

To: Community & Economic Committee
From: Jane Brunner, Oakland City Councilmember
Date: January 8, 2007
Subject: Affordable Housing Proposal

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OAKLAND

2008 JAN -3 PM 4:04

AFFORDABLE HOUSING PROPOSAL DRAFT for Discussion Purpose Only

I. Inclusionary Zoning

- Trigger Size: 20 units or greater
- Trigger Date: all projects that secure vested rights on or after July 1, 2008
- Inclusionary Requirements for First Two Years After Passage
 - 5% on-site
 - 10% off-site
 - 10% in lieu
- Inclusionary Percentages Thereafter
 - 15% on-site
 - 20% off-site
 - 20% in-lieu
- Additional 10% affordable on sites where general plan land use designation is converted from non-residential to residential
- Target Households (Ownership): At or below 100% of AMI.
- Target Households (Rental): At or below 80% of AMI
- In-Lieu Fees: In-lieu fees dedicated for rental housing targeted to 60% of AMI
- Public Funding: Use of public affordable housing funds prohibited except for transit village projects and affordable projects funded under City NOFA.
- Teacher/Public Safety Housing:
 - 20% of the total in-lieu fees dedicated to teacher/ public safety mortgage assistance program

II. Condominium Conversion

200 cap with units distributed equally among the 7 council districts OR Set cap at the number of inclusionary units built in the previous year.

- Exempt if 80% tenant ownership
- Exempt if set at 100% AMI
- Include buildings with 4 or fewer units
- Additional 100 units permitted if located in census tracts with low ownership rates (<20%) and high concentrations of low/mod (> 40% of households with incomes <80% of AMI)

Conversion Fee

- 20% of purchase price into housing trust fund
- No fee for tenant-purchased units
- No fee for units set at 100% AMI

Ownership Requirement

- Converter must own building for 3 years prior to applying for conversion

Tenant Protections

- 6 month notification
- 15% discount and first right of refusal
- Relocation assistance of 6 months' rent
- \$1000 moving expenses
- Lifetime leases for elderly and disabled
- Two year leases for families with minor children
- Penalties for lack of notice
- Staff will create an enforcement mechanism

Other Requirements

- Require seismic and energy-efficiency upgrades and code compliance
- Annual report to City Council including location and number of conversions, number of condos purchased by existing tenants or priced at 100% AMI, and tenant assistance provided.

III. Redevelopment Funds

- Increase the Redevelopment set aside to 35% for affordable housing development and first time homebuyers' programs
- Require all low/mod funds for new development to be spent for families at or below 60% AMI
- Require all low/mod funds used for first time homebuyers' programs to be spent for families at or below 100% AMI
- Require local hire and local contracting on all Redevelopment-funded affordable housing projects.

IV. Land Trusts

- Create an Oakland Land Trust using funds from the annual NOFA funds (HOME, Low/Mod Set-aside, Housing Trust Fund) to create affordable homeownership. Funds will be allocated at the time there is a concrete program and project. Could be used to acquire bank-owned foreclosed homes.

V. Individual Development Accounts

- Maintain and expand existing Individual Development Account (IDA) programs, including the Department of Human Services' City-wide Families Building Wealth IDA program. Seek new State, Federal and private funding. The IDA program will include both active education and a matching funds component to help low-income households save funds for home ownership, education or micro-enterprise development.

VI. New Funding Sources

- City Administrator will come back to Council with a report and recommendation on feasibility of a general obligation bond for affordable housing
- Investigate possibilities for new sources of funding for affordable housing.

VII. Expand Existing Home Ownership Assistance Programs

- Increase eligible income from 80% AMI to 100% AMI
- Increase loan limits on first-time homebuyer and homeowner rehab loans to 20% of median purchase price
- Increase teacher/public safety down payment program to \$50,000 with long-term deferred loans
- Use funds from the expanded low-mod funds to finance these changes.

VIII. Legislative Priorities

- Support the establishment of a National Housing Trust Fund
- Support efforts to establish a permanent source of funding at the State level for affordable housing.
- Support legislation and regulations that provide maximum benefit to Oakland from Prop 1C housing and infrastructure funds. Support targeting to mixed income projects with additional points for more affordability.

