

# CITY OF OAKLAND

## AGENDA REPORT

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OFFICE OF THE CITY CLERK  
OAKLAND  
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**To:** Office of the City Administrator  
**Attn:** Deborah Edgerly  
**From:** Community and Economic Development Agency  
**Date:** September 11, 2007

**RE: Final Report and Recommendations of the Blue Ribbon Commission on Housing Regarding Inclusionary Zoning, Condominium Conversions and Other Funding Sources for Affordable Housing**

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Staff is forwarding to the City Council for its consideration the recommendations of the Blue Ribbon Commission on Housing.

### SUMMARY

On October 17, 2006, the City Council established a Blue Ribbon Commission charged with developing recommendations for a comprehensive Inclusionary Zoning Ordinance for the City of Oakland. In addition, on December 5, 2006, the City Council referred the potential revisions to the City's Condominium Conversion Ordinance to the Blue Ribbon Commission. The scope of the Commission's task was broadened to include development of a comprehensive housing strategy to ensure that housing (rental or ownership) is affordable to all income levels within the City. On June 12, 2007, staff provided an update to the Community and Economic Development Committee on the progress of the Blue Ribbon Commission's work. The June 12, 2007 CEDC staff report is included in this report as Attachment A. This report will present the final recommendations from the Blue Ribbon Commission on Inclusionary Zoning, Condominium Conversions and mechanisms to expand funding for affordable housing development in the City of Oakland.

In summary, the Commission made the following recommendations:

1. Adopt an inclusionary housing ordinance for new ownership housing developments of 20 units or more, targeted to households with incomes at or below 100% of area median income. The ordinance should apply to all projects that submit complete applications for development approval to the City six months or later from the date of adoption of the ordinance. For the first two years, the inclusionary requirement should be five percent of total units if developed on site as part of the market rate development, and ten percent if developed off site. Beginning in the third year, the requirements should be increased to fifteen percent on site and twenty percent off site. Developers should also have the option to pay an in-lieu fee equal to the cost to subsidize development of the units required under the off-site compliance option.

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2. Increase the Redevelopment Agency's contribution to the Low and Moderate Income Housing Fund from the current 25 percent to 35 percent within two years and 50 percent within five years, subject to the ability of the Agency to meet its other obligations.
3. Projects and programs funded from the Low and Moderate Income Housing Fund should be targeted to households at or below 60 percent of area median income, with a preference for those at or below 30 percent of median. These targeting requirements would not include funds spent on existing programs for housing rehabilitation and homebuyer assistance, to any program contained in an adopted implementation plan for a redevelopment area, or to assistance provided for housing in the Oak to Ninth and Wood Street District housing developments.
4. Sponsor and support a ballot measure to issue a general obligation bond in the amount of \$200,000,000. These funds should be used to assist both rental and ownership housing, and to serve a range of incomes consistent with Oakland's identified housing needs.
5. Real estate transfer tax revenues generated from the first sale of newly constructed housing should be used to support affordable housing.
6. No recommendation was offered on possible amendments to the City's Condominium Conversion Ordinance, but two minority reports with alternative policy options were reviewed and forwarded by the Commission for the City Council's consideration.

## **FISCAL IMPACT**

This report is a set of policy **recommendations** from the Blue Ribbon Commission to the City Council. Therefore, no formal or detailed analysis of fiscal impacts is included at this time. The City Council will provide direction to staff on a specific set of desired policies to be included in future ordinances. The fiscal impacts of those ordinances will be identified in the City Council staff reports when those actions are before the City Council for consideration. Staff has included comments in this report identifying general fiscal concerns with some of the specific policy recommendations where appropriate.

## **BACKGROUND**

The establishment of the Blue Ribbon Commission was first directed by the City Council as part of a motion adopted at its October 31, 2006 meeting. At that time the Commission's scope was to review and make recommendations on inclusionary zoning. At the December 5, 2006 meeting, the City Council expanded the Commission's scope to include possible amendments to the City's condominium conversion ordinance and development of a comprehensive housing strategy to ensure that housing is affordable to all income levels in the City.

The Blue Ribbon Commission was appointed as follows: 3 by (then) Mayor Brown; 4 by (then) Mayor-elect Dellums; 1 by each Councilmember; 1 by the City Administrator; and 1 by the City Attorney.

The Commission's membership represented a variety of interests in the community. A roster of members and the groups they represent is provided in Attachment B.

Staff support was provided by CEDA's Planning and Zoning Division and Housing and Community Development Division.

Since the Status Report to the CED committee on June 12, 2007, the Blue Ribbon Commission has continued to meet in order to finalize the recommendations requested by the City Council. The final set of Blue Ribbon Commission meetings were held on June 7, June 14, June 21, June 26, July 9, August 9 and August 14, 2007. The facilitator's meeting notes from those meetings are attached to this staff report as Attachments C - I.

After eight months of work, public meetings in each City Council District, review of an economic feasibility analysis on inclusionary zoning, and lengthy discussion on a range of policy issues, the Blue Ribbon Commission made the recommendations that are presented within this report for consideration by the City Council.

#### *Past Initiatives and Efforts Pertaining to Inclusionary Zoning*

The Affordable Housing Task Force, as part of its final report in 2000, recommended that the City consider adopting an inclusionary housing policy. However, no action was taken on that recommendation.

In early 2006, a group of Oakland organizations began circulating a proposal for an inclusionary zoning ordinance. In response to a request from the City Council, staff presented an analysis of that proposal to the Community and Economic Development Committee in April 2006. The Committee then directed staff to prepare an inclusionary zoning ordinance using policy parameters developed by Councilmembers Brunner, De la Fuente and Quan. Between June and October of 2006, the proposal was reviewed by the CED Committee, the City Planning Commission and eventually the entire City Council, with a number of revisions along the way. However, the proposed ordinance was not approved by the Council, who instead referred the issue to the Blue Ribbon Commission.

At the same time, in late 2006 the City commissioned the firm of Hausrath Economics Group to conduct an economic analysis to examine the likely impact of inclusionary zoning on the feasibility of continued development of market rate housing in Oakland. Work began in early 2007 and continued while the Blue Ribbon Commission was deliberating. The preliminary findings from the study were presented to the BRC in May 2007. Following discussion and

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questions from the Commission, staff then worked with the consultant to examine the feasibility of various alternate policy scenarios. The findings from that analysis were used by the Commission as the basis for its final recommendations on inclusionary zoning.

The final economic feasibility report has now been published and is available from CEDA and on CEDA's website at [www.oaklandnet.com/government/hcd](http://www.oaklandnet.com/government/hcd). The executive summary of that analysis is included as Attachment J and is discussed later in this report.

#### *Past Initiatives and Efforts Concerning Condominium Conversions*

The Oakland City Council adopted the current ordinance pertaining to condominium conversions in 1981 and amended it in 1982 and 1984. The law sets forth the regulations by which rental units can convert to ownership units. Current law places restrictions on the ability to convert in order to preserve rental housing and protect tenants from displacement. In the existing regulations, a conversion is defined as a change in the type of ownership from residential rental realty to a stock cooperative, a condominium or community apartment project. It applies to buildings for which a certificate of occupancy has been issued for a multi-family rental building. Under the existing ordinance, all existing rental properties fall under this category as well as any newly constructed residential building that has received an occupancy permit but has not applied for a subdivision approval to sell the units separately. Most new residential projects automatically submit a subdivision map as part of land use approvals to preserve this right to sell units separately in the future.

The current ordinance further requires that each conversion of buildings of five or more units anywhere in the City and buildings with any number of units within the existing "Impact Areas" obtain a "conversion right" which is created from a newly constructed or rehabilitated unit that must remain a rental unit for seven (7) years. It defines a "Condominium Conversion Impact Area" as an area of the City where the rental housing supply was being negatively impacted by conversions at the time of adoption in the early 1980's. Primary and secondary impact areas include areas around Lake Merritt and Adams Point as well as generally in the area west of Broadway, adjacent to the City of Piedmont.

Subdividers are required to notify tenants of the proposed conversion and develop a Tenant Assistance Program that is approved by the City prior to conversion.

In 2004, staff recommended changes to the ordinance that were reviewed and considered by the Planning Commission. These changes did not move forward due to the high degree of public concern.

In November, 2006 the CED Committee considered proposed revisions to the Condo Conversion Ordinance, authored by Councilmembers and staff. The November 2006 CED Committee staff report is included with this report as Attachment K. The item was placed on the December 5,

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2006 agenda of the full Council, subsequently pulled, while an alternate motion was approved to forward the item to the Blue Ribbon Commission for development of recommendations.

## **KEY ISSUES AND IMPACTS**

Oakland faces a variety of housing issues and needs. Most of these issues are described in detail in the Housing Element of the City's General Plan (adopted in June 2004) and the Consolidated Plan for Housing and Community Development (adopted in May 2005).

### *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 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.

For the next planning period, 2007 – 2014, the draft housing needs figure is a total of 14,629 units, with 3,998 units to be affordable for very low and low income households, and an additional 3,142 for moderate income.

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.

### *Low Homeownership Rate*

According to the 2000 Census, Oakland's homeownership rate was 42 percent, compared to 55 percent for Alameda County and 58 percent for the entire Bay Area. There is a particular need for affordable ownership opportunities for low and moderate income first-time buyers. Proponents of liberalization of the City's condominium conversion ordinance have suggested that condominium conversion is one method to provide affordable homeownership opportunities.

### *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 over a 10-year period must be affordable and targeted to low to moderate income households, with at least 6 percent of units targeted to very low income households. The law requires that affordable units be built within the project area, but does not necessarily require that units be included within each market rate project in the project area. (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 redevelopment agencies use inclusionary housing programs to meet this requirement, and the redevelopment plans for these project areas all authorize the Agency to impose inclusionary requirements on market rate projects to meet the area production requirements.

At present a number of large residential development projects are either underway or proposed in 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.

## **SUMMARY OF BLUE RIBBON COMMISSION DELIBERATIONS**

### *1) Inclusionary Zoning – Issues Considered by the BRC*

The October 2006 resolution that first referred the inclusionary zoning issue to the Blue Ribbon Commission included a list of issues for the Commission to consider as part of its review. During the course of its deliberations, the Commission was provided with a range of reports and studies on inclusionary zoning, heard presentations by two economists with different analyses of the economic consequences of inclusionary housing policies, reviewed the findings of the economic feasibility analysis conducted by Hausrath Economic Group, and heard testimony from

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a wide range of public speakers. The Commission reviewed the entire list of issues from the October 2006 resolution, and decided to focus in particular on several key issues that it determined were central to the policy debate:

- Income targeting for inclusionary units
- Inclusionary Requirement (percentage of units)
- Minimum project size subject to inclusionary requirement
- Effective date and “trigger” for inclusionary requirements
- Off-site Alternatives and In-Lieu Fees
- Incentives for Developers

The Commission also discussed other issues, such as exemptions and the possibility of establishing different requirements for different parts of the City, but made no recommendations on these issues. With respect to most of the other issues, the Commission felt that those could be left to the City Council or the staff to work out the details.

Attachment L to this report provides a table showing all the issues listed in the October 2006 resolution, and compares the provisions of the October 2006 proposed inclusionary ordinance with the recommendations of the BRC, including an indication of issues that were not taken up by the Commission.

## *2) Inclusionary Zoning - Economic Feasibility Study Considered by the BRC*

As noted earlier, the Commission relied heavily on the findings of the Hausrath Economic Group study. The Executive Summary of that report is provided as Attachment J to this report, and the full report is available on the City’s website at [www.oaklandnet.com/government/hcd](http://www.oaklandnet.com/government/hcd).

The Hausrath study began by identifying typical housing types recently developed or currently underway in several different areas of the City. The information gathered was used to construct seven prototype projects that reflect the range of products and market conditions in different neighborhoods and sub-markets. Data was collected on the development costs and market prices for these prototypes. This information provided the base case analysis against which the financial impact of inclusionary housing requirements was tested.

For each of the prototypes, the study looked at the effect of the proposed inclusionary housing requirements on (a) rates of return to developers, (b) residual land values (the difference between total anticipated revenue from the project and all development costs including developer return), and (c) the market prices that would be needed to make projects feasible. The study looked at the costs of the 3 alternatives provided for in the original proposed ordinance: development of affordable units within a market-rate project (on-site compliance), development of affordable units at some other location (off-site compliance), and payment to the City of an amount

equivalent to the total subsidy required for the City to assist in the development of equivalent affordable units (in-lieu fee payment).

Staff notes that the Hausrath Study found that under conditions prevailing at the beginning of 2007, several housing types were already infeasible even if no inclusionary housing was required. This finding is confirmed by the fact that few of these types of projects are expected to be initiated in the near future. These include higher density mid-rise and high-rise condominium projects in the Downtown, and rental projects. Sales prices would need to increase by approximately six to eleven percent for these kinds of projects to again become feasible in Oakland. Because there were not any private, market-rate rental projects recently developed or underway, it was impossible to even develop a prototype project for further analysis. Therefore, the remainder of the inclusionary housing analysis and the Commission's deliberations focused exclusively on ownership housing.

The initial findings of the Hausrath analysis were that under current market conditions, the proposed inclusionary requirements would make development infeasible for most of the prototypes, although production of some medium density projects in the Downtown and in North Oakland might still be feasible if developers chose the off-site compliance option. The consultants were then directed by staff to review the effect of modifying some of the parameters of the ordinance – increasing the allowable sales price, and decreasing the percentage of units required to be affordable. Different combinations of these alternatives were analyzed and presented to staff and the Commission for review.

The study found that a modest increase in the affordable sales prices combined with a reduction in the percentage of affordable units required either on-site or off-site (and a corresponding reduction in the in-lieu fee), would make development feasible for all housing prototypes currently feasible in today's market. In addition, it found that relatively modest sales price increases for market rate units (net of any increases in development costs) would allow the percentage of affordable units to be increased.

In reviewing the Hausrath findings, there was lengthy Commission discussion about how inclusionary requirements would be absorbed by the market over the long term. In general, over the long run, inclusionary requirements tend to reduce land prices, or at least limit increases in land prices in a rising housing market, because developers determine the price they are willing to pay for land as a residual of anticipated revenue less all development costs (including the cost of complying with inclusionary requirements) and a return to the developer. As potential profits from development increase when housing prices increase rapidly, there is increased competition for land and land prices tend to be bid up accordingly. However, if costs are increasing due to higher prices for labor and materials, higher financing costs, or new regulatory requirements, land owners will not be able to increase land prices until these other costs are absorbed.



The process described above suggested to the Commission that with sufficient lead time, inclusionary requirements can be absorbed by the market, particularly when a new housing cycle begins and housing prices once again begin to increase. However, for this approach to work, there needs to be sufficient lead time for both developers and land owners to adjust to the new requirements. This consideration proved to be especially important for the Commission's recommendations on the timing and phasing in of inclusionary housing requirements.

*3) Blue Ribbon Commission Recommendations Regarding Inclusionary Housing*

After substantial discussion and consideration of various alternatives, the Commission came to a unanimous recommendation on inclusionary housing. The Commission recommends that the City adopt an inclusionary housing ordinance with the following parameters:

1. Inclusionary housing requirements should be applied to all new ownership housing development of 20 units or more (the Commission made no recommendation regarding rental housing).
2. For the first two years of implementation, five percent (5%) of all units in covered projects should be subject to inclusionary requirements. Alternatively, developers could either provide affordable units (ten percent of the market rate units) at another location or pay to the City an in-lieu fee sufficient to subsidize development of the off-site units.
3. After two years, the requirement should be increased to fifteen percent (15%) on-site, twenty percent (20%) off-site, and an in-lieu fee set at the cost of subsidizing development of twenty percent (20%) off-site.
4. Sales prices should be set at the price defined under California Redevelopment Law as the maximum price affordable to moderate income households. This would be the price at which monthly housing costs would equal 35 percent of 110 percent of area median income. Monthly housing costs include payment of principal and interest on a first mortgage, property taxes, insurance, homeowners association dues, utilities, and maintenance.
5. Sale of inclusionary units should be limited to households with incomes not to exceed 100 percent of area median income (currently this is \$83,300 for a four-person household). In the event that qualified buyers cannot be found within one year of putting a unit on the market, the maximum income would be increased to 120 percent of area median income.
6. The ordinance should apply to all projects that submit a complete application for planning approvals later than six (6) months following the date of adoption of the ordinance.

Several points were discussed and need to be emphasized regarding the sales prices and income limits recommended by the Commission.

Use of Redevelopment Law Formulas for Setting Affordable Housing Prices

The Commission had extensive discussions about balancing affordable housing prices with the need to ensure financial feasibility for developers.

One of the objectives of an inclusionary housing ordinance is to help meet requirements under State law for production of affordable housing in redevelopment project areas. However, use of the State formula results in housing prices that in practice are affordable to much lower incomes than the levels to which they are nominally targeted.

- Housing that is affordable to moderate income households is defined as housing targeted to households at or below 120 percent of median income. To ensure that such housing is affordable to a range of households and not just those at the maximum allowable income, State law requires using a formula based on 110 percent of median income, assuming that such a household can afford to pay up to 35 percent of its gross monthly income for housing costs. The table below compares the State-defined affordable sales prices for units priced at 100 percent of median (the October 2006 proposal) and at 120 percent of median (the Commission's recommendation).

**ALTERNATIVE AFFORDABLE SALES PRICES FOR INCLUSIONARY UNITS,  
ORIGINAL PROPOSAL COMPARED TO COMMISSION RECOMMENDATION**

Affordable Sales Price Assumptions	Studio	One Bedroom	Two Bedrooms	Three Bedrooms	Four Bedrooms
Proposed October 2006 Ordinance: State Formula for 100% AMI	\$158,500	\$183,100	\$209,300	\$232,700	\$249,300
Commission Recommendation: State Formula for 120% AMI	\$207,000	\$240,700	\$272,700	\$304,700	\$325,700

- The State formula includes in the definition of housing costs many items that are not considered by private lenders when determining that amount a household can borrow. Typically lenders will not include utilities and maintenance. The inclusion of these factors artificially reduces the amount of money that is counted as available for mortgage payments.

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- The State formula assumes that households will devote no more than 35 percent of income to housing. In practice, lenders will allow borrowers to devote higher amounts, and ratios of 40 percent are not uncommon, which increases the maximum affordable mortgage. It should be noted that these ratios are based on gross income and do not factor in the significant tax savings that are received by homeowners, which reduces their actual housing cost.
- Taken in combination, the requirements of the State formula result in estimates of a maximum affordable mortgage that is far below what is affordable to households at the targeted income level. The result is that the “affordable” sales price is restricted far below what is necessary, making it affordable to lower income levels than are nominally being targeted.
- Using conventional underwriting standards, staff has estimated that the sales prices set using the Redevelopment Law formula for affordable housing cost for moderate income households would in fact be affordable to households with incomes as low as 85 to 90 percent of median income. The Commission’s recommendations were explicitly predicated on this analysis.

#### Sale/Resale Provisions

There was discussion about what would happen if developers (or occupants of inclusionary units seeking to sell their homes at a later date) could not find eligible buyers within the prescribed income limits. The Commission agreed that under these circumstances sales to buyers with incomes up to 120 percent of income would be allowed. The Commission stressed that there would be no increase in sales prices, and thus there is no economic benefit to developers (or to buyers of inclusionary units when they eventually re-sell their units) to hold their units off the market and eventually sell to buyers with higher incomes. In fact, developers incur substantial costs in the form of interest and other holding costs when units do not sell quickly.

