rental units - 55 year affordability Ownership units - 45 years affordability	4 green 1 red
<b>On-Site Units - Location, Size, Amenities</b>	Mix of affordable units by size (number of bedrooms) must be proportional to mix in the market rate units.	6 green 1 red
<b>Harmony w/ Market Units</b>	Inclusionary units should be distributed proportionately among market rate units.	3 green 2 red 2 other
<b>Same Amenities as Market Rate Units</b>	Construction type, tenure, SF and interior feature of inclusionary units do not need to be equivalent to market rate units. Must be at least standard construction grade and consistent with standards for affordable housing.	7 green 1 red
<b>Limiting Accessory Units to meet Inclusionary Unit Obligation</b>	Not included - not clear what this refers to.	1 red

<b>Waiver or Reduction of Inclusionary Requirement</b>	Developer must demonstrate that it meets one of the following criteria: 1) no nexus between development and inclusionary requirement; 2) inclusionary requirement would deprive the project applicant of all economically viable use of the property or constitute a taking 3) application of the ordinance would violate CA or US Constitutions.	4 green 1 red
<b>Developer Alternatives</b>	Can build Inclusionary units off-site or pay in-lieu fee costs of affordable units and the amount of funds that can be leveraged	7 green 1 red
<b>In-Lieu Fee Options</b>	In-lieu fee based on off-site percentage (20% of market rate units). Fee calculated as the full subsidy required to cover gap between development through sale or rental at affordable costs.	5 green 3 red
<b>Developer Land Dedication for Public Uses</b>	Not included	1 green 2 red
<b>Off-Site Development of Inclusionary Units</b>	Developer must build no fewer than 20% of all market rate units in project on off-site location. (note made on chart "not necessarily build, but cause to be built.")	2 green 1 red 3 other
<b>Transfer of Inclusionary Credits to other Projects</b>	Not included	1 green 2 others
<b>Incentives and Concessions:</b>		
<b>Waiver/Reduction/Deferral of Fees for Affordable Units</b>	Not considered because of impact on General Fund.	1 green 2 other
<b>Increase Density Bonus Options to Reduce Development Costs or Financing Gap</b>	Project applicant may be entitled to density bonus/incentives/concessions under CA Density Bonus Law for incl. units.	5 green 1 red 2 other
<b>Expedited Application and Permit Processing</b>	Not included	6 green 1 red
<b>Offer of Financial Incentives</b>	Use of any public affordable housing funds is prohibited (except for exempt affordable housing projects)	3 green 5 red
<b>Modification or Reduction of Zoning or Building Standards</b>	Not included	1 red 2 other

Monitoring and Enforcement	City to monitor compliance with affordability requirements. Failure to comply constitutes cause for City to revoke certificate of occupancy and/or assess a penalty (minimum of \$500 per day for 1st 30 days of noncompliance, and thereafter 120 percent of the current in-lieu fee)	6 green 1 red
Tracking Results	City Administrator will report to City Council annually on results of Inclusionary Housing Requirements, including new applications covered by ordinance, inclusionary units provided on and off-site, amount of in-lieu fees collected, and information about any projects receiving waivers or reductions.	7 green 1 red
Teacher Housing Program	20 percent of for-sale inclusionary units located outside of certain redevelopment project areas must be offered first to Oakland teachers. If occupied by qualified teacher for 5 years, affordability restrictions are removed and owner must repay the subsidy value of the reduced sale price. Any appreciation in value is shared between teacher and City.	5 green 2 red 2 yellow
Uses of In-Lieu Fee	Restricted for development of housing affordable to households at or below 60% of AMI, with a preference for units serving 30% of AMI or below. 20% of fees used for a mortgage assistance program for moderate income teachers.	9 green 2 red
Targeting of Redevelopment Agency Affordable Housing Funds	A companion resolution would have restricted the use of Redevelopment Agency Low/Moderate Income Housing Funds to households at or below 60% of AMI, with a preference for 30% AMI or below. Exceptions for pre-existing homebuyer or rehab programs, and for assistance to affordable housing in Wood Street or Oak to Ninth projects.	6 green 2 red 1 other

*What is missing – if anything?*

- Calculations of eligibility for an individual (or family)
- Reference to income of buyers and sales prices
- Maximum income eligibility

After reviewing the results of the “dot exercise” it was apparent that none of the items that were considered essential components or the “meat” of an IZ policy had a majority vote in either direction. It was suggested that the group pull four key components of an IZ policy to be the first that we discuss.

GROUP DISCUSSION OF A COMMISSIONER'S SUGGESTED FOUR KEY POINTS:

Proposal for For Sale Housing

- 120% of AMI
- 10% on-site; 10% off-site; 10% in-lieu
- “Trigger date” – two years from submission of a complete application for the project to the City.
- Size of project is 40 units

Size of the project

Commissioners were polled to provide a number and a statement of *why or what factors were important to them in selecting that number.*

The numbers selected were 20+ (1 commissioner), less than 20 (1 commissioner), 10 (2 commissioners) and 20 (8 commissioners). Factors offered in consideration was that the number allowed for a greater number to participate; market conditions support it; timeliness – longer it takes less housing available and pricing increases; production; economies of scales; impact on small business and other comments. It was determined that 8 commissioners made up at least 2/3 of those present, thus 20 was decided to be the minimum size of the project for which the IZ policy would apply.