MODEL INCLUSIONARY ZONING¹ AND REDEVELOPMENT LOW-MOD FUND POLICIES

BRIEF COMMUNITY NEED STATEMENT: Oakland is the only city in Alameda County that does not have an inclusionary zoning (IZ) policy. Both in California and around the country, IZ has become a standard tool of proven effectiveness in producing affordable housing by engaging the private sector in helping to meet the affordable housing need. IZ also provides for economic integration of affordable housing into new market-rate developments. The City needs new sources of revenue to support the development of affordable housing and meet the critical housing needs of Oakland's residents. More local funding for affordable housing is needed to leverage additional state, federal and private equity to strengthen and anchor Oakland's communities.

SUMMARY OF COMMUNITY EFFORTS: Members of the OPHC have been fighting for an inclusionary housing policy for almost three years and have engaged in extensive community outreach, education, and organizing efforts. In addition, OPHC members have commissioned city-wide polls with the following findings: A May 2006 poll of 560 likely voters conducted by David Binder Research found that 66% of residents supported an inclusionary housing policy. This confirms the December 2005 poll conducted by Gene Bregman Associates that 67% of likely voters support such a policy.

HIGHLIGHTS OF POLICY OBJECTIVES & TERMS:

- Requires market rate developers to provide affordable units without public subsidy.
- Establishes a higher inclusionary requirement for land rezoned for residential use to capture the value of the public action for community benefit.
- Includes terms for rental housing production.
- Because the majority of the new units produced through inclusionary zoning will be moderate-income homeownership units at 100% AMI, dedicates the in lieu fees and the existing redevelopment low-mod funds for the lowest income communities at 60% AMI and below, with a priority for 30% AMI and below.
- Increases the Redevelopment Low-Mod Housing Fund set-aside of the tax increment from 25% to 35% at the earliest feasible time.
- Provides for incentive terms to address economic integration goals.

¹ Just Cause Oakland abstains from supporting the IZ policy terms.

MODEL CONDOMINIUM CONVERSION POLICY

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BRIEF COMMUNITY NEED STATEMENT: Existing loopholes in Oakland's Condominium Conversion Ordinance have enabled record numbers of conversions (400 conversion applications in 2006) and, combined with the lack of meaningful tenant protections, have resulted in Oakland households being displaced from their homes without adequate resources to secure stable and affordable replacement housing in Oakland. Developers have also complained about the lack of certainty regarding the conversion process.

SUMMARY OF COMMUNITY EFFORTS: Members of OPHC have worked on drafting model policy terms since 2003, as well as organizing to prevent the 'gutting' of Oakland's condo conversion protections.

HIGHLIGHTS OF POLICY OBJECTIVES & TERMS:

I. ALIGNS OAKLAND'S CONDOMINIUM CONVERSION POLICY WITH THE CITY'S GOAL TO PRESERVE THE EXISTING STOCK OF RENTAL HOUSING, AND AN ECONOMIC DEVELOPMENT AGENDA FOR PROVISION, MAINTENANCE, AND RETENTION OF WORKFORCE RENTAL HOUSING, WHILE ALSO PROVIDING AN ADDITIONAL HOMEOWNERSHIP OPPORTUNITY FOR OAKLAND TENANTS:

A. Allows for conversion of existing rental buildings in accordance with the following conditions:

1. To maintain the stock of Oakland's rental housing, units removed from the existing inventory by conversion, unless specifically exempted below, must be replaced one-for-one by additional rental units completed and added to the inventory within 7 years prior to date of the initial application for conversion.
2. Number of conversions citywide (annual cap) not to exceed 100 units per year, Procedures to be developed and applied to ensure that allowed conversion approvals are distributed equitably (in an approximate fashion) among the seven Council Districts.
3. Buildings of 4 or fewer units may not exceed 25% of the allowable maximum, and must comply with the requirement of one-for-one replacement.
4. Impact Areas to include rental buildings within a 1/4-mile perimeter of Lake Merritt, and the Adams Point, Gold Coast, Rockridge, and Piedmont Ave neighborhoods (area boundaries to be diagrammed and attached by staff).
5. Within Impact Areas, compliance with current Impact Area conditions, including one-for-one replacement. Buildings with 4 or fewer units within Impact Areas cannot be converted