#### Coordination with the City’s Mortgage Assistance Program

The sales prices required by this proposal (\$272,700 for a 2-bedroom unit) are well below the maximum allowable sales price of \$503,500 under the City’s first-time homebuyer program (the Mortgage Assistance Program, or MAP), which provides deferred loans of up to \$75,000 for households with incomes at or below 80 percent of median income. Production of inclusionary units would expand the supply of housing units that are available to participants in the MAP program. The Commission’s recommendations were based in part on an understanding that low income homebuyers could use assistance from the MAP program to purchase inclusionary units.

*4) Inclusionary Zoning – Other Issues Considered*

The Commission did discuss other issues in regard to inclusionary housing but made no recommendations in these areas.

The most significant of these is the provision of incentives for developers to reduce the cost of complying with inclusionary requirements. Many cities with inclusionary requirements, particularly suburban jurisdictions with relatively low density zoning and high parking requirements and development impact fees, provide incentives to make inclusionary units more feasible. While the Commission discussed these on several occasions, and in general is supportive of providing such incentives, it was unable to identify practical incentives that would be workable in the Oakland context:

- Density bonuses are of limited use because most areas where development is occurring are already zoned for densities much greater than what is being built. Higher densities often require a switch to more expensive construction techniques (such as steel frame) that require sales prices that can't be realized in Oakland's market. Higher densities frequently engender substantial neighborhood opposition as well, adding time and expense to development that most developers prefer to avoid.
- Oakland already has relatively minimal parking requirements – often only one parking space per unit. While the Commission was generally supportive of having lower parking requirements, it was noted that developers fear that housing without at least one space per unit will be difficult to sell. Moreover, most lenders have similar concerns and often will not provide financing for projects that don't provide at least one-for-one parking. While there is merit to looking for ways to make lower parking requirements feasible, the Commission made no recommendation.
- Many cities provide a reduction or waiver of development impact fees for inclusionary housing. This reduces the total cost of development. However, currently Oakland does not assess development impact fees on residential development (except for the State-mandated school impact fee and in the South East Oakland Traffic Improvement Program) and therefore there are no fees to be waived.

The Commission also discussed briefly the issue of whether transit village developments should be exempt from the ordinance but came to no conclusion. The October 2006 proposal would have exempted specific transit village developments from inclusionary requirements.

*5) Blue Ribbon Commission Recommendations Regarding Funding Sources for Affordable Housing*

The Commission spent several meetings discussing ways to increase funding for development of affordable housing. As a result of these discussions, the Commission made the following recommendations:

1. Increase the Redevelopment Agency's contribution to the Low and Moderate Income Housing Fund from the current 25 percent to 35 percent within two years, and to 50 percent within five years. The Commission noted that such increases would need to take into account the need to meet existing commitments, particularly for debt service obligations already incurred. At present levels, increasing the set-aside to 35 percent would yield approximately \$10 million in additional funding each year (this amount would increase each year because the total increment increases each year).
2. Low and Moderate Income Housing Funds should be targeted to assist households at or below 60 percent of area median income, with exceptions for the first-time homebuyer program (which targets up to 80 percent of median income) and any programs that are called for in Project Area Implementation Plans that have already been adopted. The Commission explicitly endorsed the language contained in the proposed Redevelopment Agency resolution that accompanied the October 2006 proposed Inclusionary Zoning Ordinance:

**RESOLVED:** That the Agency hereby restricts the use of the Low and Moderate Income Housing Fund to housing units that serve households at or below 60% of area median income, with a preference for housing units that serve households at or below 30% of area median income; and be it further

**RESOLVED:** That these restrictions shall apply to allocations of Low and Moderate Income Housing Funds made by the Agency's governing board after July 1, 2007, including funds allocated to development projects under the Agency's Notice of Funding Availability program after this date; and be it further

**RESOLVED:** That these restrictions shall not apply to Low and Moderate Income Housing Funds allocated currently or in the future to any housing programs established by the Agency or City prior to July 1, 2007, that provide direct assistance to homeowners or first-time homebuyers, or that provide assistance for rental rehabilitation (other than rental rehabilitation assistance provided under the Agency's Notice of Funding Availability program), including without limitation any such housing programs described in any implementation plan adopted prior to July 1, 2007; and be it further

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**RESOLVED:** That these restrictions shall not apply to Low and Moderate Income Housing Funds allocated to any affordable housing developed within the Wood Street Zoning District or the Oak to Ninth Avenue District.

(Note: The Commission did not explicitly discuss the July 1, 2007 date that was in the original proposed resolution).

3. Place a measure on the ballot to issue \$200 million in general obligation bonds for affordable housing. These funds should be used for both rental and ownership housing and should target a range of incomes, taking into account existing and projected needs. These funds could result in the development of 2,000 to 3,000 affordable units and would make a substantial contribution to the City meeting its regional “fair share” goals in the next Housing Element cycle.
4. Real Estate Transfer Tax generated by the initial sale of newly constructed housing should be dedicated for affordable housing development. Assuming annual production of 500 to 800 units of housing with an average price of \$500,000, this would generate approximately \$3.75 to \$6.0 million dollars, which could increase funding for the City’s annual Notice of Funding Availability (NOFA) process by as much as 50 percent.

*6) Blue Ribbon Commission Discussions of Condominium Conversions*

After exhaustive discussion, the Blue Ribbon Commission was not able to arrive at a consensus recommendation on Condominium Conversions. Commissioners were split into two factions on the issues and each has prepared a minority report with specific recommendations (included as Attachments M and N to this report). Key issues where there was disagreement included differences of opinion on whether condominium conversions really create first time homebuyer housing opportunities, the wisdom of continuing the no net loss policy and components of the tenant assistance provisions. Blue Ribbon Commission members representing each minority opinion will be present at the City Council meetings as this item moves forward. The following table compares key provisions of each minority report.

**Table Comparing Existing Condominium Conversion Ordinance and Two Minority Reports from the Blue Ribbon Commission**

Key Provisions of Existing Ordinance	“Balanced Approach” Memo	Greg McConnell Memo
Exemption from conversion requirements provided for 4 or fewer units	<ul style="list-style-type: none"> <li>• Remove it – smaller projects convert affordable units</li> </ul>	<ul style="list-style-type: none"> <li>• Continue existing exemption</li> </ul>
No annual cap on number of units that can	<ul style="list-style-type: none"> <li>• Institute cap of no more than <u>125</u> units/year being converted</li> </ul>	<ul style="list-style-type: none"> <li>• 800 units or no more than 1% of existing rental stock per year</li> </ul>

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Key Provisions of Existing Ordinance	"Balanced Approach" Memo	Greg McConnell Memo
be converted		<ul style="list-style-type: none"> <li>• 400 unit max in Lake Merritt / North Oakland areas</li> </ul>
Exemptions from Cap	<ul style="list-style-type: none"> <li>• None</li> </ul>	<ul style="list-style-type: none"> <li>• Units in Areas that have disproportionate share of renters to owners</li> <li>• Units in buildings where 100% of the tenants are buying the converted units</li> <li>• Units that are occupied by persons who are entitled to a life time lease</li> </ul>
No conversion fee	<ul style="list-style-type: none"> <li>• Institute a new fee equal to 15 % of sales price with exemptions for affordable units or units purchased by tenants</li> </ul>	<ul style="list-style-type: none"> <li>• Conversion Fees placed in Housing Trust fund</li> <li>• Conversion Fee based on # of bedrooms</li> <li>• Waive fee if units are affordable up to 120% AMI</li> </ul>
No net loss policy	<ul style="list-style-type: none"> <li>• Replacement units in the impact areas only</li> <li>• Conversion rights awarded by the City</li> <li>• Exempt projects where 75% of tenants agree to purchase</li> <li>• Exempt units affordable to 100% AMI</li> </ul>	
Tenant protections as provided for in State Law (Subdivision Map Act)	<ul style="list-style-type: none"> <li>• 6 months rent or 2.5% of sales price, which ever is greater</li> <li>• Add Ellis Act protections and relocation assistance</li> <li>• Counseling services offered</li> <li>• Application notice and protection requirements</li> </ul>	<ul style="list-style-type: none"> <li>• Six month's notification which clearly spells out tenant rights, assistance and protections</li> <li>• Right of first refusal to buy at a 10% discount during 6 month notice period</li> <li>• Relocation fees for tenants who voluntarily relocate during 6 month notice period</li> <li>• Relocation and moving expenses for any tenants where buyer of unit seeks to evict for owner occupancy</li> <li>• Right to refuse involuntary cosmetic upgrades to the interior of units</li> <li>• Right to rent reductions due to lengthy service interruption from common area improvements</li> <li>• Referral to housing rights organizations</li> <li>• Other rights under existing laws</li> </ul>
No eligibility requirements for conversion	<ul style="list-style-type: none"> <li>• 5 year ownership required</li> <li>• Building systems must have 10 year useful life</li> </ul>	
Tenants 62 or older have lifetime lease option	<ul style="list-style-type: none"> <li>• Lifetime lease for elderly or disabled</li> <li>• 2 years for families with minor children</li> <li>• 180 day max for others</li> </ul>	<ul style="list-style-type: none"> <li>• Lifetime leases for seniors</li> </ul>
Right to Purchase 90 days after Subdivision Report	<ul style="list-style-type: none"> <li>• 90 days after Dept. of Real Estate report</li> <li>• 10% discount</li> <li>• Referral to 1st time homebuyer program</li> </ul>	

## **SUSTAINABLE OPPORTUNITIES**

***Economic:*** Adoption of new policies and ordinances concerning affordable housing, which will provide a broader range of housing opportunities for Oakland citizens.

***Environmental:*** Over time, adoption of new policies and ordinances concerning affordable housing will likely result in reduction of commute traffic for Oakland citizens and employees who need to travel outside of Oakland to find affordable housing.

***Social Equity:*** Increased affordable housing benefits citizens of all income levels.

## **DISABILITY AND SENIOR ACCESS**

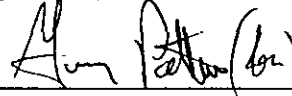
All new development is required to comply with the Americans with Disabilities Act. In addition, the affordable housing issue is of critical concern for both seniors and disabled citizens because a higher proportion of these groups live on fixed and limited incomes, thereby making it more difficult to afford adequate housing.



**ACTION REQUESTED OF THE CITY COUNCIL**

This is a report of the Blue Ribbon Commission recommendations. The action required of the City Council is to provide direction to staff on the content and recommendations in the report.

Respectfully submitted,

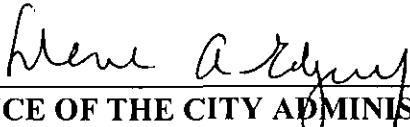


\_\_\_\_\_  
CLAUDIA CAPPIO  
Development Director  
Community Economic Development Agency

Prepared by:  
Jeffrey P. Levin  
Housing Policy and Programs Coordinator

Prepared by:   
Gary Patton  
Deputy Director of Planning and Zoning

APPROVED AND FORWARDED TO THE COMMUNITY AND ECONOMIC  
DEVELOPMENT COMMITTEE:

  
\_\_\_\_\_  
OFFICE OF THE CITY ADMINISTRATOR

List of Attachments:

- A: June 12, 2007 CED Committee Staff Report re: Status Report on the Blue Ribbon Commission.
- B: Roster of Blue Ribbon Commissioners
- C: Summary Notes of June 7, 2007 Blue Ribbon Commission meeting
- D: Summary Notes of June 14, 2007 Blue Ribbon Commission meeting
- E: Summary Notes of June 21, 2007 Blue Ribbon Commission meeting
- F: Summary Notes of June 26, 2007 Blue Ribbon Commission meeting
- G: Summary Notes of July 9, 2007 Blue Ribbon Commission meeting
- H: Summary Notes of August 9, 2007 Blue Ribbon Commission meeting

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- I: Summary Notes of August 14, 2007 Blue Ribbon Commission meeting
- J: Executive Summary of the Economic Impact Analysis of Inclusionary Housing Program in Oakland, Prepared by Hausrath Economics Group and Vernazza Wolfe Associates
- K: November 14, 2006 CED Committee Staff Report re: Revisions to Condo Conversion Ordinance
- L: Comparative Table of October 2006 Inclusionary Zoning Proposal and Blue Ribbon Commission Recommendations
- M: Gregory McConnell Memo on Condo Conversion
- N: "A Balanced Approach to Condo Conversions" Memo

**CITY OF OAKLAND  
AGENDA REPORT**

ATTACHMENT A

**To:** Office of the City Administrator  
**Attn:** Deborah Edgerly  
**From:** Community and Economic Development Agency  
**Date:** June 12, 2007

**RE: Status Report on the City of Oakland Inclusionary Housing Blue Ribbon Commission**

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**SUMMARY**

On October 17, 2006, the City Council established a Blue Ribbon Commission charged with developing recommendations for a comprehensive Inclusionary Zoning Ordinance for the City of Oakland. In addition, on December 5, 2006, the City Council referred potential revisions to the City's Condominium Conversion Ordinance to the Blue Ribbon Commission. The scope of the Commission's task was broadened to include development of a comprehensive housing strategy to ensure that housing (rental or ownership) is affordable to all income levels within the city. This report will provide an update on the process and a summary of the issues considered by the Blue Ribbon Commission to date. Additionally, staff is requesting additional time in order for the Commission to complete deliberations and to submit a set of recommendations to the City Council. This report is informational only.

**FISCAL IMPACT**

Since this report is informational only, no fiscal impacts are included.

**BACKGROUND**

In the fall of 2006, the City Council conducted a number of hearings on the issues of Inclusionary Housing Policy and Condominium Conversions. In October and December 2006, after both proposed ordinances failed to carry motions to adopt, the City Council referred both issues to the Blue Ribbon Commission for further study. The specific direction from the City Council to the Blue Ribbon Commission is contained within the letters dated October 17, 2006 and December 5, 2006 and included as Attachments A and B of this report. Upon formation of the Blue Ribbon Commission, staff set up a link on the City's website which contains all agendas and background materials distributed for each meeting. The website can be accessed directly by going to: <http://www.oaklandnet.com/BlueRibbonCommission/default.htm>

**KEY ISSUES AND IMPACTS**

**Process**

Upon the City Council's initial direction in October, 2006 to form the Blue Ribbon Commission, it was envisioned that the Commission would be able to present a recommendation back to the City Council by January 31, 2007. However, due to the holidays, the time taken to complete the appointments and time needed to make sure that all members were sworn in by the City Clerk, staff was not able to convene the first meeting of the Blue Ribbon Commission until February.

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15, 2007. Since that time, the Blue Ribbon Commission has met nearly once a week and has conducted at least one Saturday meeting to expedite the process. The Commission has held at least one public meeting in every City Council district. The initial Blue Ribbon Commission meeting schedule is included as Attachment C.

Because the City Council's direction required the Blue Ribbon Commission to hold at least one public meeting in each City Council district, the Commission decided early on not to make any decisions or vote on any recommendations until the public meeting process was completed. The Commission was very concerned about having the benefit of considering public comments received on the issues prior to making decisions. The district meeting process was concluded on May 3, 2007.

In order to fully understand the economics of affordable housing production, and more specifically, potential economic impacts of inclusionary requirements on housing development, staff commissioned an economic study. The preliminary results of the economic study are included with this report as Attachment D. The consultant presented the executive summary for discussion at the May 17, 2007 Blue Ribbon Commission meeting.

Now that the district meetings and the economic study have been completed, the commission is ready to move into the decision making phase of the process. Staff will be hiring a facilitator to lead at least two all-day work sessions to bring the discussion of these complex issues to conclusion and to facilitate recommendations. The Blue Ribbon Commissioners will hold the all-day retreats on June 7, 2007 and June 14, 2007. The Commission intends to utilize the June retreats to formulate recommendations on an Inclusionary Ordinance, Condominium Conversion Ordinance and to provide the City Council with policy recommendations on housing financing.

Much of the time during the district meetings has been devoted to taking public testimony and discussion of Inclusionary Housing issues and Condominium Conversions. The major issues of concern expressed by the public can be summarized as follows:

- any Inclusionary Ordinance requirements should consider the economics of development and not penalize the small and medium size developer by making neighborhood projects infeasible;
- the City Council should also consider policy recommendations that will help Oakland citizens increase their incomes and therefore increase their ability to qualify to purchase housing;
- the City Council should consider policies that do not displace or gentrify Oakland's diverse neighborhoods;
- the City Council should adopt policies that can leverage Oakland's housing dollars in order to actually construct affordable housing developments;
- Inclusionary Zoning should promote the development of housing at the low and very low income levels.

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### **Other Affordable Housing Issues**

The Council's direction was to also consider other affordable housing issues. The following menu of additional issues will be considered by the Commission in order to formulate a set of comprehensive recommendations to submit to the City Council:

#### **Developer Incentives**

- Faster zoning and building application processing (hire more staff, or allow 3rd party plan checkers)
- Faster CEQA process
- Update of the zoning code to match the General Plan
- Establishment of a citywide density bonus to accommodate affordable and market rate rental and for-sale housing units in residential, commercial and light (clean) industrial mixed use properties

#### **Funds**

- Maximize funds available for development of new affordable housing all over the city, not concentrated in one or two major projects
- Maximize funds for emergency, transitional, and permanent supportive housing for the elderly, poor and disabled
- Review use of Redevelopment funds to target lower Adjusted Median Income (AMI) households
- Consider putting transfer taxes from additional developments into a dedicated funding source for affordable housing
- Explore adding taxes that are directed to housing, but look at adding those taxes in a way that does not discourage developers

#### **Land Banking**

- The City of Oakland should dedicate a large program fund account to buy properties that would be appropriate sites for affordable housing, especially in higher income or gentrifying neighborhoods. The City should distribute these sites to affordable housing developers through an RFP process.

#### **Household-based support**

- Increase assistance for first-time homebuyers who live and work in Oakland who want to buy, i.e. silent second mortgages, down payment assistance, etc.

#### **Community Land Trust Model**

- Work with local experts to promote a land trust model

### **High-density and transit-oriented development**

- City staff and politicians should explicitly support higher-density housing near transit, including working to overcome neighborhood opposition.

### **Housing Preservation Programs/Initiatives**

- Restore (rehab) blighted properties
- Jobs/Housing Linkage Programs
- Home Ownership Preservation Initiative
- The National Community Reinvestment Coalition (NCRC) in 2001
- Homeowners Emergency Mortgage Assistance Program (HEMAP)
- Low-Income Housing Tax Credits (LIHTC)

### **Asset-Building**

- Individual Development Accounts (IDAs)
- Home ownership education and counseling, e.g. First time home buyer programs
- Limited Equity Housing Co-ops (LEHCs)
- Community Land Trusts (CLTs)
- Regional Trust Fund (Association of Bay Area Governments (ABAG))
- Location Efficient Mortgages (LEMs)
- Section 8 home ownership program
- Public Housing
- All of the issues discussed in the Dellums Housing, CEDA/Economic Development and Land Use Task Force Reports

The list of issues noted above are the result of presentations by staff, affordable housing experts, the many comments provided by the public, and from discussions among Commission members. There are some who have criticized the Blue Ribbon Commission for moving slowly. However, staff would suggest that absent the lengthy time taken in the start up phase, the Commission has been diligent about moving as quickly as possible. Now that the district meetings are complete and the economic analysis has been provided, the Commission will move to the all day work sessions in order to complete the process. Staff anticipates that it will take at least another 4-6 weeks to massage the complex issues noted above into a recommendation for an Inclusionary Ordinance, a Condominium Conversion ordinance modification, and the formulation of a list of other Affordable Housing Policy recommendations for City Council consideration.