Percentage of AMI – Income to qualify

The point of the discussion was to determine the median income of people who would qualify for the inclusionary units. The discussion started with 120% of AMI. From the Hausrath report, it seemed that this number would serve households at 80-90% of AMI. Again, numbers were discussed with the rationale, reason, consideration behind that proposed number. After discussion, a poll was taken to see what criteria the commissioners would accept.

- A. 120% of AMI – to serve those with 90-100% AMI; or 80-90% AMI. In addition, consideration for as many prototypes as possible with a 10/10/10 split (to be discussed later) -- 2 commissioners
- B. 80-100% maximum AMI with an average of 90%. This would serve the population who needs the policy most. – 5 commissioners.
- C. 120% AMI with considerations for time and implementation schedule, as well as the available housing supply. Discussion points that 120% needs clarification. If this percentage leaves housing infeasible, then the proponent would oppose it. Others like 120% because it provides balance. – 4 commissioners.

From the polling, Options B and C emerged fairly close. Commissioners expressed a desire, for the most part, to make the units affordable to households in the 80% to 100% of AMI range. Staff shared that using the state law formula for pricing, housing units can actually be affordable to households at roughly 85% of AMI. Using State law formulas,

prices that are nominally targeted for households at or below 120% of AMI, using a pricing formula of 35% of 110% of AMI, are actually affordable to households at roughly 85% AMI

The group would move forward with their discussions of other points, holding in mind that one of these two would most likely be the income criteria. More discussion and refinement would be provided in the next meeting. In the meantime, as the commission continued their work, they were to keep in mind the two different possibilities.

10% on-site; 10% off-site; 10% in-lieu

The group evaluated several combinations and discussed the options in an attempt to determine the application of on-site units, off-site units and in-lieu fees. The first was 10/10/10. City staff reported that such a mix works well with the “120” sales price (as defined by state law—it is not a true 120 % when the formula is applied), reaching people at 80% of AMI.

Suggestion 1	Suggestion 2	Suggestion 3
10% on-site	15% on	5 % on
10% off-site	20% off	10% off
10% in-lieu	20% in lieu	10% in lieu

Each commissioner stated where s/he was for each of the choices. Ultimately, only one person supported Suggestion 1, the 10%/10%/10% breakdown. Initially, this was discounted as an option because of the lack of support; later the group put the distribution mix of 10/10/10 to a vote and again this was discarded as an option.

Five people each supported suggestion 2 and 3. The group took a break to caucus. Upon reconvening, a “compromise” suggestion was offered.

Suggestion 4: Begin with 5% on site; 10% off site; 10% in-lieu, and after 2 years, phase in 15% on; 20 % off and 20% in lieu.

Through discussion, Commissioners outlined their willingness to move from one position to another, depending on various conditions. For most part, the commissioners showed support for Suggestion 4 with some tweaking; namely, a point of Council Review after two years and if applied to the 120% AMI.

During the course of the discussion, it was clear that an easy to conceptualize review of the attributes of each scenario would help the discussion. Linda Hausrath and Jeff Levin created the following chart to illustrate various scenarios with On-site, Off-site applications and in-lieu fees. The charts show the effect on Return on Cost for the different prototypes for the specified percentages of affordable units. All of the numbers are based on the “120% AMI” prices (35% of 110% of AMI) as used in Ms. Hausrath’s analysis.

**Return on Cost for Five Prototypes, Using State Law Formula for 120% AMI**

Scenarios of prototypes.	A	B	C	D	E
<b>On-Site</b>					
<b>10%</b>	14%	18%	14%	18%	15%
<b>5%</b>	17%	22%	16%	22%	19%
<b>Off-Site</b>					
<b>10%</b>	18%	23%	16%	24%	21%
<b>Fee</b>					
<b>10%</b>	16%	22%	15%	23%	21%

Note: “120%” AMI is 35% x10% for 10% / 10% / 10%

Two-year Trigger Date

The day coming to an end, the group chose to press on and address the last remaining components of the four. The initial proposal was a 2 year trigger date starting when a plan application is deemed “complete”. A subsequent suggestion was that the trigger date be projects that receive vested rights after December 2007. There was discussion about the differences between when a plan application is “complete,” when all entitlements are award, and when it is “vested.”

The group favored going forward with a trigger of submission of a complete application for a project, rather than receipt of vested rights.. The trigger date would be six months from when the City Council approves the ordinance. Any project application that is complete within that period would be exempt. Applications submitted after that date would be subject to the new policy.

**OTHER / PARKING LOT**

Throughout the discussion of the four key points, at times questions would arise that members of the group wanted to explore and they were parked on a flip page to be addressed later:

- *Who do we want to benefit?*
- *Would IZ add to the supply and availability of housing or not?*
- *Timing needs to be considered, what happens between now and when IZ is implemented. What is the “interim loss”?*
- *If the group comes up with a combination of ‘in lieu, off-site, on-site” that is different than the ones studied and presented by Linda Hausrath, the request is that the combination would be sent back for testing*
- *What are some of the financial considerations in regards to transfer fees, sales tax, property tax, construction and other jobs, etc.?*
- *What is the cost of keeping housing off the market.*
- *Who benefits – how do we get low and very low income involved? What about Redevelopment dollars?*

At the end of this discussion regarding IZ, time was allotted for public comment. There were no public comments.

No time was allotted to the discussion of Funding.

Meeting was adjourned.

NEXT MEETING JUNE 21, 9 a.m. – 3 p.m. at Sequoia Lodge