



# CITY OF SANTA BARBARA

## COUNCIL AGENDA REPORT

**AGENDA DATE:** May 12, 2009

**TO:** Mayor and Councilmembers

**FROM:** Housing and Redevelopment Division, Community Development Department

**SUBJECT:** Adoption Of Proposed Amendments To The Inclusionary Housing Ordinance

**RECOMMENDATION:** That Council:

- A. Adopt the findings attached to this Council Agenda Report in order to approve the Final Mitigated Negative Declaration (and related Mitigation Monitoring and Reporting Program) regarding the proposed amendments to the Inclusionary Housing Ordinance; and
- B. Adopt, by reading of title only, An Ordinance of the Council of the City of Santa Barbara Amending Title 28 of the Municipal Code to Revise Chapter 28.43 and Section 28.92.110 With Respect to Expanded Inclusionary Housing Requirements for Smaller Residential Projects Approved for Construction Within the City.

**EXECUTIVE SUMMARY:**

In September, 2008, Council acted to introduce the proposed amendments to the City's Inclusionary Housing Ordinance (the "IHO") discussed herein; however, based on comments from the public regarding the adequacy of the form of environmental review, Council postponed adoption of the amendments. Since then, additional environmental review has been conducted on the draft ordinance and the Planning Commission reviewed the proposed amendments in accordance with the requirement of the state Planning and Zoning Act. Planning Commission recommended that Council not adopt these amendments, for reasons summarized in the discussion below.

The most significant of the proposed amendments is to apply the Ordinance to all ownership housing projects of 2 or more units, rather than the current threshold of 10 or more units. Projects of 2 through 9 units would *not* be required to provide an inclusionary unit, but instead could opt to pay a pro-rated in-lieu fee of approximately \$18,000 per unit.

Staff continues to recommend that Council adopt the amendments to the Inclusionary Housing Ordinance. Although there have been upheavals in the economy since September that have shaken the housing development environment, the need to address the impacts of significantly smaller ownership projects, especially condo conversions, has not changed.

**BACKGROUND:**

The City's Inclusionary Housing Ordinance was first adopted in 2004. It requires that all residential ownership subdivisions of 10 or more units, whether new construction or condominium conversions, are required 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 sold separately. Inclusionary units mandated by the Ordinance must be sold at prices affordable to "middle-income" households (households with incomes from 120% to 160% of the area median income). Developers are entitled to a density bonus for each required inclusionary unit.

Threshold Number of Units: The Ordinance as adopted in 2004 does not apply to projects of less than 10 units. Some concerns have been expressed that smaller projects have impacts that the Ordinance does not address. Staff has noted the following comments at public hearings on the Ordinance amendments:

- The majority of new ownership housing projects, both new construction and condominium conversions, have less than 10 units.
- Many new ownership projects and condominium conversions with between 2 and 9 units have been approved since the Ordinance was adopted and more are in the development review process.
- The Ordinance findings state that new market-rate ownership housing increases demand for services provided by people who cannot afford housing in the City. These findings are just as true for new housing projects and condominium conversions with fewer than 10 units.

History of Proposed Amendments: The City Council referred the scope of the IHO to the Council's Housing Policy Steering Committee (HPSC) for consideration of possible changes to the Ordinance. The HPSC met twice, in April and May of 2007 and recommended several amendments, including:

- 1) a 10% inclusionary requirement for projects of 2 through 9 units (double the amount proposed today); and
- 2) increasing the inclusionary requirement from 15% to 20% in the Central Business District.

In June 2007, the Planning Commission approved the recommendations of the HPSC and forwarded them to Council.

In August, 2007, Council heard the recommendations of the HPSC and Planning Commission. Council decided that the two changes mentioned above should be considered as part of the Plan Santa Barbara process. Council chose instead to move

forward with a scaled-back set of amendments to the IHO that would impose a 5% (instead of 10%) inclusionary requirement on projects with 2 through 9 units. This reduction would mean that projects with 2 through 9 units would not be required to provide inclusionary units, but would instead only be required to pay a pro-rated in-lieu fee or provide one inclusionary unit. This change would expedite the environmental review process of the proposed Ordinance amendments.