### **SUSTAINABLE OPPORTUNITIES**

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### **SUSTAINABLE OPPORTUNITIES**

Economic: Adoption of new policies and ordinances concerning affordable housing, which will provide a broader range of housing opportunities for Oakland citizens. Environmental: Over time, adoption of new policies and ordinances concerning affordable housing will likely result in reduction of commute traffic for Oakland citizens and employees who need to travel outside of Oakland to find affordable housing. Social Equity: Increased affordable housing benefits citizens of all income levels.

### **DISABILITY AND SENIOR ACCESS**

All new development is required to comply with the Americans with Disabilities Act. In addition, the affordable housing issue is of critical concern for both seniors and disabled citizens because a higher proportion of these groups live on fixed and limited incomes, thereby making it more difficult to afford adequate housing.

### **RECOMMENDATION**

Staff recommends that the City Council consider the status report provided by staff and schedule the Blue Ribbon Commission recommendations on affordable housing to a future City Council meeting in September 2007.

### **ACTION REQUESTED OF THE CITY COUNCIL**

This is an information item only. No action is requested of the City Council.

Respectfully submitted,



CLAUDIA CAPPIO  
Development Director  
Community Economic Development Agency

Prepared by:  
Gary Patton  
Deputy Director of Planning and Zoning

APPROVED AND FORWARDED TO THE COMMUNITY AND ECONOMIC  
DEVELOPMENT COMMITTEE:

  
OFFICE OF THE CITY ADMINISTRATOR

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June 12, 2007

**MEMBERS OF THE BLUE RIBBON COMMISSION**

- ♦ Chair: Joaquin Turner-Lloveras, Homeownership Counselor
- ♦ Vice Chair: Earl Hamlin, Retired, Former Planning Commissioner, County of Alameda
  
- ♦ Claudia Cappio, Director, Community & Economic Development Agency
- ♦ Ray Carlisle, Director, BRIDGE Housing Corporation
- ♦ Deborah Castles, Vice President of Development, McGrath Properties, Inc.
- ♦ Carl Chan, Member of the Board of Directors, Asian Health Services
- ♦ David Glover, Executive Director, OCCUR
- ♦ Justin Horner, Chief of Staff, Councilmember Brunner's Office
- ♦ Marcus Johnson, Principal/Owner, Amstutz Associates
- ♦ Lynette Jung Lee, Executive Director, East Bay Asian Local Development Corporation
- ♦ Kathryn Kasch, Specialist on Low Income Housing Development & Finance, Independent Consultant
- ♦ Gregory McConnell, President / CEO, Better Housing Coalition
- ♦ Blair Miller, Sales and Marketing Director, Tishman Speyer, San Francisco
- ♦ Joseph Perkins, President / CEO, Home Builders Association of Northern California
- ♦ Benjamin Powell, Asst. Professor of Economics, San Jose State University
- ♦ Michael Rawson, Co-Director, CA Affordable Housing Law Project
- ♦ Alan Yee, Attorney/Partner, Siegel & Yee



City of Oakland  
 Blue Ribbon Commission on Housing  
 Summary Notes of Meeting on June 7, 2007.

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* 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 7, 2007.

The meeting started with procedural matters such as roll call and approval of minutes, then the discussion regarding Condominium Conversion began.

In setting up the preliminary structure of how the group would work together, Ms. Grant, reviewed ground rules, or principals of engagement. She asked each commissioner to state their expectations for the session(s). Then, there was a discussion regarding agreement and what constitutes agreement.

***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

**ALL COMMENTS AND ACTIONS WILL BE WITH THE INTENT OF MOVING TO THE GOAL OF POLICY RECOMMENDATIONS**

***Expectations for the meeting (check mark denotes stated by other commissioners)***

- Answer underlying policy questions re con. co. √√
- Reach consensus cc and move on. √
- Move forward with housing opportunities—ownership/rental √
- Identify trade offs of cc/set basis for policy
- Open-minded RE: information shared today; flexible
- No expectation (“limiting”)
  - Alternate funding sources
  - Keep in mind the purpose of task; reach conclusion re: CC
- “Hopes and Desires”→CC, financing, I2
- Stay on agenda/ topic
- “Hopeful”

Ms. Grant gave an over view of what kinds of agreements there are and conditions of agreement. Ms. Grant also walked the group through Community at Work “Gradient of Agreement®” and how they are applied.

***Kinds of Agreement***

- Partial Support
- Full Support
- Majority
- Unanimous: 1 or 2
- Minority
- Conditional
- Long Term
- Reversible

***Gradients of Agreement***

- Endorse: “Yes, I like it”
- Endorse with minor contention “basically I like it”
- Agree with reservation “I can live with it”
- Abstain, indifferent “I have no opinion”
- Stand Aside, “I don’t like it, but I don’t want hold up the group”
- Disagree but will go with majority, “Note my disagreement in writing, but I’ll support decision.”
- Disagree with request to be absolved
- No/vet, “I don’t like it”

***What is needed to Move Concept Forward (check at end, mean another commissioner stated agreement with same)***

- (Pro) Consensus vs. Majority
- Not easy to reach consensus
- Recommendations of policy could have maj./min. position
- Consensus model
- Discuss issues to see if consensus—vote
- Consensus around “some things,” some ideas
- Agree on the concepts, the work is in the details
- Look at everything together for compromise whole package
- Set aside time for final vote. At end, consider with the whole, as a package. ✓
- Get consensus today on what we can; Come back later for other issues ✓
- Reserve comments on non-agreements for council ✓
- Good to have votes by timeline, but there are other options
- Uncertainty regarding deadlines and schedule

The group discussed “agreement” in regard to this session and the decisions they anticipated making. It was so noted that at 10:25 on June 7 the group said that they would move a matter forward using a consensus model. The consensus model is that agreement of 2/3 of the people who are here with room for a “minority” report. Minority reports are acceptable but we don’t want a bunch of minority reports.

## **DISCUSSION REGARDING THE CONDO CONVERSION POLICY**

For the first group exercise, Ms. Grant asked each commissioner to write on blue/green or yellow Post-It note paper two components of a condo conversion policy they would like to see, and why that component is desired. This would be used later in the discussion. (Note: As it turned out, there was not time to use this information, it is included at the end of this summary and may be used in future meetings.)

The dialogue began with discussion about CC to ensure common understanding of the topic and then there was an in-depth discussion regarding the need for a condo conversion policy.

### *Condo Conversion... What is it?*

- Convert an apt. bldg to condos.
- People rent apts./ own condo
- Difference of rental and ownership and process of how you make that change
- People may “rent” a condo
- Proposed change of ownership of property
- Focus on getting people to “own a piece of the rock”.
- Original policy shows geography of where ownership is a problem. → Maybe expand or change geography to other areas.

*The question was asked “Does Oakland need a CC policy?”*

All commissioners replied “Yes” for the question.

1. Do we want to change the rate of ownership thru CC?
  - # of units for owners and # of units for Oaklanders
  - Do we want to offer homeownership through CC “yes, if...”
2. Do we agree that the current policy restricts conversion? YES! (all commissioners)
3. How do we want to “manage” the conversion?

*Comments offered in response to question 1 above regarding ownership:*

- Support for increasing homeownership in Oakland
- Let free market take its course (to be affordable requires changes to market factor)
- Affordable ownership for average workforce
- Create homeownership opportunity
- No change CC if it results in a change of renter rate (displacement)
- Policy should increase ownership for Oakland residents and workforce
- Affordable based on AMI and no net loss of renters/ need more rentals
- Focus on getting people to own a piece of the rock
- Original policy show geography of where ownership is a problem, therefore we may need to expand or change geography in other areas.

*Comments offered regarding question 3 above regarding management*

- Can be done with a cap
- Strong tenant protection to prevent displacement – choice to move, buy, stay

*Intent of original existing CC policy*

- Protect rental housing, especially in certain areas
- Prevent condo conversions, except for 4 or less units (exemption)
- Limits homeownership

**Elements of Policy** – The components listed below were pulled from a comparison chart created by the city as the typical kinds of elements in local CC policies. In addition, bottom five were added during the course of the discussion by commissioners as additional elements to consider.

- Eligibility
- Caps
- Permit/Selection Process
- Tenant Notice
- Tenant Rights
- Purchase options/rights
- Relocation assistance
- Inclusionary
- Fees
- More...
- ❖ Rate (tenancy, renters vs. owners)O
- ❖ Geography

- ❖ Application (who it applies to)
  - Design for Oak residents?
  - Design for low income?
- ❖ Tenant relocations/replacement units
- ❖ Tenant rights with improvement, unit specific improvements

In determining how to proceed, the referred to the list of components and felt that one component everyone had some level of agreement with was tenant protection. So the group proceeded with Tenant Protections as a starting point.

#### Agreements

- Need for Tenant protections
- Policy should Benefit / target towards people who live or/and work in Oakland

#### Components of CC policy

##### *Tenant Protections*

- Lifetime leases for disabled, elderly (62 years and above)
  - What is a disability?
    - Impairment of life ability? (Staff was asked to check on various legal definitions of disabled and disabilities)
    - Consider this point more in relation to the CAP
- Displacement / Moving expenses to a tenant who is evicted for owner occupancy. “Just cause” doesn’t apply after 1980— therefore, “just cause” needs to be addressed
- No involuntary tenant improvements or passing through of cost.
  - Health and safety upgrades must be allowed should state or local codes mandate
- *Relocation expense = to 1 year (another proposal on table to limit to 6 month) \*\**
- Penalties/denial of map for those who don’t uphold tenant rights
- Program would have a referral to a (CBO) home counseling program (referencing policy at Tab 20 p. 6)
- Existing 1 year tenant gets 5% discount→ *some discussion regarding percentage \*\**
- Existing tenant can get 50% relocation or purchase assistance
- If new rent with CC is higher, the 6 months of rent
- Proposal of tenant resolution to the Planning Commission
  - The reconciliation should be completed between the sub divider and the tenant

It was shared that there should be a separate relocation and purchase discount. Reference was made to TAB 21 of the commissioners’ packet regarding changes that had been made or suggested to the ordinance.

##### *Relocation\*\**

A discussion took place regarding relocation.

#### Recommendations

- 1) 6 months
  - a. Relocation expenses
  - b. Option to move
- 2) 12 months
  - a. with means based on income level
  - b. market rate
  - c. means test
    - i. limit resources

One commissioner offered that tenants should be provided with 2 months relocation. After more discussion, a recommendation was made that 6 month relocation expenses should be provided, with an "opt" to move. Then there was a proposal for 12 months relocation. This was discussed and a suggestion was made that the relocation would be "means based" with income being the determinant. Others offered market rate as a determinant, others "limit resources."

Minimums were put forth of 5% or 10%, someone offered a compromise of 7-1/2% and 1 year of rent relocation. Another was a "means test" of 10% based on income, with it dropping to 5% if a tenant is over the limit. Another suggestion was to use rent level of the unit: the higher rent gets less of a discount.

No consensus or conclusion developed and the group acknowledged that we would have to come back to this point and discuss.

#### Evaluation Criteria

In discussing policy components, the following were offered as criteria that may be considered. The last bullet provided by a commissioner.

- Time Needed
- Cost/Benefit
- Feasibility
- Social Acceptance
- Political Acceptance
- Purpose/Usefulness
- ❖ Impedes/Promotes

At one point, during the early discussion, Ms. Grant ask for feed back from the Commissioners of *why they live, work, and play in Oakland?* The intent was so that the facilitator could get a feel for what is of value to them regarding their experience with Oakland.

- Born here, family here, like her backyard
- Didn't like alameda—social stratification like diversity, not the suburbs
- Born here, diversity in Oakland, Bay Area culture
- Live⇒Work, 25 years. “Love it; real, exciting, honest
- Born here, no place compares
- Home, ditto to others, weather
- Oakland like Washington DC, wants to be part of “great future”
- Oakland is in a state of becoming, wants to be apart of it
- City/Business interest developing
- Born here; family here; homeowner; business; here; rich in values and climate (weather)
- Invest capital, emotional and financial in projects to be proud of and make a difference
- Family; greatest city in America; friendly; cutting edge. Beautiful; weather is great.

\*\* Agreement not reached. Matter to be discussed at continued meeting.

Due to time constraints the discussion had to end so that the Commission could receive public comment. It was hoped that this discussion could be continued at the next scheduled meeting on June 14, however, open meeting regulations required that only the posted topics could be discussed. Therefore, the discussion of CC would be taken up at a future meeting and date to be determined.

Meeting was adjourned.

The following summarizes that information submitted by commissioners on the Post-It Note exercise.

<b><i>Yellow – what is the attribute, component, requirement that you feel must be included in a CC policy.</i></b>	<b>Blue – why is this important to you.</b>
Increase minority home ownership and chances for economic growth and future financial security.	I don't see a permanent minority underclass and I don't want to surrender to the notion that minority tenants have no hope to enjoy wealth building that has advanced every other group in the country.
100 unit annual cap or 75% of non-subsidized rental construction which ever is less	A) To limit loss of affordable rental housing B) Ensure there is no net loss of rentals
Tenant Protection A) Lifetime leases for disabled tenants B) 2 year leases for families with children C) 1 year rent for relocation	To minimize and mitigate the effects of displacements
1. Cap of not less than _____ 2. Small building outside impact area	A) Compares with City encouraging home ownership

exempt from _____ closing costs	B) Not exempting small buildings would be economic hardship for building owners
If we change 'condo conversions' at all then having some mechanism to promote home ownership for people who live and/or work in Oakland.	Why I think its important to give tenants long notice and relocation assistance, but in a way that allows the conversion to happen IF we decide we want to allow conversions.
If we change condo conversions at all then I want to see fair and reasonable tenant protection	This is important to me because I want Oaklanders to be able to stay in Oakland
*Conversion Fee One-to-one conversion ratio (1 new unit for 1 converted unit)	Add funds to affordable housing fund No net loss of rental units
Tenant Protection for old and disabled	Protect those with the least clout and opportunity and resources
Modify cap to provide for more home ownership opportunity at a affordable level	We need more entry level home ownership and we cant create it thru I2. Too expensive.
Rental stock in Oakland will not be reduced	Rental housing is the main form of affordable housing in Oakland
Any conversion would be made affordable to low income families	Important because our lack is to determine how to create more affordable housing
Protect sitting tenants. Avoid involuntary evictions	People shouldn't be forced to move from their homes against their will
Help interested tenants buy their units	Homeownership in the U.S. does confer advantages for people and society
Geographic limitations	To ensure that all areas of the city have a relatively equal owner/renter balance
Annual cap on total conversions	To ensure that the rental housing market is kept stable and not "shocked" by too many conversions at once
Opportunities for workforce homeownership	If we have no place for work force housing we lose young professionals and cant grow the city
Opportunity for first time home buyers	Homeownership is an important component of social mobility
Tenant Protection	Tenants often have the least resources to keep from being exploited
Add fund to affordable housing fund	No net loss of rental units



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

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

<b>Monitoring and Enforcement</b>	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
<b>Tracking Results</b>	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
<b>Teacher Housing Program</b>	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
<b>Uses of In-Lieu Fee</b>	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
<b>Targeting of Redevelopment Agency Affordable Housing Funds</b>	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>					
10%	14%	18%	14%	18%	15%
5%	17%	22%	16%	22%	19%
<b>Off-Site</b>					
10%	18%	23%	16%	24%	21%
<b>Fee</b>					
10%	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

City of Oakland  
Blue Ribbon Commission on Housing  
Summary Notes of Meeting on June 21, 2007

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 to the Oakland City Council with the intent of assisting the Council with establishing components of an Affordable Housing program that *may* have 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 agreements made at the workshop on June 21, 2007 at Sequoia Lodge, Oakland, CA.

The meeting agenda allowed for discussion of several pre-determined topics: Inclusionary Housing; Condo Conversion; and Funding Sources. However, the initial focus of the meeting was to continue the discussion and momentum from the previous meeting about IZ.

The meeting started with procedural matters such as roll call. Staff distributed the *draft* notes from the previous two facilitated meetings on June 7 and June 14; however, the minutes from the June 14 meeting were not available for a vote.

Following the procedural matters, Linda Hausrath of Hausrath Economics made a presentation regarding the financial consideration for implementing IZ through different scenarios. Based on the group discussion of the June 14 meeting, she presented models of the various combinations of on-site, off-site and in-lieu percentages. Jeff Levin, CEDA's Housing Policy and Program Coordinator, contributed to the report. Clarifying questions were asked and the more detailed policy implementation questions were held until the group engaged in a fuller conversation of IZ. The handouts distributed by Ms. Hausrath are available through the Planning Department.

## **DISCUSSION OF INCLUSIONARY ZONING**

Surlene Grant reviewed the notes from the June 14 meeting in which components determined to be the "meat" of any IZ policy were identified. Four key components were identified. Agreement had been reached June 14 regarding two of the four components.

Therefore, it was suggested that the group focus on the remaining components to start the day's dialogue.

Four Key Point for Inclusionary Zoning:

Agreed on June 14, 2007

- **“Trigger date” – six months from submission of a complete application for the project to the City. \*\***
- **Size of project is 20 units minimum**

**\*\* Unanimous agreement**

Remaining to be discusses.

- 120% of AMI
- 10% on-site; 10% off-site; 10% in-lieu

The Commission began with a discussion of “other considerations” when determining an IZ policy implementation. These points helped the Commission arrive at some consensus about the AMI.

- Is there a pool of people in the given range of AMI
- Are there buyers within the range / price
- Partial or Full exemptions should be considered
- Lower the percentage to a point of feasibility
- Market demand of qualified buyers for affordable housing
- Involvement of Homeownership counseling groups
- Tie the program to the First Time Homebuyer program – is this possible?
- Create a mechanism for increasing the pool of homebuyers, if the home does sell to the Lower AMI group.
- City to monitor the program – can the City do this?
- A suggestion for the City to buy the units after 1 year, if they don't sell. (Staff responded that such would not be possible. The city is not in the business of buying property like this.).
- Create “something” (a formula or process) that gets us to the average AMI.
- Consideration of additional fees such as HOA, insurance and more into the total pricing formula.
- Need some kind of asset test for people who have hidden assets.
- Consider an impact fee

A Commissioner suggested that the program begin with a 5% on-site, 10% off-site and 10% in-lieu changing after 2 years to 15% on-site, 20% off-site and 20% in-lieu. This would be offered in combination with 80-100% AMI with an average of 90%. The sales price would be based on the State formula. After 1 year there could be a waiver.

This proposal launched a discussion of desired outcomes, ability to implement, market conditions, feasibility, the impact of additional costs such as HOA dues and mortgage insurance, timing, suggested counter proposals and more. The resulting proposal emerged as the final proposal before the group:

### IZ PROPOSAL for FOR-SALE PROPERTIES

Eligibility: Buyers must have incomes at or below 100% of AMI. If after 1 year the IZ unit has not sold then the inclusionary unit can be sold to someone at 120% AMI.

Application:

5% on-site	<i>over two years converting to</i>	15% on-site
10% off-site		20% off-site
10% in-lieu		20% in-lieu

\*Time line: For the first six months from City Council adoption, the 5%, 10%, 10% applies, then 24 months later (for a total of 30 months) the 15%, 20%, 20% will apply.

Sales price determined by State Redevelopment Formula for ownership units targeted to moderate households (120% of AMI). That formula sets the price such that monthly housing costs (including mortgage, taxes, insurance, maintenance, utilities and HOA dues) do not exceed 35% of 110% of AMI. Staff presented information that showed that because the State formula includes many costs not considered by mortgage lenders, these prices would actually be affordable to households with incomes as low as 85% to 90% of AMI. *Per commissioners request, the staff report should show that the 35% of AMI equals 120%.*

Property owners will work with Homeownership programs and centers to find people with qualifications or help meet qualifications.