6. Payment of a conversion fee, at the time of application, equal to 20% of the undiscounted projected sales price for each unit in buildings proposed for conversion.
7. Moratorium on conversions when the residential vacancy rate, as determined by Oakland Post Office survey, falls below 5%.
8. Except for buildings exempt from the annual cap and from the requirement of 1-to-1 replacement, owners must have owned buildings proposed for conversion for 5 years prior to acceptance of an initial application to convert.

B. Allows for conversions, exempt from the annual cap, and from the requirement of one-for-one replacement, for only the following conditions:

1. In non-Impact Area buildings, where 80%, or more, of current tenants pledge to purchase, and are certified as financially qualified, and who enter into a formal purchase agreement:
 - a. Conversion fee is waived when the pledged building's tenants actually purchase units in the building.
 - b. At the time of application, purchasing tenants must deposit into the city's escrow account, a retainer amount of 10% as down payment against the projected purchase price. The retainer amount is held in trust until the final map is granted and the start of the sales program.
 - c. To insure completion of pledged tenant purchases, the condominium developer (converter), at the time of initial application, shall deposit into the escrow account a refundable amount equal to the sum of conversion fees that would otherwise be applicable for a non-80% tenant purchase conversion plus 10%. Developer's "insurance deposit" is returned during the sales period when the pledged tenant successfully completes purchase of a unit in the converted building.
 - d. Where a committed tenant fails to complete their purchase obligation, in addition to tenant's forfeiture of tenant's escrow deposit, the developer's 30% insurance deposit is retained as the "modified conversion fee" for each conversion unit not purchased by the pledged tenant.
 - e. Enforcement procedures to ensure that pledged tenants are the actual purchasers; otherwise forfeited funds are deposited into the Affordable Housing Trust Fund established by the City.
2. Severely distressed rental buildings that have at least one year of documentation as being vacant or abandoned AND meet one of the following conditions:
 - a) condemned by the Oakland Building Dept for outstanding code violations, or
 - b) have been closed or shuttered by the Beat Health Unit of, and/or Oakland

Police Dept for drug or illegal activity, or c) have Priority 1 or Priority 2 habitability citations.

C. Conversion fee:

1. Conversion fee applies to all proposed condominium conversions, except non-Impact Area buildings where 1) 80% of current tenants purchase units in their building; or 2) units are affordable to and reserved for households with incomes at 100% of area median income or below.
2. Conversion fee for all other applications is 20% of the undiscounted sales price per unit, payable at the time of application for conversion.
3. Conversion fee revenue to be deposited into the City's Affordable Housing Trust Fund, and is earmarked for new rental housing production, tenant assistance programs, and attributable costs of administration and enforcement operations.

D. Conversion credits¹:

1. The application of "conversion credits" as marketable commodities -- which previously could be traded between converters -- is rescinded. Instead, conversion credits become an internal departmental procedure where the City tracks the rental housing construction inventory for purposes of coordinating one-to-one replacement requirements.
2. A conversion credit is created upon issuance of a "certificate of occupancy" by the Oakland Building Dept only for: (a) certified completion of construction of a new rental unit; or (b) a unit in a rental building documented as being vacant or abandoned for one year or more, and certified by the Building Dept as "substantially rehabilitated."
3. An inventory of conversion credits to be maintained by the Planning Dept based on certificates of occupancy and their completion dates as processed by the Building Dept.
4. The Planning Dept deducts a conversion credit from the inventory of credits for each allowed conversion up to the annual cap. A conversion may not be approved if sufficient credits, on one-for-one basis, are not available. (Note: Conversion credits to be recorded and monitored separately for Impact Areas.)
5. A conversion credit may be drawn upon from the preceding seven (7) year period, after which the credit expires and may not be used.