In April 2008, the Ordinance Committee reviewed the Council recommendations and received public input. The Ordinance Committee added an exemption for the first unit in projects of 2 through 4 new units in order to exempt “mom and pop” (i.e., owner occupied) developers. In June 2008, Council accepted the recommendations of the Ordinance Committee and returned the matter to Ordinance Committee for drafting of amendments to the Ordinance.

On September 30, 2008, on a 6-1 vote, Council accepted the amendments to the Inclusionary Housing Ordinance and introduced the revised Ordinance for subsequent adoption. These are the same amendments that are before Council today. The following week, the revised Ordinance was on Council’s Consent Calendar for adoption but was pulled when members of the public objected to the form the environmental review and asked that the final version of the ordinance be reviewed by the Planning Commission. Since then, on the advice of the City Attorney, further environmental review has been completed and the revised Ordinance has been considered by the Planning Commission.

#### **DISCUSSION:**

Planning Commission Recommendation: On April 2, 2009, after reviewing and discussing the latest draft of the amendment, the Planning Commission recommended that Council not adopt the proposed changes at this time. The vote was 4-0 with 1 abstention. The majority agreed on the following reasons, as paraphrased and summarized by Housing Programs staff:

- There is no need to rush this, especially since housing development has slowed. It is better to look at these issues as part of the City’s General Plan Update process (PlanSB).
- This acts as a disincentive on new housing development and may actually stop some new projects by making them economically infeasible. We should look to providing incentives for affordable ownership and rental development rather than imposing a disincentive on the people who are trying to provide new housing.

The draft minutes from the Planning Commission action on this agenda item are attached as Attachment #3. The Planning Commission is scheduled to review, revise if necessary, and approve these minutes at their meeting of May 7, 2009.

Despite the recommendation of the Planning Commission, staff continues to recommend that Council adopt the amendments to the Ordinance. Although there have been upheavals in the economy since September that have shaken the development environment, the need to address the impacts of smaller ownership projects, especially condo conversions, has not changed. Approving these changes now would not affect the

ability to explore further incentives for affordable housing through the Plan Santa Barbara process.

Summary of Proposed Amendments approved by Council in September:

1. Lower the Threshold from 10-or-More Units to 2-or-More Units: In September 2008, the Council directed staff to prepare revisions to the IHO so that the IHO would apply to all ownership housing projects of 2 or more units, rather than the current threshold of 10 or more units. The required inclusionary percentage for projects of 2 through 9 units would be 5%. Projects of 2 through 9 units would *not* be required to provide an inclusionary unit, but instead could opt to pay a pro-rated in-lieu fee. Because there would be no absolute requirement for an inclusionary unit for these smaller projects, there would be no entitlement to a density bonus unit.

In new construction projects of 2 through 4 units, the first unit would be exempt from the in-lieu fee requirement. This exemption is limited to new construction projects, and does not apply to condominium conversion projects or to residential land subdivisions into individual lots.

2. Expand the permissible uses of collected in-lieu fees: This amendment would expand the allowable uses for collected in-lieu fees to include 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. It would also permit the fees to be used to subsidize the creation of affordable middle and upper-middle housing.

3. Delay the payment due date for in-lieu fees for projects of 2 through 4 units: This amendment would also allow a developer to delay the payment due date until "prior to occupancy" rather than "prior to the building permit." This would lessen the financial impact on these small projects, some of which are developed by "mom and pop" owners rather than professional developers.

4. Eliminate the reference to a lot-area modification. Under the existing IHO, all required inclusionary units receive a density bonus by entitlement. Because the increased number of units allowed on the site is mandated by the IHO, there is no lot area modification required. This change will simply clarify this point. [A density bonus "by right" applies only to inclusionary units required by the IHO, 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 unless the project developer decides to provide a unit in lieu of paying a fee. 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 approve the project. If the Planning Commission believes the project is too large for the site, they may deny the project. The Planning Commission (and Council on appeal) retains its discretion to require that the market-rate unit sizes be reduced or other design changes be made to assure that the approved project is compatible in size, bulk and scale with its neighborhood.