**\*Unanimous.** Everyone agreed that there would be a period of 6 months from City Council adoption to implementation of the 5% on-site, 10% off site and 10% in lieu. The difference being a point as to whether it should be 18 months or 24 months before the higher percentage becomes effective. Four commissioners wanted 18 months; 6 commissioners wanted 24 months. The group took a break to have lunch and caucus. Returning to group discussion, the four commissioners agreed to move to the position of the other 6; thus making the proposal of the time line for implementation unanimous.

The basis for the IZ proposal being established, the facilitator and the commissioners created a list of other issues, concerns and desires they felt were necessary for the successful implementation of the IZ policy. Some of the items were pulled from the proposed 2006 ordinance (see previous chart). The Commissioners allowed only 30 minutes for talking about the list of additional concerns because of the late hour of the afternoon. All were offered with the understanding that City Staff would take these items

into consideration when crafting the draft policy and integrate them into the policy recommendation in an appropriate manner.

It was pointed out that the “dot-vote” reflected on the June 14 notes should not be used by staff to determine priorities or all that is acceptable to the commissioners. That particular exercise took place early in the discussions and opinions may have changed given all the discussion and information exchanged since then.

***“IZ GRAVY” – additional topics and points for consideration in formulating reports and recommendations for IZ.***

- Preferences of IZ units for “Oaklanders” (Oakland residents / workers) to the extent possible by law. (All commissioners supported)
- Higher requirements for land rezoned from industrial to residential. (Discussion: Rezoning changed land value of approx. 25%. More info. needed. Commissioners split on this point.)
- Lottery – there needs to be a means to determine who gets a unit. A pool of qualified applicants should be created for the initial sale. (All commissioners except for 1 supported this concept).
- Rental Units -- IZ for rental units? Need affordable rentals. (Could that be addressed through Condo Conversion policy?).
- 45 Year Affordability tied to the property. (Discussion. Can be done with a “recapture” provision. Counters those who want to flip houses. Creates a different class of ownership that is not the same as a regular homeowner. Possibly look at a shared equity program.)
- Exemptions (Lots of discussion regarding various exemptions.)
  - State Redevelopment Law – How does it come into play with this policy in relations to the 15% affordability requirement. Value to add or exclude Redev. Areas in IZ. Will help City achieve Redevelopment. IZ can help achieve it. It is part of the 15%, not 15% on top of it.)
  - The interface with the four Transit Villages. Is there support for the exemptions of the Transit Villages...all which seem to have their own affordability goals. Many of the affordable units are already built.
  - Use of Public Funds for IZ. (Discussion: Proposition 1C makes fund available for programs such as this. Did the earlier Council recommendation to prohibit public monies from being used to implement the IZ program, mean funds such as Proposition 1C or only local (City)

funds. Staff offered that the prohibition would apply to state funds too. The Commissioner who raised this concern said that she would like to use some public money, depending on the source.

- Rental Units – Use what is in the proposed ordinance.
- Geography / Economic Consideration – There should be an exemption in economically depressed areas to encourage market rate and economic integration.

The conversation about the IZ policy was considered to be done. At the end of the series of meetings, the Commissioners will review the policy suggestions in the context of all the other policy suggestions to see if there is a recommendation to the City Council.

The group then decided to take a few moments and list the key components of the Condo Conversion policy. As the list grew, the facilitator suggested a quick method of providing priority to the items for discussion. Ideally, all topics will be discussed at the next meeting in detail.

#### **CONDO CONVERSION CONSIDERATIONS**

- CAPS – number of units allowed to convert. (All 10 commissioners voted for this one as key subject).
- Conversion Fees – housing trust funds, others (Six commissioners)
- Tenant Benefits (Six commissioners)
  - Discounts
  - Relocation (Forced / Involuntary)
  - Consumer Education / Credit Worthiness / Homeownership
  - Tenant Protection Process
- No net loss of rentals (Four commissioners)
- Number of units covered / included (Four commissioners)
- Geographic Distribution (Three Commissioners)
  - City-wide
- Guarantees Affordability (One commissioner)
- Preferences for Conversions
  - Age of Building, Ability to be Converted

City of Oakland  
Blue Ribbon Commission on Housing  
Summary Notes of Meeting on June 26, 2007

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 to the Oakland City Council with the intent of assisting the Council in establishing components of an Affordable Housing program that *may* have 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 given that the recommendations from the BRC will result in an actual policy. The possibility remains for a recommendation to not 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 agreements made at the workshop on June 26, 2007 at Joaquin-Miller Park, Oakland, CA.

The meeting agenda allowed for discussion of several pre-determined topics: Inclusionary Housing; Condo Conversion; and Funding Sources. The meeting started with procedural matters including roll call and an opportunity for public comment.

In the previous meetings the Commissioner had discussed IZ exhaustively. Therefore, for this meeting, they decided to begin with a discussion about Condo Conversion. Based on input from the meeting on June 21, the group identified the top priority components for CC and the discussion started from these points.

- CAPS – number of units allowed to convert.
- Conversion Fees – housing trust funds, others
- Tenant Benefits
  - Discounts
  - Relocation (Forced / Involuntary)
  - Consumer Education / Credit Worthiness / Homeownership
  - Tenant Protection Process
- No net loss of rentals

The facilitator provided a recap of the previous meeting and an overview of the “Principles of Engagement.” The group began with a discussion of Tenant Benefits.



## TENANT BENEFITS

A tenant must receive notification of his/her rights. A tenant has the right to:

1. Remain in the unit
  2. Relocate
  3. Buy
  4. Be referred to a housing rights organization in the City
- 
- 1) **REMAIN** – self explanatory
  - 2) **RELOCATE** – The tenant is entitled to 6 months payment within 180 days. The start of the 180 days begins with the marketing of the property and /or the final report.  
Moving expenses will be included. Moving expenses will be the actual cost of moving, not to exceed \$1,000. Also, moving expenses of up to \$1,000 should be paid to a tenant who is evicted for owner occupancy.
  - 3) **BUY** – The tenant has an opportunity to buy within 180 days – 180 days is the option period. If the tenant buys, s/he gets a 10% discount on the price.
  - 4) **REFERRED TO HOUSING RIGHTS ORGANIZATION** – important to note that the referral is to a housing “rights” organization, not another kind of housing assistance provider.

## COMPENSATION FOR RELOCATION

The Commissioners had a lengthy discussion regarding the 6 months payment for relocation as agreed to above. The discussion was around how much that should be. Staff provided information regarding Stat requirements for different types of projects, such as redevelopment. Several scenarios were lifted forward, with the group on the whole settling on the last option (highlighted in bold below).

- A) The amount of rent currently being paid.
- B) The amount of the Market Rate rent that will be paid at the new place. With the assurance that it is a comparable place ...size for size or bedroom for bedroom.
- C) A or B, whatever is greatest
- D) **As in the existing ordinance – 6 months/ 2.5% of sales price (look at the ordinance for specifics). (6 support)**

## CONVERSION FEES

There are two kinds of fees associated with creation of condo unit(s): 1) Conversion and 2) Processing.

The purpose of Conversion fees is to protect rental housing; to provide balance in the conversion through the use of steep fees in combination with other factors; and to increase homeownership rate among tenants in certain area of the city.

In order for a property owner to convert, s/he must pay a fee per unit that will go to a housing trust fund.

A few of the Commissioners offered up different fee scenarios or proposals for the group to discuss and consider.

- A) The conversion fee would be the cost of the city subsidy for replacing the unit. (This basically provides a way to put back a unit lost from the rental stock)
- B) (Linked to A above) At an affordable level of 100% - 120% of AMI set the sale price or at percentage. Use the percentage on a graded level. This approach would take into consideration building type and area income. The more affluent, higher income neighborhood would pay a fee.
- C) The conversion fee would be as stated from workbook Tab 20 and the slide presentation with a slight modification to how the funds are allocated. Fees would be \$3,000 / room in the impact area and \$2,000 / room outside of the impact area. 75% allocation of the fund to be determined by the City Council but they would have to be for housing production – ownership or rental.
- D) Affordable housing at 100-120% AMI. Opt out with 10% of sales price and 15% of units. Affordable to 100%-120% AMI. This plan would make it affordable for low income. For higher income, it will encourage some mix of units. If tenant buy unit, then there would be no fees. (5 support)
- E) Draft of Tab 20. \$3,000/room – impact zone; \$2,000 / room – outside zone; 75% of funds to housing or sales up to 120% AMI fees are waived. (6 support)
- F) Other suggestions: set the fee as a percentage of sales price.... Have a review.... Create an index.

## **BUILDING IMPROVEMENTS with CC**

Commissioner Lloveras-Turner expressed concern about the tenants' rights during remodels or repairs. Bringing a building to code can take months resulting in displaced tenants. If the landlord's intentions are to bring the building up to code before applying for a condo conversion, then the landlord must take precautions to ensure that no tenants are displaced.

It may be possible for the Building or Code Inspection Department to help with assurances. Or if there is a displacement within a specified window of time, then the

property owner would pay for relocation of the tenant during that period of time. (3 support, 5 no).

NOTE: On June 7, there was also discussion regarding building improvements and tenants rights.

## **CAPS**

A cap is the number of units to be converted annually within the City. The facilitator introduced the discussion of this point as determining what is the “magic number.” Commissioners did not identify any other considerations for “caps” except for the number.

Suggestions:

- Tab 20 referral – set s the cap at 800 (6 supported)
- Start with a Trial Basis of 100 (4 supported)

## **NO NET LOSS**

For every unit converted, there is one that is made available for rent. This could be accomplished a couple of different ways: someone / an entity could build new units, or someone / an entity could purchase condo conversion credits.

There was discussion as to whether there could be an effective CC policy if there was a condition of “no net loss.” There was a recommendation to remove the concept of “no net loss’. (Six commissioners said remove it, 4 wanted to keep it in consideration).

## ***PROCESS NOTE:***

In the previous meetings, “agreement” was defined as getting “2/3” of the group to support a position, then deciding to move the item forward. For many of the ideas shared during throughout the day, there was not agreement. As a consequence, there were no strong recommendations to move something forward.

Unfortunately, as the day unfolded, the group hit a roadblock. With less than an hour remaining in the meeting, there was not time to delve into the issues deeper. A number of Commissioners left the meeting, thus affecting the quorum. The workshop ended, and public comment was heard by those remaining.

The next meeting is set for July 9 at 4 p.m. (Subsequently the place has been confirmed for the Oakland Senior Center on Grand Avenue.)

City of Oakland  
Blue Ribbon Commission on Housing  
Summary Notes of Meeting on Monday, July 9, 2007  
Oakland Senior Center

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 to the Oakland City Council with the intent of assisting the Council in establishing components of an Affordable Housing program that *may* have 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 for a recommendation to not have such 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 agreements made at the workshop on July 9, 2007 at Oakland Senior Center (formerly Veterans Memorial Hall), Oakland, CA.

The meeting agenda allowed for discussion of several pre-determined topics: Inclusionary Housing; Condo Conversion; and Funding Sources. The meeting started with procedural matters including roll call and an opportunity for public comment.

Ms. Grant began the meeting by reviewing the ground rules, terms of engagement and agreement that had been followed in the previous meeting. She also reviewed the discussion points of the previous meeting.

In the previous meeting (June 26, 2007), the Commissioners had ended their discussion regarding Condo Conversions prematurely without reaching a closure point of consensus. Therefore this meeting began with Condo Conversion as a focal topic.

Ms. Grant called out the fact that the Commissioners serve as their own best experts and resource persons. She encouraged them to work from their respective professional knowledge and not so much their personal or professional positions as they participate in these discussions.

## CONDO CONVERSION

The key policy issue regarding CC is the criteria of “no net loss” – that is with the implementation of CC there should not be any net loss of rental units.

There are voices around the table in support the concept of “no net loss”, and there are other voices around the table that state that such a criteria will not make for feasible program. Thus, the Commission was at a stalemate for moving forward.

The Facilitator put forth the question to the group – *Can or will a commissioner’s position change? – what would make for a change of view or a different stance?*

Two suggestions were made;

- if we defined the geographical area where the CC policy applies. The area could be defined by census tracts or by redevelopment areas.
- if there were no cap on conversions in the defined geographical areas.

There was some discussion around the table regarding those suggestions. Finally, after some discussion of whether to continue to struggle through the discussion or move forward to another topic, the group for the most part, decided to move on to another subject.

Sentiments were shared that perhaps the group would not find consensus for CC and that there may be 2 or more reports to the City Council. These “individual” reports would be developed, vetted and reviewed through the BRC’s public meeting process and then forwarded to the City Council.

There was a discussion as to what the City Council is expecting of the BRC and what the end product of these sessions will be. The staff report of the BRC activities has to come back to the BRC before being forwarded to the City Council, so maybe that meeting will be the time for the various “individual” reports or proposals to be brought forward.

#### ALTERNATE FUNDING SOURCES

Co-Chairperson Earl Hamlin introduced and shared with the other commissioners a document he prepared prior to the meeting about IZ and funding mechanisms. In particular, his document called out Redevelopment Tax Increments, Affordable Housing Bonds, Impact Fees and Parking Requirements.

The Commissioners used this document to start their discussion about funding sources.

Discussion with the group followed using the guiding questions: *What did you hear? What did you not hear? Other Ideas? How does this help the affordable Housing Objectives?*

Particular points raised:

- Encourage the City Council to do Land Banking
- Impact Fees for Residential or Non-Residential Development
- Tax increment – Phase up the amount over time. New dollars should go to affordable housing production of units. Suggestion that it would go to 50% like

in San Francisco. There was discussion around this concept which led to a proposal.

**PROPOSAL:** Increase the tax increment set aside funds over time. The first jump would be from 25% to 35%, then to 50%. Increase tax increment housing set aside funds from 25% to 35% in 2 years from council adoption or when the debt ratio reaches 1.10 or 1.20 (the debt coverage ratio that was used when the housing set aside increased from 20% to 25%), whichever is sooner, and to increase the housing set aside funds from 35% to 50% in 5 years from council adoption or when the debt ratio reaches 1.10 or 1.20 (the debt coverage ratio that was used when the housing set aside increased from 20% to 25%), whichever is sooner.

**All Commissioners except for three\* agreed with this proposal.** Two caveats: 1) need additional information on the debt service ratio because it is possible to happen sooner; 2) there is concern that the money is used for what it is intended to be used for (Housing) and not some other budgetary need of the City.

- Tax increment funding set aside: The target would be for low-moderate households at 60% AMI or below with a preference for households at 30% AMI or below. (Use the language from the October 2006 ordinance.)

Question: What is the tax increment fund money currently used for? The money is used for developing of new rental housing and the City's First-time Homebuyers program. The council has a goal of splitting 50/50 for ownership and rental up to 100% median.

**PROPOSAL:** To have a tax increment funds set aside for low-moderate income housing for people at 60% or less of AMI, with 75% of the money going to rental and 25% going to ownership. **(ALL commissioners except for three\* supported this proposal.)** Commissioners also wanted to emphasize that the use of tax increments is "doable."

\* Three commissioners did not participate in the funding discussions at any juncture because of potential conflicts -- these were Commissioners Lynette Jung Lee, Ray Carlisle, and Carl Chan.

*NOTE: At this point in the meeting, it was 7 p.m. Due to previous commitment, Surlene Grant, the Facilitator, had to leave the meeting. Additional notes were captured by staff and are reflected below.*

*The commission would like to schedule 2 additional meetings. The first meeting ideally will be held in the evening (such as 6:30-9:00 p.m.) to wrap up discussion on alternative funding sources. The second meeting will be scheduled for 4:00 p.m. – 8:00 p.m. to discussion condo conversion proposals. These meetings need to take place before the 1st or 2nd week of August to allow enough time for staff to incorporate the commission proposals into the September 11th City Council staff report.*

City of Oakland  
Blue Ribbon Commission on Housing  
Summary Notes of Meeting on Monday, August 9, 2007  
City Hall Hearing Room 4

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 to the Oakland City Council with the intent of assisting the Council in establishing components of an Affordable Housing program that *may* have 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 for a recommendation to not have such 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 agreements made at the workshop on August 9, 2007 in Oakland City Hall.

The meeting agenda allowed for discussion of several pre-determined topics: Inclusionary Housing; Condo Conversion; and Funding Sources. The meeting started with procedural matters including roll call and an opportunity for public comment.

Based on the previous meeting held on July 9, the Commission determined that they wanted to continue the discussion regarding Funding Sources. Because of the month-long break since the meeting, the group took a few minutes to review the meeting notes from all of the previous meetings.

#### REPORTING THE RESULTS OF THE BRC

The review of the meeting notes led to a discussion regarding the development of reports from the BRC to the City Council and the process of submitting "minority reports." In addition, clarity was sought on whether or not staff would be making recommendations.

- If separate reports are submitted, individuals will sign off on the report that they created or supported. An individual does not have to choose to sign off on a report.
- Based on the discussion and submittals at the meeting on August 14, 2007, the BRC may take trial votes of who supports what recommendations. Only the people present at the August 14 meeting can vote. There cannot be participation / voting by proxy.

- Currently, staff plans to release their report to the public on August 31. Staff suggested that the preferred manner for the report to be prepared is as a report of the BRC meetings such as a summary of “this is what was said” and to seek further recommendation and direction for the City Council committee. It is not their preference to make the final recommendations.
- The Chairperson and the Vice Chairperson will review the staff report before it is released to the public. (Due to the schedule, it is not possible for the staff report to be reviewed by the entire Commission and the review from the Chairs was acceptable to those present at the August 9, 2007.)
- Any commissioner can write a letter to be submitted as part of the record for the September 11 report. Any commissioner can attend the meeting Council committee meeting on September 11.

#### DISCUSSION REGARDING FUNDING SOURCES:

At the end of the July 9, 2007 meeting there was a motion made regarding using tax increment set aside funds as a source for increasing affordable housing opportunities in the City of Oakland.

#### Use of Tax Increment Funding –

Commissioner Yee wanted to further the strength of that motion by having a statement from the BRC that the tax increments funds should be a *priority* as a funding source. It was a known entity, in that the infrastructure was already in place for tax increment funds to be used for such.

Use of the tax increment funds should accommodate the policies, numbers and existing recommendations of the established Redevelopment Area PACs.

Use of the tax increment funds should not conflict with First Time Homebuyers Program. Staff referred to a list of exclusions in the existing ordinance that BRC seemed to go along with. Ultimately, there was a recommendation of using exiting language (that Jeff Levin read).

Finally, the suggestion was made to add to the motion of July 9 some additional language of using tax increment as a priority funding source “to the extent that other existing priorities are not violated.”

Motion/Second: Yee/Kasch. Abstain – McConnell. All others supported.

#### Use of Affordable Housing Bonds –



Discussion ensued around the use of a general obligation bond as a source of funding affordable housing. It was determined that such a bond would have to be of a substantial amount, something everyone shares in (which is the nature of a G.O. bond), would require two-thirds voter approval and must apply to a mixture of housing types: ownership, moderate income and low income. In creating the bond language and usage criteria, consideration should be given for ABAG's housing distribution numbers. Staff provided a cursory calculation to determine that a \$200 million bond would come close to achieving the City's ABAG numbers; and that a \$100 million bond would bring in approximately 1000 units of low and very low new housing.

A motion was made to recommend that the City put an Affordable Housing (G.O.) Bond on the ballot. Motion/Second: Miller/McConnell. Abstain – Lee. All others supported.

#### Impact Fees –

The discussion centered around the use of Inclusionary Zoning (IZ) in comparison of impact fees based on a square footage formula. Would it be possible for the City Council to adopt both an IZ policy and the impact fees? Members of the BRC perceived that it would be hard for the City to provide both.

