



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: June 24, 2008

TO: Mayor and Councilmembers

FROM: Housing and Redevelopment Division, Community Development Department

SUBJECT: Inclusionary Housing Ordinance Revisions

RECOMMENDATION:

That Council review possible revisions to the City's Inclusionary Housing Ordinance (SBMC Chapter 28.43) as recommended by the Ordinance Committee and refer the revisions back to the Ordinance Committee for drafting.

EXECUTIVE SUMMARY:

Some Councilmembers and members of the public have expressed concern that the City's current Inclusionary Housing Ordinance ("Ordinance") does not adequately address the need for affordable (middle-income) housing in the City and does not go far enough in furthering the stated goals and purposes of the Ordinance. At Council's direction, Housing Programs staff, the City's Housing Policy Steering Committee, and Planning Commission reviewed the Ordinance, considered appropriate revisions, and made recommendations to Council.

In August, 2007, Council reviewed the recommendations and decided to defer certain changes and implement others. Council deferred consideration of increasing the percentage of required inclusionary units from 15% to 20% for some types of projects; some Councilmembers felt that this change would best be considered as part of the PlanSB process now underway. However, Council did wish to further explore applying the Inclusionary Housing Ordinance to projects of two or more units rather than the current minimum project size of ten units. Council referred this change and various minor revisions to the Ordinance Committee.

On April 1, 2008, the Ordinance Committee met, heard input from staff and interested members of the public, and voted to recommend that Council adopt several changes. The recommended changes are the subject of this report.

The Committee also concluded that it would be advisable to return to Council prior to drafting the Ordinance changes in order determine if the proposed changes would have the support of at least five Councilmembers which, as an amendment to the City's Zoning Ordinance is the number of affirmative votes required to amend a zoning ordinance under City Charter Section 1507.

BACKGROUND:

The City's Inclusionary Housing Ordinance (SBMC Chapter 28.43) was adopted by the Council in 2004. This Ordinance requires all residential ownership subdivisions of ten or more units, whether new construction or condominium conversions, to provide 15 percent of the total units as "inclusionary units." Apartments are exempt from the Ordinance because they are not subdivisions and may not be owned separately. Inclusionary units must be sold at prices affordable to "middle-income" households (households with incomes from 120% to 160% of the area median income). The current 2008 affordable sale prices for inclusionary units are \$249,900 for a 2-bedroom unit and \$283,300 for a 3-bedroom unit. Under the Ordinance, residential developers are entitled to a density bonus for each required inclusionary unit provided on-site.

Purpose and Intent: The Inclusionary Housing Ordinance incorporates a number of findings that indicate its purpose and intent. These include the following (edited for brevity):

- A lack of new inclusionary housing units will have substantial negative impacts because, without more affordable housing close to employment centers, commutes will increase, traffic will worsen, and City businesses will find it more difficult to attract and retain the workers they need.
- Development of new market rate housing (and conversion of apartments to condominiums) encourages new residents to move to the City. This increases the demand for new services, and the service providers who are in the middle income category cannot afford to buy homes here. These employees may feel forced to commute long distances.
- The city of Santa Barbara has very effective affordable housing programs, but 90 percent of the City's affordable housing is *rental* housing for very-low and low income residents. There is an increased need to create home ownership opportunities for middle income (and upper-middle income) households, however, federal and state subsidy funds are not available for these income categories.

Threshold Number of Units: The current Ordinance does not apply to projects smaller than ten units. Some Councilmembers and members of the public have expressed concern that smaller projects have impacts that the Ordinance does not address. Staff has noted the following assertions by members of the public at public hearings on the Ordinance revisions:

- The majority of ownership housing projects, both new construction and condominium conversions, have fewer than 10 units.
- Dozens of new ownership projects and condominium conversions with between 2 and 9 units have been approved in the 4 years since the Ordinance was adopted and many more are in the development review process.
- The pace of apartment-to-condominium conversions with fewer than 10 units seems to be increasing.

- The Ordinance findings state that new ownership housing increases the demand for services provided by people who cannot afford housing in the City. These findings are just as true for new housing projects and condo conversions with fewer than 10 units.