¹ The current Ordinance provision that creates "conversion rights" by buildings operating as rental units for seven (7) years would be deleted.

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6. Building conversions that utilize public financial assistance do not create conversion credits.
7. Buildings constructed as condominiums and/or that are operated as rentals, and/or that subsequently convert do not create conversion credits

II. PROVIDES INCENTIVES AND PRIORITIES FOR TENANTS, OAKLAND RESIDENTS AND WORKERS TO PURCHASE CONVERTED UNITS:

- A. Current tenants have right of first refusal for purchase of units in buildings where they reside, or had resided.
- B. Provides a 15% reduction from published sale prices for current and former tenants.
- C. Provides preference for purchase of available conversions to Oakland residents, then to Oakland workers.

III. PROVIDES FOR MEANINGFUL TENANT ASSISTANCE PROGRAMS:

- A. Provides lifetime leases for elderly, and chronically disabled tenants
- B. Extends tenancy to 3 years after conversion for families with school-aged children or households with incomes of 60% area median income or below.
- C. Requires a general moving assistance payment of \$3,000 per household (\$5,000 for elderly or disabled households), AND a relocation assistance payment of 6 months rent at the current HUD fair rent schedule. The total moving benefit is due and payable to tenant no later than the date scheduled for tenant's displacement.
- D. Creates and mandates certified distribution of a Tenant Bill of Rights, and a Tenant Assistance Program.
- E. Mandates that buildings constructed as condominiums, and/or that are operated as rentals, and/or that subsequently convert shall comply with Tenant Assistance Program requirements throughout the process of conversion.
- F. Provides explicit administrative appeals process, enforcement, and remedies (see policy comparison chart for more details).

IV. AUTHORIZES AN ADMINISTRATIVE BODY WITH CAPACITY TO ADEQUATELY PROVIDE COMPREHENSIVE REVIEW OF CONVERSION APPLICATIONS AND ENFORCEMENT OF CONVERSION PROCEDURES:

- A. Expands jurisdiction of the Rent Board and its Boardmembers and staff into the Rent Adjustment & Conversion Board. Creates a Staff Technical Review Team to consist of representatives from City Attorney, Housing, Planning, Building, and Real Estate divisions.
- B. The Staff Technical Review Team is authorized to implement first-tier review, monitoring, and review of appeals relating to the period of condominium conversion.
 1. Prior to the City granting the initial subdivision map, the Rent Adjustment & Conversion Board, by way of the Staff Technical Review Team, completes

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- “proofing” steps utilizing a comprehensive checklist of applicable requirements and conditions, preparatory to awarding a conditional and revocable conversion checklist clearance certificate.
2. Following issuance of the checklist clearance certificate, the conversion application undergoes Planning Department review and other applicable processes, including required Planning Commission or City Council hearings.
 3. Prior to granting the final subdivision map, the Rent Adjustment & Conversion Board must certify that the conditions of the checklist have been fully met.
- C. The Rent Adjustment & Conversion Board retains monitoring and enforcement jurisdiction, including authority to remedy tenant complaints throughout the conversion process.
- D. A registry of tenants displaced by conversions is created, maintained, and made available by the Board.
- E. Mandates a twice-annual report to City Council of conversion approvals and locations, of completed condominium conversions and locations, and of related tenant displacements.
- F. The Rent Adjustment & Conversion Board and its operations are funded by an initial loan from the City's general fund that is repaid from accrued fees and penalty payments generated by condominium conversion procedures; after which, it is projected that the condominium conversion program and its operations will be funded by accrued fees and penalty payments from program activity.

CITY OF OAKLAND
AGENDA REPORT

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2007 AUG 30 PM 5:34

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

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.

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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. 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.

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

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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.

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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"> • Remove it – smaller projects convert affordable units 	<ul style="list-style-type: none"> • Continue existing exemption
No annual cap on number of units that can	<ul style="list-style-type: none"> • Institute cap of no more than <u>125</u> units/year being converted 	<ul style="list-style-type: none"> • 800 units or no more than 1% of existing rental stock per year

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

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.