Question: What is the difference between in-lieu fees and/or impact fees?

There are current impact fees. The nature of the impact fee is that it goes to the what is being impacted, such as streets for traffic, etc. Fees currently do not go to housing and the connection to affordable housing may be tenuous.

Based on the over all tenor of the Impact Fee discussion, no member put forth a proposal for group consideration.

#### Real Estate Transfer Fees –

The concept of using Real Estate Transfer Fees surfaced as a more acceptable method than Impact Fees. A proposal was put forth: The first time a (brand) new unit sales, the proceeds of the Real Estate Transfer Fees will go to an Affordable Housing Fund. Real Estate Transfer Fees generated from additional sales in subsequent years would go to the General Fund. Staff reported that this would generate approximately \$6 million in funds. Motion/Second: Hamlin/Kasch. Abstain – Lee. All others supported.

Following public comment, the meeting was adjourned at 9 p.m.

Next meeting will be on Tuesday, August 14 from 4 p.m. to 8 p.m. at Oakland City Hall.

City of Oakland  
Blue Ribbon Commission on Housing  
Summary Notes of Meeting on Monday, August 14, 2007  
City Hall Hearing Room 3

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 to the Oakland City Council with the intent of assisting the Council in establishing components of an Affordable Housing program that *may* have 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 for a recommendation to not have such 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 agreements made at the workshop on August 14, 2007 in Oakland City Hall. To date, this was the last meeting planned for the Blue Ribbon Commission on Housing. The final report to the City Council is anticipated for September 11, 2007.

The meeting agenda allowed for discussion of several pre-determined topics: Inclusionary Housing; Condo Conversion; and Funding Sources. The meeting started with procedural matters including roll call and an opportunity for public comment.

The intent of this meeting was to initially continue the discussion regarding funding sources from the previous meeting. The basis of the discussion was a list prepared by Commissioner Hamlin. Following the funding discussion, the group would review the various approaches to Condo Conversion.

Complete sets of meeting notes were distributed to the Commissioners who missed the August 9 meeting. Copies were also available to the public at the August 9 and August 14 meetings. The intent of the notes is to capture the essence of the meetings, the tone of the meetings and the degree of consensus around topics. They will be used by the staff in compiling the final report and will be included in the final report packet to the City Council. Any comments or corrections to the notes should be submitted to staff or Surlene by the end of the week.

The following is a list of all the meetings:

- June 7, 2007
- June 14, 2007
- June 21, 2007
- June 26, 2007
- July 9, 2007
- August 9, 2007
- August 14, 2007

## DISCUSSION REGARDING FUNDING SOURCES:

### Tradable Credits –

This would be an “incentive” of trading credits for creating more affordable housing opportunities. “ If you do ‘this’, then you get relief from ‘that.’” This concept seems to be similar to the concept of Transfer Development Rights. This concept would also help people who are financially jammed from getting into homeownership under unscrupulous conditions or bad terms. Example: An individual may have a mortgage for a \$400,000 home that is currently only worth \$350,000. Someone comes in to restructure the loans and a credit is given to offset other obligation(s). This would assist someone who is in financial difficulty or could be perceived as a response to predatory lending.

There was discussion regarding the values that such a program supported (or not). Discussion stemmed from several questions that were volleyed around the room on this topic.

Would this be a reward for someone who got in a situation they should not have gotten into in the first place. Would this be rewarding questionable lending practices, etc.? – seems to be a kind of bailout fund. Should we subsidize lenders and other “bad acts”? How can we identify who is worthy?

Would it be possible for such a program to apply to Oakland Housing Authority scattered housing sites?

Who would monitor? Who would do the referrals.?

This could be a dedicated program that could be an offset against the Inclusionary Zoning requirements.

The purpose is to encourage development. Banks might be able to get a charitable deduction.

This is a program to address blighted properties. This program could provide incentives for the restoration of blighted properties.

We don't want to take away from getting new homes out in the market.

Commissioner Hamlin acknowledged that there were a number of points for consideration and that he was satisfied to have it on the record for consideration.

Commissioner McConnell suggested that the City Council consider Tradable Credits as something for a credit under some of the City's programs. There could be a variety of programs for which this would apply, a variety of obligations – excluding the Inclusionary Zoning components.

*Proposal* – To make to the City Council a recommendation for Tradable Credits as a mechanism to create incentives for putting money into properties and programs other than the Inclusionary Zoning policy. M/S: McConnell / Horner. All supported.

Staff requested some clarity on the point of “other than the Inclusionary Zoning.”

It is conceptual now. Perhaps the City Council can direct City Staff to study.

It's too vague and it may turn out that it may result in a trade for something we want in the Condo Conversion ordinance.

If we apply it to blighted property with property owner income limits, then we may be able to avoid flipping and arbitrage.

The City could use this concept to bolster community employment programs.

Does this quantify a “community benefit?” – Provide a benefit, and then get a credit that offset something else.

#### Parking –

The concept is to reduce parking requirements in certain situations.

Like the other points, there was lots of discussion regarding this point. In some instances, the City already has such efforts. The City already has reduced parking requirements in transit zones.

Discussion to the question of how this applies to Affordable Housing.

Parking spaces cost approximately \$30,000 / space. Primarily, if a parking space does not have to be built, then that leaves more money to go into the new development or into offsetting the cost of the affordable unit(s).

The reduced parking requirements could be a development incentive to reduce cost. It could also create more housing in general and bring about a response to environmental concerns and climate change.

There currently seems to be strong support from Oakland's leadership to support reduced parking.

It was suggested that the BRC support this concept and encourage the City to maintain the strong support of the existing policies regarding parking reduction.

The challenge to the parking reduction is that developers need a certain number of parking with their projects so that they are marketable. In addition, lenders look at the amount of parking in a project when considering funding. If there is not an appropriate number, then the units will be difficult to sell, and projects just starting in the process will find it more difficult to obtain funding.

A position was stated that the BRC was not here to study transit policy but housing, and that this was beyond the scope of what we needed to be discussing.

*Proposal* – The Condos in Transit Oriented Districts (TOD) which fall under the cap in a TOD development will not count towards that cap. M/S: Perkins, Johnson.

Friendly amendment – hold this concept until the Condo Conversion discussion. (General agreement to move on with the discussion).

*Proposal* – Through statement to the City Council, the BRC to strongly encourages the City staff to seek more sources of funding from State, Federal and Philanthropic sources to enhance the Affordable Housing program. The staff should “re-double” their efforts. And in doing so, staff time should not be paid from the in-lieu fees, Inclusionary Zoning and Redevelopment programs budget. M/S: Kasch / Yee. All supported.

#### CONDO CONVERSION –

At the previous meetings, it became apparent that the BRC had divergent viewpoints on the components of a Condo Conversion policy. Per the agreements made on August 9, it was anticipated that at least two individuals would come forth to present their recommendations for a Condo Conversion policy.

The two drafts were brought forth. Michael Rawson presented one to the group; Greg McConnell presented the other. Each one provided a clear summary of their respective proposals.

It was determined that the group had agreed on August 9 not to go into a process of trying to find consensus with the two but to bring them both forward in the report to the City Council.

Clarifying questions were asked and some discussion ensued, but in the end, both would be forwarded.

#### Discussion:

Commissioner Carlisle asked about the areas of commonalities. The two are close in tenant protections. Commissioner McConnell commented that they are at opposites regarding caps and how many to units to convert; the cost of condo conversion and the positions regarding “no net loss” as well as the applications to “4 units or less.”

Commissioner Perkins shared that the proposal presented by Michael Rawson is prohibitive.

Commissioner Chan shared his observation of the homeownership values of the Asian community and how condo conversion would work with the common community practices in Chinatown and within families.

There was a question to Greg McConnell’s proposal regarding the exemptions from a CAP and what percentage of renters would be affected – is that 50% of renters?

The facilitator reminded the group of the outstanding question from the earlier discussion of parking, TOD and the condo conversion. The group decided not to address it any further in this meeting.

In keeping with the agreements made at the August 9 meeting, the group ended the discussion and moved the items forward.

*Proposal* – To forward the two different proposals regarding Condo Conversion forward to the City Council. M/S: Hamilin / Carlisle.

Discussion regarding Commissioner Yee’s concern that a motion to move forward is not indicative of support for a particular Condo Conversion proposal.

Substitute motion – To take two votes -- 1) a vote that is “to forward them both to City Council” -- it does not indicate support of an alternate proposal, and 2) a vote indicating support of one or another, or not. Kasch/Carlisle. All in support.

Moving forward: All voted in favor.

Votes on specific proposals:

MR	GM	Abstain	No Opinion
Carlisle	Castles	Hamlin	Horner
Lee	Chan		
Kasch	Johnson		
Rawson	Miller		
Yee	McConnell		
Turner-Lloveras	Perkins		

DISCUSSION REGARDING THE INCLUSIONARY ZONING ORDINANCE

Commissioner Johnson suggested that BRC should look at Redevelopment Areas and Transit Village exemptions. He did not want the IZ policy to evolve into something that determines where poor people “have to live” versus where they “want to live.”

Commissioner Castle said that the previous policy had such an exemption.

Commissioner Johnson commented that the exemption would eliminate a lot of people. Someone else commented that there is a better leveraging of investment dollars and thus a better chance of affordable housing being built in a Redevelopment Area.

There are only three areas in the City currently mapped where this exemption would apply – MacCarthur/Broadway, West Oakland and Coliseum. All are below I-580. Johnson commented that it would be good to bring opportunities above I-580.

Commissioner Kasch reminded the group that there was a host of items remain to be discussed that had been captured in a previous meeting as “Gravy Items” (see June 21, 2007 meeting summary.)

This ended the discussion, and the group received public comment.

The meeting adjourned at 9 p.m. with comments of good wishes, gratitude for dedicated work and acknowledgment of staff by several of the Commissioners.



**ECONOMIC IMPACT ANALYSIS OF  
INCLUSIONARY HOUSING PROGRAM  
IN OAKLAND**

**EXECUTIVE SUMMARY**

*Prepared for the*  
**CITY OF OAKLAND**

*Prepared by*  
**HAUSRATH ECONOMICS GROUP  
URBAN ECONOMISTS**

*and*

**VERNAZZA WOLFE ASSOCIATES, INC.**

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*August 2007*



# EXECUTIVE SUMMARY

## INTRODUCTION

### Purpose

To assist the City of Oakland in its consideration of an inclusionary housing program, an economic study was undertaken to analyze the impacts of potential inclusionary housing requirements on the feasibility of developing housing in Oakland.

### **Evaluation of City's Proposed Ordinance Requirements**

The economic analysis tested the impacts of the proposed inclusionary requirements as set forth in the City's draft ordinance of October 2006. Key aspects of those requirements include the following:

- ◆ Three options for compliance:
  - On-site: 15% of units affordable.
  - Off-site: 20% of units affordable.
  - In-lieu fee: Equivalent to amount required if City were to subsidize production of off-site affordable units.
  
- ◆ Affordability levels for inclusionary units:
  - For-sale units affordable at an average of 100% Area Median Income (AMI).
  - Rental units affordable at an average of 60% AMI.
  - Affordable sales prices and rents to be determined consistent with California Redevelopment Law.
  
- ◆ Inclusionary units to be at least proportional to market-rate units in terms of number of bedrooms.

### **Sensitivity Analysis of Alternative Requirements**

Once the economic impacts of inclusionary requirements in the proposed ordinance were evaluated, additional sensitivity analysis was done to test the impacts of alternative ordinance parameters, focusing on differences in the percentages of inclusionary units required, and differences in the affordable sales prices for the inclusionary units.

### Approach for the Analysis

The first step in the analysis was to assemble current data and information on prototypical development projects that cover the range of types of market-rate housing projects being developed throughout Oakland. Pro forma financial analysis summaries were then prepared for

the development prototypes to understand the economics of feasible development. Separately, the costs of potential inclusionary requirements were estimated for each of the compliance options: on-site units, off-site development, or in-lieu fee payment. With these inputs, the costs of inclusionary requirements were added to the housing prototype pro formas to assess potential impacts on project feasibility and to consider possible implications for residential development in Oakland if the inclusionary requirements were adopted.

## **OAKLAND HOUSING DEVELOPMENT PROTOTYPES**

Seven market-rate housing development prototypes were identified for use in the analysis. The prototypes were chosen to be representative of the range of types of housing development occurring in Oakland. They also were chosen to represent developments with different costs and revenues. In this way, it is possible to demonstrate how the economics of development vary among prototypes in order to test the possible market effects of inclusionary requirements throughout the city.

The seven housing development prototypes are defined based on a combination of factors that determine the costs and revenues of development:

- *Building types and densities:* including wood-frame, and concrete and steel construction, from low-rise townhomes/lofts/row houses, to lower-rise and mid-rise condos, to higher-rise development.
- *Locations within the city serving different markets:* including locations in the neighborhoods of North Oakland, West Oakland, and East Oakland, locations along the Estuary waterfront, and locations in downtown Oakland.

The prototypes are all for-sale developments, as new market-rate housing occurring in Oakland has been for-sale housing. Consultations with developers and feasibility testing undertaken as a part of this effort, indicated that rental housing is generally not feasible to develop under current market conditions. The few market-rate rental projects that have been proposed or developed recently, are rented on an interim basis and then sold as condominiums.

Certain housing types were not included as prototypes for this analysis. They include: single family detached homes (typically developed on individual lots or in small projects not covered by inclusionary requirements); conversions of non-residential buildings to residential use (costs are specific to individual projects and not easily generalized); and luxury, high-rise development in tall towers (only limited examples in Oakland, which tend to be relatively unique and are not generally feasible in most parts of the city).

## **BASE CASE FEASIBILITY WITHOUT INCLUSIONARY HOUSING IN OAKLAND**

Financial pro formas were developed for the housing prototypes based largely on data and information for actual Oakland projects. The objective was to develop an understanding of the

economics of housing development by establishing a base case for each prototype, without an inclusionary housing program in Oakland.

### **Market Context and Feasibility Thresholds**

The pro formas for the prototype projects reflect *costs* for construction and land, as of late 2006/early 2007 when data was collected for the analysis. They also include *revenues* based on housing sales prices estimated for the time when the new units would be completed and ready for sale. Depending on the prototype, the sales prices would apply about one to two years later than the costs. For the analysis, market-rate housing prices assume future prices at levels that have been achieved in Oakland, although prices in late 2006/early 2007 were somewhat below those levels for some prototypes. Generally, prices are anticipated to return to prior levels and then increase again thereafter.

There is uncertainty about housing prices in the near future. The assumptions for this analysis are reasonable, and not particularly optimistic or conservative. They also tend to even out the effects of the recent housing market downturn for purposes of assessing economic impacts. For economic impact analyses, assumptions about market conditions should reflect overall trends, and not be based at either the low point or the high point of market cycles.

The pro formas calculate the return from development and evaluate project feasibility by comparing this return to the minimum return levels or feasibility thresholds typically required by developers for the types of development projects analyzed. The required return measures set firm thresholds for project feasibility, and are used in the development industry by developers, lenders, and investors. The minimum returns identify what must be achieved for developers to earn acceptable compensation for their efforts and risk and for financing and equity investment to be attracted to the project.

### **Base Case Feasibility for Development Prototypes**

The results of the base case pro forma analyses without an inclusionary housing program in Oakland, show that project feasibility varies among development prototypes throughout the city.

### **Most Feasible Projects**

*Wood-frame* prototypes in the stronger market areas show returns that are above the minimum feasibility thresholds. These prototypes include the following:

- Prototype B: Low-rise lofts/townhomes in North Oakland/West Oakland, typically in the vicinity of the Oakland/Emeryville/Berkeley borders.
- Prototype D: Mid-rise condos (4-5 floors) in North Oakland and along the eastern parts of the Estuary waterfront.

- Prototype E: Mid-rise condos (4-6 floors) in Downtown Oakland including the Jack London District.

These results are confirmed by recent development activity in these areas and including these product types.

### **Marginally Feasible Projects**

*Lower-cost, wood-frame* prototypes that provide lower-priced, often entry-level housing in Oakland neighborhoods show returns at or close to the minimum feasibility thresholds. These prototypes include the following:

- Prototype A: Low-rise townhomes and row houses in East Oakland and West Oakland, including larger projects on former industrial sites and smaller projects on infill locations.
- Prototype C: Lower-rise condos (3 floors) in East Oakland and West Oakland, often along the major streets/corridors.

In general, market-rate development of these prototypes has become feasible only recently in Oakland. Developer interest has not been as strong as for other prototypes, due to lower potentials for return and fewer successful project examples. Although identified for East and West Oakland, Prototype C is also applicable in nearby parts of North Oakland as well.

### **Infeasible or Marginally Feasible Projects**

The more costly prototypes with *concrete/steel construction* show returns below the minimum feasibility thresholds. These prototypes include:

- Prototype F: Higher-density, mid-rise condos (6-8 floors) in larger projects in Downtown Oakland.
- Prototype G: High-rise condos (9-16 floors) in Downtown Oakland.

For these prototypes, construction costs are high and have been increasing, while sales prices have not kept pace with costs or have not reached high enough levels in Oakland.

This group includes project types that have been recently built downtown. However, the costs for these recent developments were below current costs as the projects were built under construction contracts signed several years earlier. There also are numerous projects of these prototypes that are approved or proposed in downtown Oakland. The financial analysis suggests that many of those proposals will not be built right away, and that construction is likely to be postponed until housing prices increase.

While the results for Prototypes F and G are generally applicable, some projects of these types in particularly strong locations may command higher sales prices and generate higher returns that could fall within or above feasibility thresholds. Examples include downtown projects with waterfront sites on Lake Merritt or the Estuary and, possibly, particularly strong locations in Chinatown or the Jack London District.

## **COSTS OF PROPOSED INCLUSIONARY REQUIREMENTS**

The inclusionary housing requirements proposed in the City's draft ordinance of October 2006 were analyzed to estimate the costs of compliance from the perspective of the market-rate projects that would be subject to the requirements. Costs were identified for each of the compliance options: on-site development, off-site development, or payment of an in-lieu fee that reflects the full subsidy required to build the inclusionary units as part of a separate affordable development. The costs of compliance are based on inputs from actual developments in Oakland, State Redevelopment Law definitions for affordable sales prices, and other City of Oakland requirements.

- ◆ *Affordable Sales Prices.* Based on the City's proposed ordinance, on average, inclusionary units are to be affordable to households with incomes up to 100% AMI. Consistent with State Redevelopment Law and City of Oakland definitions, the calculations of affordable sales prices are based on 35% of 90% AMI. The State formula includes a number of costs and lending assumptions that are different from what is typically used by the lending industry. Under conventional underwriting standards, households with incomes as low as 70% AMI could be able to purchase units at these affordable prices.
- ◆ *On-Site Compliance.* The cost of on-site compliance is represented by the difference between the market-rate sales price and the affordable sales price for inclusionary units required in a residential development. From the perspective of the market-rate project subject to the requirements, the "cost" is the reduction in revenues from selling a unit at the affordable price instead of the market-rate price. It is assumed that the development costs for the affordable units (15 percent of units in the project) would be essentially the same as the costs of developing the market-rate units in the project (85 percent of units).
- ◆ *Off-Site Compliance.* To provide inclusionary units off-site, the developer could build the units directly or could contribute funds to another developer who would build the affordable units. The cost of off-site compliance is defined as the difference between affordable sales prices and the development costs of the off-site units. The analysis assumes that the off-site affordable units are constructed without public funds. As calculated, the costs may understate the true costs of off-site compliance, as there could be additional risks and difficulties of developing two projects in the same timeframe, which cannot be easily quantified. In most cases, the development costs of off-site units are less than the costs of on-site units, as it is assumed that developers of relatively more expensive, market-

rate projects could develop affordable units on less valuable sites and with lower construction costs.