DISCUSSION:

On August 14, 2007, Council considered the recommendations of the Housing Policy Steering Committee and Planning Commission. The majority of the Councilmembers decided not to increase the inclusionary percentage above the current requirement of 15% at this time. Some Councilmembers supported an increase to 20% for some types of projects but thought that instead this change should be considered in the PlanSB process for the update to the City's General Plan.

The majority of the Councilmembers supported lowering the project size threshold from ten units to two units. Council also referred a few other issues to the Ordinance Committee for consideration. These issues included the method of calculating the in-lieu fee and expanding the allowed uses of collected in-lieu fees.

Changes Approved by Ordinance Committee and Recommended to Council:

1. Lower the Threshold from 10-or-More Units to 2-or-More Units: The Ordinance Committee recommends that the Inclusionary Ordinance be revised to apply to all ownership housing projects of two or more units, rather than the current threshold of ten or more units. The required inclusionary percentage for projects of two through nine units would be 5%. Projects of two through nine units would *not* be required to provide an inclusionary unit, but instead would pay a pro-rated in-lieu fee. Because there would be no requirement for an inclusionary unit for these smaller projects, there would be no entitlement to a density bonus unit from application of the Inclusionary Ordinance.

The following table shows the recommended inclusionary requirement percentages for various project sizes. There is no change for projects of 10 or more units.

# of Units in the Project	Inclusionary Percentage	Density Bonus ("by Right") for Required Inclusionary Units?
2 – 9	5%	NA (no units required)
10 and more	15%	Yes

It should be noted that the percentage recommended for these smaller projects by staff and Ordinance Committee is lower than that recommended by the Housing Policy Steering Committee and Planning Commission in 2007. Those bodies had recommended to Council that the percentage be **10%** for projects of 5 through 9 units, and 5% for projects of 2 through 4 units. As noted above, staff and the Ordinance Committee now recommend a **5%** requirement for 2 through 9 units. One of the reasons for this is to potentially simplify and expedite the environmental review for an Ordinance amendment. With a 5% inclusionary requirement, a 9-unit project would be required to provide less than one-half of an inclusionary unit (5% of 9 units = 0.45 units). This requirement would be satisfied by paying a pro-rated in-lieu fee (45% of the in-lieu fee for 1 unit). There would be no requirement to build a unit on-site, and therefore there would be no entitlement to density bonus for an inclusionary unit. These revisions to the Ordinance would *not* result in an increase in the number of housing units beyond the base density. Thus the environmental review of the impacts of the Ordinance should be greatly simplified. Note: if there is support by Council to eventually increase the requirement for 5 through 9 units to 10%, such an increase (and the environmental review necessary for this change) could be considered as part of the PlanSB process.

2. Change the Method of Calculating the In-Lieu Fee: The Ordinance Committee recommends that the in-lieu fee calculation be modified slightly. When the Ordinance was adopted in 2004, the amount of the in-lieu fee was \$310,000, based on a formula set by the Ordinance. Since then, the fee has increased to \$473,300 (over 50 percent higher). This increase is largely due to the increase in the median sale price of condos in the City (from \$500,000 to \$650,000).

Staff believes a one-word amendment to the Ordinance would bring the fee more in-line with the amount of the fee at the time the Ordinance was adopted. Currently the fee is calculated as the difference between the development cost of a 2-bedroom condominium in the City and the maximum sale price of a *low-income* affordable unit. Staff recommends that the words “low-income” be changed to “*moderate-income*.” This revision would result in an in-lieu fee of \$354,000, as shown in the following table.

	In-Lieu Fee Calculations	
	LOW (current)	MODERATE (proposed)
Median Sale Price of Condo in SB	\$650,000	\$650,000
Cost to Build (=85% of Sale Price)	\$552,500	\$552,500
Minus the Affordable Sale Price of a Low Income Unit:	(\$79,200)	NA
Minus the Affordable Sale Price of a Moderate Income Unit:	NA	(\$198,500)
In-Lieu Fee	\$473,300	\$354,000

Changing the Ordinance language from “low income” to “moderate income” would be more consistent with the stated purpose of the Ordinance to create affordable ownership housing for moderate and above-moderate income households.