5. Exempt Projects that provide at least 30% of the units as Affordable Upper-Middle Income Units from the Inclusionary Requirement: This change was in response to

requests from employers who might wish to target the units to employees with incomes that are higher than middle income. It is not limited to employer-sponsored housing, though. There will be no density bonus by right for these units .

**CONCLUSION:**

The proposed amendment ordinance was introduced by the City Council on May 5, 2009, by a six-to-one vote. Because these IHO amendments would involve changes to SBMC Title 28 (the "Zoning Ordinance"), Charter Section 1507 requires the affirmative votes of at least five Councilmembers for adoption. If the Council believes that these IHO amendments are an appropriate amendment to the City's Zoning Ordinance, it should adopt the attached findings for the Final Mitigated Negative Declaration (along with the Mitigation Monitoring and Reporting Program) and move to adopt the revised amendments to the Inclusionary Housing Ordinance (SBMC Chapter 28.43) as shown in the ordinance draft attached hereto. .

**ATTACHMENT:** Negative Declaration Findings dated as of May 12, 2009

**PREPARED BY:** Brian Bosse, Housing and Redevelopment Manager/SBF

**SUBMITTED BY:** Paul Casey, Community Development Director

**APPROVED BY:** City Administrator's Office

**A. NEGATIVE DECLARATION FINDINGS – 2009 AMENDMENTS TO THE INCLUSIONARY HOUSING ORDINANCE (SBMC CHAPTER 28.43)**

1. The City Council has read and fully considered the draft Final Mitigated Negative Declaration for the proposed 2009 amendments to the City's Inclusionary Housing Ordinance (SBMC Chapter 28.43) together with all of the letters, comments, the City staff response to comments (including the views of the City Planning Commission), and all public testimony received during the City Council's public review process. In the City Council's independent judgment and analysis and on the basis of the entire record provided to the Council at the Council hearings on this proposed amendment, (including the initial study, all written correspondence and Planning Commission and public comments received, and the public testimony) the Council finds that there is no substantial evidence that the proposed 2009 amendments to SBMC Chapter 28.43 will have a significant effect on the environment.
2. Pursuant to Section §15074 of the California Environmental Quality Act Guidelines, the City Council adopts the Final Mitigated Negative Declaration MST2008-00574.
3. In enacting these amendments to SBMC Chapter 28.43 based on a Mitigated Negative Declaration, the City Council approves and adopts the Mitigation Monitoring and Reporting Program (the "MMRP") dated as of May 12, 2009 (attached hereto), which MMRP will monitor compliance with the mitigation measures agreed to by the City, as the applicant, and conditions imposed on this ordinance project in order to mitigate or avoid all potentially significant effects on the environment. The Council further finds that nothing in these amendments to SBMC Chapter 28.43 will alter or reduce the existing requirements for obtaining a zone density modification for a residential housing project from those requirements which are currently in place as a result of the adoption of the City's original Inclusionary Housing Ordinance in March of 2004 as well as other City's ordinances allowing density modifications for affordable units in a manner consistent with the City's approved Affordable Housing Policies and Procedures.
4. The custodian of the environmental documents (such as the Initial Study, the Mitigated Negative Declaration, the public comments and staff response to comments and all record documents of the proceedings) upon which this decision is based is the Environmental Analyst for the City of Santa Barbara Planning Division (Michael Berman) and the environmental documents are located at 630 Garden Street, Santa Barbara, 93101 (phone # 564-4558) and requests for copies of any of these documents may be addressed to Michael Berman.

5. An Initial Study has been conducted by the lead agency, which has evaluated the potential for these amendments to the Inclusionary Housing Ordinance to result in adverse effect, either individually or cumulatively, on wildlife resources. For this purpose, wildlife is defined as "all wild animals, bird, plants, fish, amphibians, and related ecological communities, including the habitat upon which the wildlife depends for its continued viability." The proposed ordinance clearly does not and will not have the potential for adverse effect on wildlife resources and their habitat. Mitigation measures would be applied to any affordable housing unit or affordable projects that may be proposed when Inclusionary Housing in-lieu fee funding is available such that any potential impacts on the City environment (which is exclusively urban and developed) will be less than significant. The project is therefore not subject to payment of the California Department of Fish and Game environmental review fee.