- ◆ *In-Lieu Fee.* The proposed ordinance provides the option of paying a fee in-lieu of providing units either on-site or off-site. The fee is to cover the costs for a developer, generally a non-profit, to provide the required inclusionary units as part of an affordable housing development. The amount of the in-lieu fee is calculated as the difference between affordable sales prices and development costs to build the affordable units with receipt of City funds (including payment of prevailing wages and meeting other City contracting requirements).

The costs of compliance were estimated for each of the market-rate housing development prototypes. The results show that the costs of compliance would vary among prototypes and among compliance options. In most cases, the costs of compliance through payment of the in-lieu fee or with off-site development would be lower than the costs of compliance on-site.

In general, on-site compliance could reduce sales revenues by an average of \$27,000 to \$59,000 per unit in the project, depending on the development prototype. By comparison, the in-lieu fee payments range from \$25,000 to \$40,000 per market-rate unit, and the off-site compliance costs are estimated to range from \$23,000 to \$29,000 per market-rate unit (without accounting for the additional risks and hassles involved in developing two projects in the same timeframe).

## **IMPACTS OF PROPOSED INCLUSIONARY REQUIREMENTS**

The costs of proposed inclusionary housing requirements were integrated into the base case housing prototype pro formas to test potential impacts on development feasibility. Analysis was also done to assess effects on residual land values, and to identify how much housing prices would need to increase to offset inclusionary costs. Consideration was then given to overall implications for housing development in Oakland.

### **Effects on Housing Project Feasibility**

Overall, the impact analysis identifies that the costs of inclusionary requirements in the City's proposed ordinance are high relative to returns from housing development in Oakland. The proposed inclusionary requirements could cause returns from development to fall below feasibility thresholds in almost all cases. The pro forma analyses show that, for the five prototypes that are feasible in the base case, there is only one prototype under one compliance option where development might be marginally feasible. The two prototypes that are already not feasible in the base case, would have returns that fall further below feasibility thresholds with the additional costs of the proposed inclusionary requirements. The proposed requirements are anticipated to have the greatest impact on the feasibility of developing lower-priced housing in the neighborhoods and developing the more costly building prototypes downtown.

Among compliance options, payment of an in-lieu fee or off-site development would have less impact on project feasibility than on-site compliance in most cases. This is consistent with the differences in costs among the compliance options.

## **Market Adjustments and Implications for Housing Development**

Over time, a combination of market adjustments are likely to be required to offset the costs of the proposed inclusionary housing requirements. Given the magnitude of effects on project feasibility, these adjustments could take time. In the process, there are likely to be implications for housing development in Oakland. The following summarizes anticipated adjustments and their implications.

- ◆ If the October 2006 ordinance proposal was implemented immediately, some development may slow or stop until the market adjusts to incorporate the costs of inclusionary requirements. It also could take longer for development not currently feasible to reach minimum feasibility thresholds, with inclusionary requirements.
- ◆ Land prices are likely to stabilize initially and then decline over time, as a result of the inclusionary requirements. Changes in land prices could eventually offset some of the additional costs of inclusionary requirements.
  - For the prototypes with stronger financial feasibility in the base case (three of the seven prototypes), a combination of land price adjustments and development returns at minimum threshold levels, could make a difference in project feasibility.
  - Land price adjustments (in combination with development returns at minimum threshold levels) are unlikely to make enough difference where development is marginally feasible or infeasible in the base case (four of the seven prototypes). With the inclusionary requirements, residual land values are very low or negative for these projects.
- ◆ Over time, market increases in housing prices may help restore feasibility, depending on broader housing market trends. Price increases would first need to exceed increases in development costs. Then, price increases would likely go to offsetting inclusionary costs before increasing development returns and/or land values.
  - Housing price increases could help in offsetting inclusionary costs. Depending on the prototype, housing price increases of two percent to eight percent above prices assumed for the analysis and above any increases in development costs, could be sufficient to offset compliance costs and restore feasibility for the five prototypes that are feasible to develop in the base case.
  - Given the current market context, it is unlikely that housing prices will increase this much in the short term, suggesting that it could take a number

of years for prices to increase sufficiently to offset the costs of complying with the proposed inclusionary requirements.

- ◆ Feasibility is likely to be restored sooner for the wood-frame building types in the strongest market areas, as exemplified by Prototypes B, D, and E.
  - These are the projects with stronger feasibility in the base case. A combination of adjustments in land prices, housing prices, and development return could occur more quickly than for the other prototypes.
- ◆ Effects of the inclusionary requirements could encourage wood-frame construction over steel/concrete construction since the requirements would increase the already high costs of developing the larger building types, as exemplified by Prototypes F and G. To some extent, this is already happening in the current market context under the base case.
  - For the higher-cost building types, the housing prices required for a feasible project with an inclusionary program would need to be at levels above those achieved in Oakland thus far, and therefore could take time to achieve. In addition, possible land price adjustments could make relatively small contributions to restoring feasibility for these projects.
- ◆ Lower-priced housing projects, as exemplified by Prototypes A and C, could require significant adjustments to offset inclusionary costs.
  - The ability of land price adjustments to offset inclusionary costs is limited. Similarly, lower development return is unlikely to help offset inclusionary costs, since these projects already have returns at or just above the feasibility thresholds in the base case.
  - Higher housing prices may not be obtainable in some of the locations where these projects could be built, unless there is a general increase in housing prices throughout the broader market.

## **SENSITIVITY ANALYSIS OF ALTERNATIVE ORDINANCE PARAMETERS**

Additional analyses were undertaken to test the impacts of alternative ordinance parameters, focusing on differences in the percentages of inclusionary units required, and differences in the affordable sales prices for the inclusionary units. The alternatives tested assumed lesser requirements that would have lower costs of compliance than the inclusionary requirements in the October 2006 ordinance proposal.



The findings of the sensitivity analyses show that changes in ordinance parameters could make a difference in lessening impacts on housing project feasibility in Oakland. With less stringent requirements resulting in lower costs of compliance, an inclusionary program could be more successful in producing inclusionary housing units sooner and with fewer market impacts.

While each of the several alternatives evaluated has the effect of reducing impacts and the market adjustments needed to offset inclusionary costs, the results are not substantially different from those for the proposed requirements until fairly large changes in requirements are assumed. Housing development throughout Oakland is not so profitable that it can easily absorb the additional costs of an inclusionary housing program. Of the many alternatives tested, the following options achieved financial feasibility for the greatest range of prototypes and compliance options.

◆ *Lower Percentages of Inclusionary Units Required:  
5% On-Site and 10% Off-Site/In-Lieu Fee*

With these lower requirements, three of the prototypes could be feasible to develop under all three compliance options compared to only one prototype under one compliance option with the proposed ordinance requirements. Returns would still fall below feasibility thresholds for the other four prototypes, including the higher-cost building types and the lower-priced prototypes. As the inclusionary costs would be lower than under the ordinance proposal, fewer market adjustments would be needed to offset inclusionary costs.

As noted above, and assuming the ordinance parameters from the October 2006 proposal, the costs of compliance for off-site development and payment of an in-lieu fee are lower than the costs for on-site compliance for most prototypes. This could result in few affordable units being incorporated into market-rate projects. The sensitivity testing of alternative percentage requirements identified that as the inclusionary requirements are reduced, the differential between the on-site and off-site/in-lieu fee requirements is also reduced. If the percentage requirements were reduced to 5% on-site and 10% off-site/in-lieu fee, there is a higher probability that developers would choose to build affordable units on-site.

◆ *Higher Affordable Sales Prices for Inclusionary Units: Up to 120% AMI*

Affordable sales prices based on a higher nominal target income level of up to 120% AMI (setting prices so that State-defined housing costs equal 35% of 110% AMI), would lower the costs of compliance and reduce impacts compared to the ordinance proposal. Under conventional underwriting standards, housing priced at the alternative sales prices could actually be affordable at incomes as low as 87% AMI. As a result, the City could set the affordable sales prices at a higher level than specified in the proposed ordinance and still maintain affordability to households at incomes at or below 100% AMI.

With the higher affordable sales prices, two to three of the prototypes could be feasible to develop (three reach the feasibility threshold under one compliance option and two do so under two of the options), compared to only one prototype under one option under the ordinance proposal. Returns may still fall below feasibility thresholds for the other development prototypes (four to five prototypes), including the high-cost building types and the lower-priced prototypes. As inclusionary costs would be lower than under the ordinance proposal, fewer market adjustments would be needed to offset inclusionary costs.

Under this alternative, the higher affordable sales prices make the most difference in project feasibility for off-site and in-lieu fee compliance. Higher sales prices alone are not sufficient to make any of the prototypes feasible with on-site compliance.

- ◆ *Combination of Lower Percentage Requirements and Higher Affordable Sales Prices:*
  - *5% On-Site and 10% Off-Site/In-Lieu Fee*
  - *Housing Priced at 120% AMI*

The feasibility testing of this combined alternative shows at least one feasible compliance option for four of the housing prototypes, including Prototypes A, B, D, and E. The results for a fifth prototype, Prototype C, are just below the feasibility threshold. The results for Prototypes F and G are still below feasibility thresholds, since they are already not feasible in the base case.

Among all of the alternatives tested, this combined option could be the most successful in producing inclusionary housing units sooner because the required adjustments to development return and/or land prices would be relatively smaller and more easily absorbed.

### **Comments Regarding Possible Phasing-In of Inclusionary Program**

If an ordinance were to include requirements at the mid-level or higher end of the range of costs for an inclusionary program, “phasing in” such a program over time could help accommodate the necessary market adjustments. “Phasing-in” could include implementation of lower-cost requirements for a period of time followed by the more costly requirements at a later time. The effect of “phasing-in” inclusionary requirements would be to allow more time for market adjustments. It also could allow time for overall market conditions to improve.

The benefits of this approach, however, would depend on trends in the broader housing market context during the phasing-in period. Improving market conditions for new housing development would help accommodate the costs of inclusionary requirements, while stable or declining conditions would not.

The phasing-in of an inclusionary housing program may not in itself eliminate or substantially reduce impacts, particularly for the higher cost alternatives. However, the benefits of phasing-in inclusionary requirements would allow more time for market adjustments to occur and would give the market an early signal regarding future compliance costs, which could be especially important when developers are negotiating land purchase prices.

**CITY OF OAKLAND**  
**AGENDA REPORT**

OFFICE OF THE CITY CLERK

2006 NOV - 2 PM 3:50

TO: Office of the City Administrator  
 ATTN: Deborah Edgerly  
 FROM: Community and Economic Development Agency  
 DATE: November 14, 2006

RE: **Consideration of revisions to the City of Oakland Subdivision Regulations (Title 16 of the Oakland Municipal Code – Condominium Conversions) regarding conversion of rental housing to condominium ownership as requested by Council members De La Fuente, Brooks and Chang; changes include substituting a fee to be paid to a Housing Trust Fund rather than the requirement for purchasing a conversion right in the private market; establishment of a cap of 1,500 units per year and changes to the required tenant assistance program; New Chapter 16 would be entitled “Conversions to Homeownership”**

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**SUMMARY**

Council President De La Fuente and Council Members Brooks and Chang have jointly introduced an ordinance amending Oakland Municipal Code (OMC) Chapter 16.36, pertaining to conversion of existing rental units into ownership condominiums. The proposed amendments have four key parts:

- In addition to the requirement to purchase conversion rights to other existing rental units on the private market, an option of paying a per room fee would be provided as part of the conversion process. This fee would be placed in a newly established Housing Trust Fund to fund affordable housing.
- An annual cap of 1,500 units would be placed on the number of conversions granted by the City.
- The existing geographic restrictions on conversions (for instance around Lake Merritt and Adams Point) would remain, but owners of rental buildings who wish to convert would be able to pay a fee into the Housing Trust Fund.
- Tenant Assistance Programs would be refined and expanded to encourage home ownership and provide more assistance for displaced tenants.

The Planning Commission reviewed these proposed changes at their October 18, 2006 meeting and continued their review at the November 1, 2006 meeting.

This staff report provides detailed information about the proposed amendments. In addition, major issues associated with these changes is presented, along with Planning Commission comments, public comments, staff comments and recommendations for further changes. A redlined version of the ordinance is attached; this version includes changes that have been suggested during the Planning Commission's review process.

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## FISCAL IMPACT

Adoption of this ordinance will not have any direct impacts on City revenues. The City Council previously established a Development Services Fund for planning and building permits to cover the processing of planning and zoning applications. This Fund is fully cost covering. Condominium conversions are a form of subdivision, and are covered in the master fee schedule. Depending on the number of condominium conversions permitted by the amendments, planning and building services staff would need to be increased from 3 to 12 FTE. Planning, civil engineering, inspection and records administration staffing would all need to be increased to accommodate the likely increase in application volume. The proposed annual cap of 1,500 units represents approximately 1,100 more units than are presently processed annually. It is proposed that the increased costs would be covered by a surcharge on condominium conversion subdivision maps, pro-rated by the size of the conversion. Given that the proposed effective date is July 1, 2007, staff would recommend that the required modifications to the master fee schedule be covered as part of the FY 2007-09 budget process.

## BACKGROUND

The Oakland City Council adopted the current ordinance pertaining to condominium conversions in 1981 and amended it in 1982 and 1984. The law sets forth the regulations by which rental units can convert to ownership units. Current law places restrictions on the ability to convert in order to preserve rental housing and protect tenants from displacement. In the existing regulations, a conversion is defined as a change in the type of ownership from residential rental realty to a stock cooperative, a condominium or community apartment project. It applies to buildings for which a certificate of occupancy has been issued for a multi-family rental building. Under the existing ordinance, all existing rental properties fall under this category as well as any newly constructed residential building that has received an occupancy permit but has not applied for a subdivision approval to sell the units separately. Most new residential projects automatically submit a subdivision map as part of land use approvals to preserve this right to sell units separately in the future.

The current ordinance further requires that each conversion of buildings of five or more units anywhere in the City and buildings with any number of units within the existing "Impact Areas" obtain a "conversion right" which is created from a newly constructed or rehabilitated unit that must remain a rental unit for seven (7) years. It defines a "Condominium Conversion Impact Area" as an area of the City where the rental housing supply was being negatively impacted by conversions at the time of adoption in the early 1980's. (Please refer to attached map for specific definition of the Primary and Secondary areas which are located around Lake Merritt and Adams Point as well as generally in the area west of Broadway, adjacent to the City of Piedmont.)

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Subdividers are required to notify tenants of the proposed conversion and develop a Tenant Assistance Program that is approved by the City prior to conversion.

In 2004, staff recommended changes to the Ordinance that were reviewed and considered by the Planning Commission. These changes did not move forward due to the high degree of public concern. The proposal now before the Council takes into account many of the concerns raised in 2004. In addition, the Council Members sponsoring this proposal have included provisions for additional tenant protections and a new significant funding source for affordable housing through the creation of a Housing Trust Fund.

The table below presents the key provisions of the existing ordinance, followed by the Council Members' 9-27-06 version and suggestions that have been made by staff and others to further refine the proposal.

#### Description and Comparison of Key Condominium Conversion Ordinance Provisions

Existing Ordinance	Proposed Amendments by Council Members 9-27-06
1. <u>Ordinance Title</u> : Condominium Conversions	Title changed to: "Conversions to Homeowner Condominiums"
2. <u>Four or fewer dwelling units</u> are exempt from the conversion requirements. (16.36.010)	Four or fewer dwelling units would be included within the definition of "conversion" – requiring payment of conversion fee to the proposed Housing Trust Fund
3. <u>Notice to Existing and Prospective Tenants</u> : need to confirm that notice has been provided by use of mail delivery receipt. (16.36.020)	A monetary penalty provision has been added if subdivider fails to give proper notice to existing tenants and monetary penalties have been increased for failure to give notice to prospective tenants.
4. <u>Provisions for Tenants 62 years or older</u> : Tenants 62 or older have the option of a lifetime lease on their unit or any other available unit in the building. (16.36.050)	Provisions for a lifetime lease on occupied unit remains; the option to occupy another available unit and receive a lifetime lease has been eliminated.

Existing Ordinance	Proposed Amendments by Council Members 9-27-06
<p>5. <u>Tenant Rights</u>: Specific protections and rights are established including no rent increases during conversion process or one year after; right of first refusal to purchase, right to occupy up to 180 days after final subdivision report and lifetime leases for tenants 62 or older. (16.36.050 A.)</p>	<p>Establishes more specific Tenant Assistance Program provisions (see # 6, below); keeps provision for lifetime lease for persons 62 and older but only for their occupied unit, not any available unit(see # 4).</p>
<p>6. <u>Tenant Assistance Program</u>: Program must contain efforts to minimize tenant displacement and tenant relocation assistance. There are no specific requirements but only suggestions concerning incentives toward ownership and requirement that special efforts must be made for hard to relocate tenants, disabled and the elderly. (16.36.050 B.)</p>	<p>--Proposal more clearly specifies and expands components of Tenant Assistance Program in order to streamline process and provide a more generous package such as cash equal to six months of free rent for those tenants who choose to move rather than to buy their unit. Also – conformity finding would be required as a part of staff review. Current practice is cursory review to insure that minimum requirements have been established. --Proposal includes provision to submit an alternative Tenant Assistance Program to the Planning Commission for review and approval. (New section 16.36.050. C. and D.)</p>
<p>7. <u>Requirements for Approving a Conversion</u>: Planning Commission must find that every converted unit will be replaced with a rental unit added to the City's housing supply. This requirement is accomplished through the purchase of "conversion rights" and must be locked in for a minimum of 7 years (16.36.070.)</p>	<p>--Requirement for replacement unit is an option and another option has been added to pay a conversion fee based on \$2,000/room. Such fees will be placed in a new Housing Trust Fund. Fees in the "conversion impact areas" would be \$3,000/room. An estimate of \$12,500 has been calculated based on a 5 room average. --Fees will be waived if all tenants purchase their units.</p>

<p>8. <u>Basis for Denying a Conversion:</u>          Planning Commission given the authority to deny conversion application outright in the "conversion impact areas" if it is demonstrated that rental housing supply has been negatively impacted by previous conversions (16.36.070 G.)</p>	<p>Planning Commission has authority to deny a conversion if it finds that subdivider vacated units in the building proposed for conversion in order to avoid tenant assistance and relocation or if the Preliminary Tenant Assistance Program does not meet standards in 16.36.050 (see # 6).</p>
<p>9. <u>No annual cap placed on the number of units that can be converted.</u></p>	<p>Annual cap of 1,500 units established for conversion.</p>
<p>10. <u>Annual Reporting requirement:</u>          Subdivider needs to submit informational reports to the City pertaining to tenants displaced since the filing of the tentative map and to buyers of the units being converted</p>	<p>In addition to the current informational reporting requirements, Director of City Planning shall submit an annual report to the City Council regarding the number and location of conversions, changes to City's percentages of owner occupied and renter occupied units, number of tenants who purchased units and amount deposited in the Housing Trust Fund.</p>

## KEY ISSUES AND IMPACTS

The proposed changes to the condominium conversion ordinance are well founded and build on the comments and concerns previously raised about the existing ordinance. In particular, the desire to revise the procedures and account for changed circumstances in law and market conditions since the original ordinance was enacted in 1981. Although more rental units and homeownership units have been added in Oakland, homeownership rates continues to lag other adjacent counties and other parts of the country. According to the 2000 Census, only 41 percent of Oakland households own their own homes, compared to 55 percent for Alameda County and 58 percent for the San Francisco-Oakland-San Jose Census Metropolitan Statistical Area (CMSA), 57 percent for California and 67 percent for the country in general. Homeownership rates for the cities of San Jose, Fresno, Sacramento, Anaheim, San Diego, Santa Ana, Oakland, Long Beach, Los Angeles and San Francisco range from 35% to 61.8%. Of these ten cities, Oakland ranks seventh (7th). Oakland also ranks 1003 of 1080 jurisdictions in California for homeownership rates.