The revised in-lieu fee of \$354,000 for each required inclusionary unit would be pro-rated for fractions of a required unit. 5% of \$354,000 is \$17,700, so a fee of \$17,700 per unit would apply. Thus, the in-lieu fee required of projects for 2 through 9 units would be as follows:

Number of Units	Times 5%	In-Lieu Fee
2	10%	\$35,400
3	15%	\$53,100
4	20%	\$70,800
5	25%	\$88,500
6	30%	\$106,200
7	35%	\$123,900
8	40%	\$141,600
9	45%	\$159,300

3. Expand the permissible uses of collected in-lieu fees. The current Ordinance states that collected in-lieu fees may be used for the development or rehabilitation of housing affordable to very-low, low and moderate income households. The Ordinance Committee recommends that allowable uses for collected in-lieu fees be expanded to also include the following:

- The City’s purchase and resale of middle and upper middle income affordable units that are in default in order to preserve the long-term affordability of such units. The In-lieu fee fund would be reimbursed upon the resale of the units to eligible households. This is a crucial allowable use for collected in-lieu fees, because the City’s affordable housing subsidy funds (such as Redevelopment Agency housing funds and federal HOME funds) may not be used for above-moderate income housing, even for a short term purchase and resale.
- For the City to subsidize the creation of affordable middle and upper-middle housing. For example, in the future, the City may wish to assist a non-profit developer in building new affordable condo units for locally-employed middle and upper-middle income workers. None of the City’s sources of affordable housing subsidy funds may now be used for above-moderate income housing. In-lieu fees would be the only source for subsidies at middle and upper-middle income levels.
- Finally, to allow a portion of such funds to be spent on the City’s administrative costs of monitoring and enforcing the compliance of inclusionary units with the City’s affordable housing policies.

4. Delay the payment due date for in-lieu fees for projects of 2 through 4 units: Delaying the payment due date until “prior to occupancy” rather than “prior to the building permit” would lessen the financial impact on these small projects, some of which are developed by “mom and pop” owners rather than professional developers. This delay may make collection of the fee more risky for the City and could put the City in the awkward position of refusing a Certificate of Occupancy for a completed residential building causing the unit to be vacant for an extended period of time; however, staff believes that the potential cost savings and project feasibility for the property owners might outweigh the increased risk to the City.

5. Eliminate the reference to lot-area modifications. Under the current Ordinance, all required inclusionary units provided on-site receive a density bonus by entitlement. Because the increased number of units allowed on the site is entitled by the Ordinance, a lot area modification under the general modification provisions of the Zoning Ordinance (SBMC Chapter 28.92) is not required. The City’s practice of documenting the bonus density entitlement with a modification suggests a degree of discretion that is inconsistent with the on-site incentive provided in the Inclusionary Housing Ordinance. Revisions to the existing language would clarify the scope of the incentive and provide a method of documenting the bonus density in a manner that avoids the present confusion.

Council should note that a density bonus by right only applies to inclusionary units required by the Ordinance, so it will continue to apply only to projects of 10 or more units. As noted above, for projects fewer than 10 units the recommended changes will not result in any required inclusionary units on-site. Only the payment of a pro-rated in-lieu fee will be required.

It is also important to note that the entitlement to density bonus units does not assure the developer that the Planning Commission will necessarily approve the project. If the Planning Commission believes the project is too large for the site or its neighborhood, they may deny the project. The Planning Commission (and Council on appeal) retains its discretion to require that design changes be made to assure that the approved project is compatible in size, bulk and scale with its neighborhood. Finally, this change only applies to the unit *required* by the Inclusionary Ordinance. It does not apply to any additional affordable units above and beyond the Ordinance requirements. If an applicant proposes a 20-unit project, which requires three inclusionary units, no lot area modification or density would be required. However, if the applicant also proposes two additional affordable units (for a total of 25 units), those two units require approval of a lot area modification.

6. Exempt Affordable Units from the Inclusionary Requirement: In projects that already propose to include housing that is affordable to upper-middle income households per the City’s policies, exempt such affordable units from the inclusionary requirement. For example, an employer may sponsor a housing project that is between 75% - 100% affordable to upper-middle income households (or below), and such a project would have no inclusionary requirement.

CONCLUSION:

Council is requested to review the recommended changes, receive comments from interested members of the public, and, if there is conceptual support from five or more Councilmembers, direct the Ordinance Committee and staff to draft the recommended revisions to the Inclusionary Housing Ordinance and return to Council for possible introduction and adoption.

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APPROVED BY: City Administrator's Office