**INCLUSIONARY HOUSING ORDINANCE AMENDMENT (MST2008-00574)**

**MITIGATION MONITORING AND REPORTING PROGRAM**

Dated as of May 12, 2009

**PROJECT LOCATION**

Citywide Ordinance Amendment

**PROJECT DESCRIPTION**

Amend the Inclusionary Housing Ordinance (IHO) that already applies to projects with 10 or more units, to apply to projects with from two to nine units. An in-lieu fee of \$17,700 per market rate unit included in the project (payable prior to occupancy for two through four units), would be charged when an affordable unit would not be provided as part of the project. The ordinance would also state that where one to four new units are proposed the first unit would not be required to pay the in-lieu fee. The requirement for a lot area modification for inclusionary housing would be eliminated. The maximum sale prices of inclusionary units in employer-sponsored housing projects would be increased substantially, provided that all of the units in the project are priced at below-market restricted prices. The in-lieu fee could be used for purchasing and reselling of existing middle and upper middle income housing, subsidizing the creation of middle and upper middle income housing, and ensuring compliance with middle and upper middle income housing policies and procedures

**PURPOSE**

The purpose of the **IHO** Mitigation Monitoring and Reporting Program (MMRP) is to ensure compliance with all mitigation measures identified in the Initial Study to mitigate or avoid potentially significant adverse environmental impacts resulting from the proposed project.

The following MMRP Matrix describes each initial study mitigation measure, monitoring activities and the responsibilities of the various parties, along with the timing and frequency of monitoring and reporting activities.

The MMRP Matrix is intended to be used for monitoring the project mitigation measures. The Matrix should be used as a compliance checklist to aid in compliance verification and monitoring requirements.



Inclusionary Housing Ordinance Amendment (MST#2008-00574)  
 Mitigation Monitoring and Reporting Program  
 February 13, 2009  
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MITIGATION MEASURE	PARTY RESPONSIBLE FOR IMPLEMENTATION	VERIFICATION		
		DATE	ACCOMPLISHED	COMMENTS
<b>Aesthetics</b> - When construction is proposed it shall be subjected to environmental and discretionary/design review to minimize any project visual impacts identified and for consistency with the Santa Barbara Municipal Code, General Plan Conservation Element, and applicable design review guidelines. Existing Lighting Ordinance compliance would be ensured during project review and standard conditions of approval would be applied.	Applicant			
<b>Air Quality</b> - When construction is proposed it would be reviewed according to the MEA and SBCAPCD Scope and Content of Air Quality Sections in Environmental Documents and conditions of approval designed to minimize construction and operation air pollutant emissions would be applied to the project.	Environmental Analyst			
<b>Biology</b> - When construction is proposed, it would be reviewed according to MEA, the General Plan Conservation Element, and SBMC standards and regulations and conditions of approval designed to minimize biological impacts would be applied to the project.	Environmental Analyst			
<b>Cultural</b> - When construction is proposed it would be reviewed according to the MEA Guidelines for Archaeological Resources and Historic Structures and Sites, Conservation Element, and SBMC and conditions of approval designed to minimize cultural resource impacts would be applied to the project.	Environmental Analyst			
<b>Hazards</b> - When construction is proposed federal, state, and local regulations pertaining to hazardous material and conditions of approval designed to minimize hazardous materials impacts would be applied to the project.	Environmental Analyst			
<b>Noise</b> - When construction is proposed, California Building Code, Noise element policies, City Noise Ordinance requirements, and conditions of approval would be applied to the project to minimize noise impacts.	Environmental Analyst/Building Department			
<b>Water</b> - When construction is proposed requirements of the Storm Water Pollution Prevention Plan, SBMC, and General Plan policies designed to minimize water resource impacts and conditions of approval would be applied to the project.	Environmental Analyst			