In addition, conversion rights are nearly impossible to find and there is no central point of monitoring to ascertain whether the value of these rights is consistent or whether there has been compliance with the seven year restriction on conversion of those units. Providing additional home ownership opportunities at below the average sales price for new units or single family homes would be an important tool for the City as most converted condominiums will cost less than a single family home.

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These proposed changes are not without consequence. There needs to be careful review of the change in policy direction and a review of protections to avoid or minimize problems in project/program administration. This proposal represents a major shift in approach and purpose from protection of rental housing to encouraging home ownership. It is with these thoughts in mind that staff presents the major issues to be considered.

#### Conversion Within the Context of Related State and Local Laws.

Four pieces of legislation have come into effect since the adoption of the 1981 Condominium Conversion Ordinance, all of which potentially influence how rental units are converted to ownership units and the process by which they are taken out of the rental stock. These laws are summarized below:

*Costa-Hawkins Rental Housing Act (1995)*: Costa-Hawkins phased out rent regulations on single-family units, including condominiums. The net effect of this legislation for cities that have rent regulations was to encourage landlords to convert to condominiums in order to gain an exemption from rent regulations. The State legislature revised the Costa-Hawkins Act in 2001 by requiring the subdividing landlord to sell units to a third party before they are exempt from rent regulations. The effect of this change was to prohibit the landlord from converting to condominiums to make the units exempt from rent regulations. Costa-Hawkins does not exempt condominiums from locally enacted just cause eviction restrictions.

*The Ellis Act (1986)*: The Ellis Act permits a landlord to evict tenants in order to get out of the rental business at any time. It also limits the power of local jurisdictions to regulate the process by which it may be exercised. In September 2003, the City Council enacted an ordinance consistent with Ellis Act regulations to allow landlords to withdraw units from the rental market (OMC 8.22.400.) The ordinance provides for extended eviction notices – 120 days for most tenants, and one year for elderly and disabled tenants. The ordinance also gives evicted tenants specific rights should the landlord return the rental units to the rental market, including first right of refusal to re-rent their unit(s) and the right to sue for damages if the eviction was in bad faith.

*Measure EE – Just Cause Eviction Ordinance (2002)*: Measure EE was an Oakland voter enacted initiative that protects tenants against arbitrary, unreasonable, discriminatory, or retaliatory evictions. Under the ordinance, landlords must show good cause for eviction by proving that specific conditions exist. The net effect is that landlords desiring to convert their rental properties to condominiums can no longer evict tenants by using a “no cause” eviction to vacate condominium units for sale to third parties.

*Rent Adjustment Ordinance (1980)*: The Rent Arbitration Ordinance regulates rents in Oakland, including rented condominiums.

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Public Comments to Date

During the Planning Commission's October 2006 meeting, many comments were received that ran the gamut between support and opposition. Major comments received are summarized below:

- The objective of increasing home ownership throughout Oakland is important, and increasing the number of conversions permitted will increase first time homebuyer opportunities given that converted units often sell below the prices set for newly constructed housing.
- It is important to expand homeownership opportunities for Oakland citizens such as teachers, firefighters, and the like so that these households can be a part of the community they work in.
- Affordable rental housing stock would be permanently removed as the result of these changes. Only ten to fifteen percent of Oakland households presently living in existing rental units would meet the income requirements for purchasing condominium units, measured at the low end of the market (\$250,000-300,000.)
- Many existing tenants will be displaced, and these households will have fewer housing options, thereby creating more impacts on the housing market.
- Once units are converted, if brought back onto the rental market, they will not be subject to the City's rent adjustment ordinance.
- A socio-economic impact study is required prior to adopting the amendments so that the impacts to the rental housing supply and existing tenants can be determined.
- The most desirable rental housing will be taken off the market, thereby increasing the economic segregation above and below I-580.
- These proposed amendments are not exempt from the California Environmental Quality Act (CEQA) due to potential impacts to traffic, parking and overcrowding.
- Seniors, low income households and people with disabilities will be impacted disproportionately due to the already limited rental housing choices.

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Planning Commission Comments

The Planning Commissioners had the following comments regarding the proposed ordinance amendments:

- Increasing homeownership is an important objective but it must be balanced with the potential impacts from tenant displacement.
- Homeownership and steady employment are key factors in economic success. Therefore, employment growth is an equally important objective.
- The 1500 annual unit cap is too high.
- If all tenants wish to convert in a building then the conversion fees should be waived since there would be no displacement.
- The amount of the conversion fee is an important issue. Perhaps an annual monitoring and adjustment of this fee should be included, such as a pilot program.
- Another important tool for increasing homeownership and providing affordable housing is a housing bond, such as Los Angeles (\$ 1 billion bond measure on the November, 2006 ballot).
- A socio-economic impact study needs to be completed prior to any changes in the ordinance.
- Senior renters should be protected.
- Down payment assistance is critical to the success of tenants being able to afford their units.
- Public education and outreach efforts should be a part of this effort so that tenants can be educated about the homeownership assistance programs and the responsibilities of homeownership.
- Geographic impact areas should still be subject to the conversion rights requirement without the option to pay the conversion fee.
- One way to strike a balance is for the ten year increase in homeownership to 50 percent of Oakland households to be increased to 15-20 years.

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### Geographic Impact Areas

The purpose of placing the original restrictions on the two impact areas was two fold. First, there is a high concentration of rental units in these areas and secondly, these are highly desirable parts of Oakland in which to live. Although the impact areas would remain and an annual cap would be established, the new proposal might result in many older, larger apartment buildings being converted because conversion rights would no longer be required and the annual cap is fairly high. Retaining rental units in more desirable areas is an important consideration with regard to condition, location and balance.

### Keeping the Conversion Rights Provision

Rather than eliminating the option for subdividers to purchase conversion rights as a means of preserving rental housing, the Planning Commission and staff recommend that this provision be retained. Instead, the conversion fee can be added, as another approach to meeting the objective of preserving rental units. In addition, since purchasing conversion rights would result in no net loss of rental units, these types of conversions may fall outside the annual cap. The version of the ordinance dated October 25, 2006 incorporates this change.

### Annual Cap

The proposal would establish an annual cap of 1,500 conversions; no such cap is currently in place. Other cities have adopted such an approach. For instance, San Francisco allows 200 conversions per year and Berkeley allows 100. The Council Members who have sponsored this ordinance propose a cap of 1,500 units because, according to their calculations, if 1,500 Oakland renters become homeowners each year, over the next 10 years Oakland's homeownership rate would increase from 41 to 50 percent.

The 1,500 unit/year number may be problematic with regard to administration and monitoring. Up until 3-4 years ago, there were only a handful of conversion applications. Presently, there are about 400 units/year up for conversion, all in smaller properties. This number alone has placed a tremendous administrative burden on staff. Another related issue is how to manage applications that may exceed the established annual cap. One suggestion would be to allow applications for conversion to be accepted by a date certain each year on a "first come, first served basis." Any applications that exceed the annual cap can be placed, in order received, on a waiting list for the following year. These applications would then receive preference. This approach provides more certainty to applicants and eliminates the need to reapply.

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Conversions of Buildings When a Certain Percentage of Tenants will Purchase Their Units.

There are a number of options available to strengthen the objective of tenants being able to purchase their units and thus increase homeownership for Oaklanders, and minimize tenant displacement. The Council Members' proposal includes an exemption from the conversion fee if all tenants in the building are participating in the conversion. Other limited exemptions from either the fee or the conversion rights provisions are available when the net effect would be no displacement of existing tenants. Any approach that involves a certain number of tenants consenting to conversion complicates the administration process. Staff suggests that a further exemption for tenants in common ownership and limited equity cooperative ownership be added to the ordinance. These are variations on the homeownership model and could be allowed based on identified criteria and confirmation of ownership status.

Protection of Rental Stock and the Need for Increased Homeownership

*Context of Rental Households in Oakland and Income Levels.* It is important to account for the major disparity of incomes of those households who own vs. rent in Oakland. Presented below are some key facts to consider about who may derive the benefits vs. who would be adversely affected due to displacement:

- The 2000 Census showed 88,301 renter households in Oakland, with an average median income of \$29,278. (This gross figure includes approximately 9,000 subsidized units, Section 8 units, and other non-profit housing that would not be affected by the conversion ordinance.)
- To account for inflation, the current average annual income range for these households is approximately \$35,000-40,000. The income required to purchase a \$375,000 unit is approximately \$75,000/year. Only 8 to 13 percent current renters would fall into this category.
- An affordable unit for purchase to these households would be approximately \$175,000 - 185,000. Given the average range of sales prices for rental units that have been converted (\$350,000 - 400,000), there is a huge affordability gap.
- This affordability gap could be partially filled with the City's first-time home buyers program or State assistance (total: up to \$125,000 - including \$75,000 from the City and \$50,000 from the California Housing Finance Agency). However, a significant gap would still remain.

*Amount of Conversion Fee.* The average City subsidy to aid in the construction of new affordable rental units is \$80-150,000. In order to more directly connect the amount of the fee to the objective of increasing rental housing and encouraging first time homebuyers, staff urges

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the City Council to carefully review the amount of the fee in relation to the loss of rental housing stock and the ability of the City to construct new affordable rental housing stock using the conversion fees.

Code Requirements for Building Upgrade Could be Further Standardized and Clarified.

Although the current condominium conversion ordinance OMC Chapter 16.36, "Condominium Conversion", has several provisions to ensure that prospective buyers are fully informed of the life-expectancy of habitability systems in the building (roof deterioration, wood frame pest damage, electrical and plumbing capacity, etc.), it currently does not require any fire protection upgrades or seismic safety analysis to insure that condominium conversion buyers enjoy the same degree of protection as other OMC ordinances that provide for live/ work conversions and historic building retrofitting. The existing ordinance requires that information on building systems be provided to prospective purchasers, similar to standard practices in real estate sales. The only upgrade required by the existing ordinance pertains to noise insulation standards. Neither the state model building code nor the model fire code considers the conversion of an existing multiple-family dwelling to condominium ownership a "change of occupancy". Therefore, neither code mandates any analysis of or upgrades to the building's life/safety systems.

The Building Services Division and the Fire Prevention Bureau of the Fire Services Agency are recommend two life/safety amendments to the current proposal which will require:

- a seismic analysis (similar to the California Historic Building Code) to determine the structural weak-points in buildings constructed before 1984 which would contribute to a collapse hazard during an earthquake;
- an upgrade of the building's fire warning system to a level required for Live/Work conversions.

The seismic analysis report will include a "plain English" summary of structural elements which should be strengthened to meet Historic Building Code design requirements (75% of current building code). As a condition of sale, the building will have to be upgraded with interconnected smoke alarms, exit signs and lighting, building and unit address numbering, and door keys for emergency access by the Fire Department.

The intent of these amendments is to standardize life safety improvements, thereby providing certainty, and to ensure that potential buyers are aware of the potential seismic risks of a structure prior to purchase. Since the vast majority of the City's rental stock was constructed prior to 1984, staff believes that these provisions will insure compliance with current minimum life/safety standards and also provide a "buyer beware" set of seismic information that will allow thoughtful consideration prior to making a substantial investment in real property.

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Specifically, the earthquake analysis would assess and describe the extent of structural strengthening older buildings would need to in order to upgrade them to the (somewhat "relaxed") Historical Building Code safety standards (such as adding foundation anchor bolts, adding plywood in the crawl space to wall framing, bolting outside staircases and parapets to walls, etc.). Any upgrade would still be voluntary, but prospective buyers would know up-front the extent of a "potential fix".

The installation of 1) "early warning" devices (interconnected smoke alarms), b) hallway emergency exit lighting, c) firefighter "Knox boxes" at the main entry with door keys, and d) "prominent" building addressing (so an ambulance driver can find the building) are not costly and are typically required when Building Services plan checks live/ work conversions of older buildings (change-of-use from commercial/ industrial to residential triggers staff's ability to require these changes). The electrical wiring for the smoke detectors and exit lighting can be easily tapped into the existing building wiring. Exterior building numbering is an important safety feature for timely identification in an emergency, and tacking up numbers on interior doors is a minimal expense. Knox boxes (similar to what realtors use to store door keys for vacant houses) are an industry standard item, and will mitigate the potential liability for multiple-owners attributable to delays in gaining immediate access for emergency responders.

#### Environmental Review

Staff has determined that this project would be exempt from further review under the California Environmental Quality Act (CEQA) under the following Guideline Sections:

- 1) Section 15061(b)(3), State CEQA Guidelines, "General Rule," no possibility of significant effect on the environment because the housing units being converted already exist and a change in occupancy does not in and of itself constitute an environmental impact.
- 2) Section 15183, State CEQA Guidelines, "Projects Consistent with a Community Plan, General Plan or Zoning." This project constitutes a series of amendments to an existing portion of the City of Oakland Subdivision Ordinance. As described in detail in the October 18, 2006 Planning Commission report and in the findings attached to the draft ordinance, the amendments are consistent with a broad set of current General Plan policies and objectives concerning condominium conversion policies, increasing home ownership opportunities and encouraging a mix of housing costs, unit sizes, types and ownership structures. There has been previous environmental review for the General Plan Land Use and Transportation Element (LUTE – certified EIR in 1998) and a 2004 Negative Declaration for the General Plan Housing Element.
- 3) Section 15301 (k), State CEQA Guidelines, Existing Facilities – Division of Existing Multiple Family or Single-Family residences into common-interest ownership and subdivision of existing commercial or industrial buildings, where no physical changes occur and which are

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not otherwise exempt. This exemption is specific to the proposed condominium conversion ordinance as it applies to existing housing units where there are not physical changes occurring.

#### Other Minor Issues

Staff suggests that when an alternative Tenant Assistance Program does not meet the proposed requirements, that specific criteria be developed to permit the Planning Commission to review these alternative requests in an objective manner (Section 16.36.050 D.)

### **SUSTAINABLE OPPORTUNITIES**

Economic: Adoption of the ordinance will provide more home ownership opportunities for citizens and provide opportunities and incentives for some Oakland renters to own condominium units. Conversely, depending on the annual conversion limit that is established, existing rental units will be eliminated from the City's housing stock.

Environmental: Adoption of the ordinance will not have a direct impact on the environment since the housing units that will be affected by the ordinance changes already exist. Life safety measures will be improved, thus increasing public safety in the existing housing stock, the majority of which is of an older vintage.

Social Equity: Increased home ownership opportunities for Oakland is an important objective to improve communities and increase neighborhood investment. However, a portion of the existing rental housing stock will be eliminated over time. A portion of this existing rental stock is much more affordable than the average price of a condominium ownership unit. Much of this existing rental housing stock is now protected through the rental adjustment ordinance.

### **DISABILITY AND SENIOR CITIZEN ACCESS**

This ordinance will not directly affect disability or senior citizen access because the housing units potentially affected already exist. Over time, it may affect the availability of rental units that are more affordable to disabled and senior citizens.

### **RECOMMENDATION(S) AND RATIONALE**

The proposed ordinance amendments represent a distinct change in the intent of the condominium conversion provisions that have been in effect during the past 25 years. The change in approach would likely increase home ownership opportunities for first time

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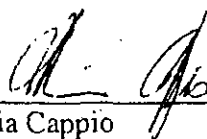
homebuyers and some renters in Oakland, but it would also decrease the amount of available rental housing stock over time. City Council Members must carefully consider the consequences of this change in policy.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff recommends that the City Council:

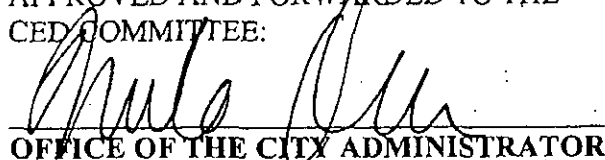
- 1) Take public testimony concerning the proposed amendments to Title 16.36 – Condominium Conversions.
- 2) Review and consider the proposed amendments to the ordinance.

Respectfully submitted,



\_\_\_\_\_  
Claudia Cappio  
Development Director, CEDA

APPROVED AND FORWARDED TO THE  
CED COMMITTEE:

  
\_\_\_\_\_  
OFFICE OF THE CITY ADMINISTRATOR

Attachments:

- A) Proposed Ordinance – dated 1-1-06, redlined against 9-27-06 and presented to the Planning Commission on November 1, 2006
- B) Planning Commission Staff Reports dated October 18, 2006 and November 1, 2006
- C) Council Members' Powerpoint presentation
- D) Location of Condominium Conversions - 2006

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## Attachment L

### Comparison of Provisions of October 2006 Inclusionary Zoning Proposal and Blue Ribbon Commission Recommendations

Provision/Issue as Listed in October 2006 Memorandum	October 2006 Proposal	Blue Ribbon Commission Recommendation
<b>Number of Inclusionary Units</b>	15% of total units if built on-site 20% of total units if built off-site	First two years: 5% of total units if built on-site 10% of total units if built off-site  After two years: 15% on-site, 20% off-site
<b>Target Households</b>	Rental: Maximum of 80% of AMI, with average of 60% AMI  Owner: Maximum 120% of AMI, with average of 100% AMI	Rental: no recommendation  Owner: Maximum 100% AMI, but allow up to 120% if units don't sell within one year
<b>Application of Ordinance to All New Residential Development</b>	All projects except those that have vested rights on or before May 1, 2007 or if project qualified for exemption.	All projects that submit a complete application for approval more than 6 months after adoption

Provision/Issue as Listed in October 2006 Memorandum	October 2006 Proposal	Blue Ribbon Commission Recommendation
<b>Exempt Projects</b>	<ul style="list-style-type: none"> <li>• Certain specified transit village projects</li> <li>• Reconstruction of units destroyed or damaged by natural disaster (within certain time limits)</li> <li>• Projects subject to recorded restrictions imposed in conjunction with City's affordable housing funding process</li> <li>• Rental projects that contain at least 40% of units affordable at 60% of AMI for at least 55 years (tax credit projects)</li> <li>• Rehabilitation of existing units when cost of rehabilitation is less than 75% of estimated replacement cost after rehabilitation ("moderate rehabilitation")</li> </ul>	<p>Transit villages discussed but no recommendation.</p> <p>No discussion or objection to these provisions.</p>
<b>Number of Threshold Units</b>	Projects that create 20 or more new residential units	Same
<b>Rental vs. Ownership Thresholds</b>	Same for rental and ownership	Not discussed since rental not considered.
<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.	
<b>Term of Affordability of Inclusionary Units</b>	Rental units - 55 year affordability Ownership units - 45 years affordability.	Rental units - Not discussed Ownership units – Not explicitly discussed, but compliance with Redevelopment Law generally accepted.

Provision/Issue as Listed in October 2006 Memorandum	October 2006 Proposal	Blue Ribbon Commission Recommendation
<p><b>On-Site Units - Location, Size, Amenities</b></p> <p><b>Harmony w/ Market Units</b></p> <p><b>Same Amenities as Market Rate Units</b></p>	<p>Mix of affordable units by size (number of bedrooms) must be proportional to mix in the market rate units.</p> <p>Inclusionary units should be distributed proportionately among market rate units.</p> <p>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.</p>	<p>Not discussed</p> <p>Not discussed</p> <p>Not discussed</p>
<p><b>Limiting Accessory Units ("In-Law" or "Secondary") to meet Inclusionary Unit Obligation</b></p>	<p>Not included – not clear what this refers to.</p>	<p>Not discussed</p>
<p><b>Waiver or Reduction of Inclusionary Requirement</b></p>	<p>Developer must demonstrate that it meets one of the following criteria:</p> <ol style="list-style-type: none"> <li>1) no nexus between development and inclusionary requirement;</li> <li>2) inclusionary requirement would deprive the project applicant of all economically viable use of the property or constitute a taking; or</li> <li>3) application of the ordinance would violate CA or US Constitutions.</li> </ol>	<p>Not discussed</p>
<p><b>Developer Alternatives</b></p>	<p>Can build Inclusionary units off-site or pay in-lieu fee</p>	<p>Same</p>

Provision/Issue as Listed in October 2006 Memorandum	October 2006 Proposal	Blue Ribbon Commission Recommendation
<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 costs of affordable units and the amount of funds that can be leveraged through sale or rental at affordable costs.	Same (10% for first two years; 20% thereafter). Fee calculated as the full subsidy required cover gap between development costs of affordable units and affordable sales price. (Rental not discussed).
<b>Developer Land Dedication for Public Uses</b>	Not included	Not discussed
<b>Off-Site Development of Inclusionary Units</b>	Developer must build no fewer than 20% of all market rate units in project at off-site location.	10% for first two years; 20% thereafter.
<b>Transfer of Inclusionary Credits to other Projects</b>	Not included	Not discussed
<b>Incentives and Concessions</b>  <b>Waiver/Reduction/Deferral of Fees for Affordable Units</b>  <b>Increase Density Bonus Options to Reduce Development Costs or Financing Gap</b>   <b>Expedited Application and Permit Processing</b>	Not considered because of impact on General Fund.  Project applicant may be entitled to density bonus/incentives/concessions under CA Density Bonus Law for incl. units.   Not included	Discussed briefly. Oakland has no impact fees. Waiver of building and planning fees not discussed. Discussed....generally not feasible. In most cases zoning permits higher densities than developers propose. Higher densities could increase costs and engender more neighborhood opposition. Discussed and encouraged but no specific recommendation.

Provision/Issue as Listed in October 2006 Memorandum	October 2006 Proposal	Blue Ribbon Commission Recommendation
<p><b>Offer of Financial Incentives</b></p> <p><b>Modification or Reduction of Zoning or Building Standards</b></p>	<p>Use of any public affordable housing funds is prohibited (except for exempt affordable housing projects)</p> <p>Not included</p>	<p>Not generally discussed. Inclusionary understood as obligation of developer.</p> <p>Discussed and possibly favored but not specific recommendation.</p>
<b>Monitoring and Enforcement</b>	<p>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 1<sup>st</sup> 30 days of noncompliance, and thereafter 120 percent of the current in-lieu fee)</p>	<p>No recommendation but need for City monitoring/enforcement was discussed.</p>
<b>Tracking Results</b>	<p>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.</p>	<p>Not discussed</p>
<b>Teacher Housing Program</b>	<p>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.</p>	<p>Not discussed</p>

<b>Provision/Issue as Listed in October 2006 Memorandum</b>	<b>October 2006 Proposal</b>	<b>Blue Ribbon Commission Recommendation</b>
<b>Uses of In-Lieu Fee</b>	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.	Not discussed
<b>Targeting of Redevelopment Agency Affordable Housing Funds</b>	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.	Discussed and recommended same language as October 2006 resolution.

**MEMORANDUM**

To: Blue Ribbon Commission  
Fr: Gregory McConnell  
Re: Condo Conversion Ordinance  
Date: August 13, 2007

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**GOALS of CONDO CONVERSION ORDINANCE**

The following are the goals of the Condominium Conversion Ordinance

- 1) Encourage homeownership opportunities
- 2) Allow shift in rate between rental and ownership, but allow the city to control the rate of shift
- 3) Provide funding assistance that benefits people who already live and/or work in Oakland, especially city employees
- 4) Protect tenants from involuntary evictions
- 5) Give tenants more information about rights through clearly defined notices and referrals to local housing rights groups
- 6) Make it easier to create homeownership opportunities in areas where the housing stock percentage is lopsided in favor of rentals (East Oakland).
- 7) Protect affordable rental units in areas that may lack affordable rental units (North Oakland) and in buildings mostly rented to people paying median or below median rents.
- 8) Give city better information about what is happening with condo conversion. Set up an office that tracks conversions and what happens to the tenants who don't buy.
- 9) Grandfather units that are in process of converting under existing laws
- 10) Continue exemption of 4 or fewer unit buildings. Alternatively, count 4 or fewer unit buildings in new limits, but exempt from various requirements, such as Planning Commission review, conversion fees, etc.

**HOW to ACHIEVE GOALS****Limits on Conversions**

The city sets an annual cap of how many units can be converted. The cap should be approximately 800 units or no more than 1% of the rental housing stock per year. To ensure that the Lake Merritt and North Oakland areas do not take up the entire cap, those areas should be limited to 400 units per year. The remaining 400 should be spread throughout the city. People who want to convert a rental building to condominiums have to apply. The first year is first come, first serve. If the cap is exceeded, the second year is the rest of the first year applicants, then move to a point system to be developed by City Council. If there are more units to be converted than are allowed by the cap, then units compete for points that are tied to the policy goals above.



## **Exemptions from Cap**

The following are not counted in the cap.

1. Units in areas that have a disproportionate share of renters to owners (i.e. East Oakland)
2. Units in buildings where 100% of the tenants are buying the converted units
3. Units that are occupied by persons who are entitled to a life time lease

## **Tenant Protections**

Tenants shall be entitled to the following rights and protections.

1. Six month's notification which clearly spells out tenant rights, assistance, and protections
2. Right of first refusal to buy at a 10% discount during 6 month notice period
3. Relocation fees for tenants who voluntarily relocate during 6 month notice period
4. Relocation and moving expenses for any tenant where buyer of unit seeks to evict for owner occupancy
5. Right to refuse involuntary cosmetic upgrades to the interior of units
6. Right to rent reductions due to lengthy service interruption from common area improvements
7. Referral to housing rights organizations
8. Life time leases for seniors
9. Other rights under existing laws

## **Processing Fees**

The city of Oakland shall adopt reasonable fees on a per unit basis for the cost of running the program.

## **Conversion Fees**

In order to create funds for assisting Oakland residents and employees, converters will be charged a conversion fee which shall be placed in a housing trust fund to assist Oakland residents and/or people who work in Oakland. Conversion fees are based upon the number of rooms as outlined in the De La Fuente, Brooks, and Chang October 2006 proposal. The city may consider waiving conversion fees on units where the owner sets a sales price that does not exceed the HUD established prices that are affordable to households earning 120% of the Area Median Income.

# INCREASING & PRESERVING AFFORDABLE HOUSING OPPORTUNITIES

## —A BALANCED APPROACH TO CONDOMINIUM CONVERSIONS

RECOMMENDATIONS OF MEMBERS OF OAKLAND'S BLUE RIBBON COMMISSION

### INTRODUCTION

**Our Charge.** The City Council charged the Commission with developing a condominium conversion policy that would increase *affordable* housing opportunities in Oakland. In that spirit and after many months of consideration, we forward to you recommendations for revision of the existing condominium conversion ordinance, which both preserve the ordinance's protection of Oakland renters and provide reasonable opportunities for affordable homeownership. The recommendations ensure that Oakland's precious existing stock of affordable housing will be preserved, while allowing for conversions of rental housing to provide affordable homeownership opportunities and adequate notices, protections and relocation assistance for renters.

**The Debate.** Both sides in the condominium conversion debate make important points. Reeling from the disastrous effects of the astronomic increase in land values, both prospective buyers and renters need help. Those in favor of the proposal of October of last year speak of the need to create affordable homeownership opportunities for first-time homebuyers. But, those opposed correctly point out that condo conversions will sell at a market rate, thereby making them unaffordable to the work force. In addition, for every ownership "opportunity" created by conversion, a renter household will be displaced. Those in favor proclaim the need to extend the opportunity to achieve the "American Dream" to lower income residents in Oakland. But, when condominium conversion becomes the vehicle for this mission, every dream fulfilled for one family brings an "American Nightmare" of displacement for another family.<sup>1</sup>

**The Way Home.** Thankfully, there are far less onerous ways to provide affordable condominium homeownership opportunities—options that do not require us to choose between displacement and homeownership. Hundreds of units have been developed and remain on the market in Oakland. Through utilization of the City's first-time homebuyers program, these units can provide substantial source of affordable homeownership. Developing new condominiums rather than converting rental units avoids the trauma of displacement and loss of rental housing stock. We should take a cue from the fundamental principle that guides the decisions of all health care practitioners: "First, do no harm." Condominium conversions are antithetical to this standard and, consequently, should be used only if they produce affordable

<sup>1</sup> Although proponents of the October proposal argue that existing renters will have the opportunity to buy their units, the analysis of city staff demonstrates that the current renter households could not afford the converted units, even at the discount provided in the proposal.

homeownership opportunities, and even then condo conversions should be limited to prevent the loss of a significant number of affordable rental units.

**Maintaining Balance.** A balanced approach is needed—one that allows limited conversions and at the same time protects renter families and our supply of rental housing. The current ordinance provides for a "no-net-loss" of rental housing—it allows conversions in certain areas only when there has been an equivalent increase in rental housing. This approach, while allowing some displacement, emanates from the need for balance. It ensures the city will maintain its stock of rental housing, while allowing conversions to proceed gradually as the market provides new rental housing and new condominiums.

**Deficiencies in the Current Ordinance.** But, Oakland's ordinance has several weaknesses. It contains three major loopholes and omissions:

- 1) It *exempts buildings of four units or less*, which has resulted in over 400 conversions in less than two years;
- 2) It requires *no fee* for conversion, thus providing no funds to replace the converted rental housing stock, while allowing the converter rather than the public to capture 100% of the enormous increase in land value created by the mere fact of conversion;
- 3) It provides *inadequate tenant protections and assistance*, providing little assistance to renter families in residence at the time of the conversion and *no* assistance to those renters living in the units when sale is forgone for several years.

The amendments to the ordinance proposed in October of last year, however, represented a *reversal* of Oakland's balanced approach to preserving and increasing affordable housing opportunities for lower income households rather than a *reform*. They ran counter to the statewide trend to protect existing rental housing from conversion and to focus, instead, on the development of new, in-fill condominiums as a means of creating homeownership opportunities. Rather than retreat from its progressive and relatively effective policies on conversions then, we commissioners propose revisions to the current ordinance that close the loopholes while provide affordable homeownership opportunities that are real and tenant assistance that is effective.

**Recommendations.** Our recommendations for amendments begin on page five and are summarized on the last page of this report.

## BACKGROUND

First and most significantly we must understand that increasing condominium conversions generally will *not* provide *affordable* homeownership opportunities to existing tenants. According to city staff research, only 10% of Oakland renters can afford a median-priced condominium in Oakland--\$375,000. And very few of those are minority households. Only 5.5% of Oakland's Black renters, 2.9% of Latino renters and 7.1% of Asian renters could afford a median-priced condo. With the current average median income for renter households in Oakland at \$35,000 to \$40,000 depending on household size, the average renter family could afford to purchase a condo costing no more than around \$185,000.

Far from increasing affordable housing opportunities, relaxing conversion controls would substantially decrease affordable housing stock. Without a means for or requirement of replacing units, a policy that would allow conversion of 800 units each year would cause rents to rise as rental stock declines, forcing current lower income Oakland residents out of Oakland. 800 units comprises approximately 1% of Oakland's rental housing stock. An 800 unit per year conversion rate, therefore, would result in the loss of 5% of Oakland's rental housing stock in five years and the displacement of thousands of Oakland families. The remaining rental housing stock in Oakland could not absorb that many renter families on an annual basis, and the competition for the scarce remaining rental housing would drive rents upwards.

Cities without effective controls on conversions have lost thousands of units of rental housing during the extended run-up in land values and housing prices. Los Angeles alone has lost of 11,000 units and is currently pursuing adoption of stringent controls. Without controls, the state Ellis Act creates an incentive for landlords to evict their tenants and convert their units to condominiums. To avoid this potential disaster, Berkeley and San Francisco have caps on conversions at 100 and 200 units per year respectively.

## RECOMMENDATIONS

### Units Covered

As explained, the exemption of the current ordinance of buildings with four units or less has resulted in substantial conversions over the last two years. In the Commission hearings we heard testimony from residents of these building who were forced to move because of these conversions. We also heard testimony from people who live in buildings developed since 1980 and who, therefore had no protections under the current ordinance. Accordingly, we recommend:

- Extend the coverage of the current ordinance to all buildings, regardless of number of units or when they were built.

### Eligibility for Conversion

We heard testimony from former and current residents of buildings that had been acquired from long time landlords by developers and immediately converted to condominiums. The possibility for windfall profits for persons who have owned buildings providing rental housing accommodations for many years will only increase as time goes on. This powerful incentive to convert will eventually cause an extreme imbalance between preservation of rental stock and conversions. Therefore, we recommend: that conversions only be allowed when an owner has owned a building for at least five years.

- Owners applying to convert a building must have owned it for five years
- Major building systems must have a remaining useful life of at least ten years

### Cap and No-Net-Loss

We propose a modification of the current ordinance with respect to replacement housing. Replacement units would still be required in the “impact areas,” but there would be no replacement housing requirement outside these areas. Within the impact areas, developers would no longer need to purchase conversions rights from other developers. Conversion rights would be awarded by the City based on development records kept by the City and would be granted based on the priorities included in these recommendations. To balance the relaxation of the no-net-loss policy, there would be a city-wide annual cap of 125 units—between Berkeley (100) and San Francisco (200). However, any units in buildings where 75% of the tenants agree to purchase or that are affordable to and reserved for families at 100% of area median income would be exempt from the no-net let-loss requirement in the impact areas. Our recommendations are summarized as follows:

- Maintain no-net-loss in the “impact areas” only
- Cap conversions citywide at 125 units per year.
- Exempt from no-net-loss requirement buildings in which 75% of the existing tenants agree and qualify to purchase

- Exempt from no-net-loss requirement units affordable to and reserved for households at 100% of area median income

### **Conversion Fee**

The loss of rental housing stock that will be facilitated by our recommendations to relax the no-net-loss policy and institute the annual unit cap must be balanced by imposition of a reasonable fee to provide funding for development of replacement units. Paying a conversion fee would not be an option in the impact areas. The \$2,000 to \$3,000 per room fee in the October proposal is far too little to provide a source of funding sufficient to substantially assist in the development of replacement units. Other communities use a percentage of sales price. Consequently, we recommend the following percentage of sales price with appropriate exemptions for affordable units and tenant purchases<sup>2</sup>:

- 15% of sales price
- Exempt units affordable to and reserved for households at 100% of area median income
- Exempt units purchased by tenants

### **Tenant Protections and Assistance**

Minimization of the hardships to tenants in converted units must be first priority. The comparison with other communities provided by staff and the testimony we heard from Oakland residents provided stark evidence that the tenant protections and relocation assistance in the current ordinance is unacceptably insufficient. Another thing that became apparent from the testimony was that there is an entire group of households that are unprotected by the current ordinance—those who reside in buildings that were converted sometime ago but not sold. These households must be brought within the protections of the ordinance to the extent legally possible. We also heard from City staff that the current protections in the City's Ellis Act<sup>3</sup> ordinance are weaker than those in the condominium conversion ordinance and, therefore, must be conformed to the better protections to avoid owners electing to empty buildings under the Act prior to applying to convert. Accordingly, we recommend the following package of relocation assistance and tenant protections:

- Relocation Assistance

To provide tenants sufficient funds to search for and relocate to other rental housing that would likely be more expensive, we recommend the amounts on which the Commission achieved consensus:

<sup>2</sup> A portion of this fee may be used for enforcement and for homeowner assistance programs that may be necessary.

<sup>3</sup> The Act allows landlords to evict all their tenants to go out of business. *See Government Code §7060 et seq.*

- Six months rent or 2.5% of sales price, whichever is greater
- Up to \$1,000 Moving Expenses

- Continued Occupancy

The current ordinance provides lifetime leases for this elderly, but tenants with disabilities need similar protections (and are afforded lifetime leases in many other communities).

- Lifetime leases for elderly and disabled
- Two years for families with minor children
- All others: 180 Days after Final Subdivision Report

- Building Improvement

Many tenants complained of suffering through extremely invasive upgrading process and constructive evictions as converting landlords ignored their needs and conditions.

- The cost of any upgrade made within 18 months of conversion cannot be passed through to tenants

- Right To Purchase

The current law provides for a 90 day right to purchase after issuance of the City's subdivision map report, but often the owner does not seek approval from the state Department of Real Estate to begin the sales process until many months or years after the conversion. Our recommendations tie would add to the current law a right for a tenant to purchase within 90 days after issuance of the DRE report. It would also encourage tenant purchase by requiring a 10% discount over the market price provided to the DRE and referral to the City's First Time Homebuyer program:

- 90 days from state Dept. of Real Estate Report
- > 10% Discount
- Referral to City's First Time Homebuyer program

- Other Tenant Protections

These recommendations add critical protections that are not a part of the existing law. In addition to conforming the protections in the City's Ellis Act ordinance, the recommendations protect tenants of any units being sold regardless of the date of conversion and extend the City's just cause eviction protections to converted units that are built after 1980.

- Conform City's Ellis Act Ordinance protections and relocation assistance requirements to those provided in these recommendations

- Apply Notice and Protections to Units Receiving DRE Public Report (required before units can be sold) regardless of when the conversion was approved by the City
- Extend Just Cause protections to all converted units regardless of date of construction
- All tenants in units proposed for conversion must receive notice of their rights and referral to tenant counseling agencies contemporaneous with the application for conversion or for the DRE Public Report.



## SUMMARY OF PROPOSED REVISIONS

- Extend coverage to buildings with 4 units or less
- Eligibility to Convert:
  - Owners applying to convert a building must have owned it for five years
  - Major building systems must have a remaining useful life of at least ten years
- Maintain no-net-loss in the “impact areas” only
- Exempt from no-net-loss:
  - buildings in which 75% of the existing tenants purchase
  - units affordable to and reserved for households at 100% of AMI
- Cap conversions citywide at 125 units per year
- Conversion fee
  - 15% of sales price
  - Exempt units affordable to and reserved for households at 100% of area median income
  - Exempt units purchased by tenants
- Tenant Protections and Assistance
  - Relocation Assistance:
    - 6 mos. rent or 2.5% of sales price, whichever is greater
    - up to \$1,000 Moving Expenses
  - Continued Occupancy:
    - Lifetime leases for elderly and disabled
    - Two years for families with minor children
    - All others: 180 Days after Final Subdivision Report
  - Building Improvements:
    - The cost of any upgrade made within 18 months of conversion cannot be passed through to tenants
  - Right to Purchase
    - 90 days from state Dept. of Real Estate Report
    - > 10% Discount
    - Referral to City’s First Time Homebuyer program
  - Other Tenant Protections:
    - Conform City’s Ellis Act Ordinance protections and relocation assistance requirements to those provided in these recommendations
    - Apply Notice and Protections to Units Receiving DRE Public Report (required before units can be sold) regardless of when the conversion was approved by the City
    - Extend Just Cause protections to all converted units regardless of date of construction
    - All tenants in units proposed for conversion must receive notice of their rights and referral to tenant counseling agencies contemporaneous with the application for conversion or for the DRE Public Report.