



## **STAFF REPORT TO THE CITY COUNCIL**

**DATE:** March 26, 2019  
**TO:** Members of the City Council  
**SUBMITTED BY:** David Biggs, City Manager  
**SUBJECT:** Inclusionary Housing Implementation Policy Recommendations

### **RECOMMENDED ACTION:**

Receive Report, Discuss, and Provide Direction on Formulation of an Inclusionary Housing Implementation Policy to Manage the City's Interests in the Development, Restriction, and Management of Affordable Housing Units to be Constructed as Part of Projects with Development Agreements Requiring Affordable Housing.

### **COMMISSION/SUBCOMMITTEE ACTION AND RECOMMENDATION:**

There was no commission or subcommittee review of the item.

### **FISCAL IMPACT OF RECOMMENDATION:**

No direct financial impact for item; the implementation, administration, and monitoring of affordable housing will have a cost associated with those units.

### **DISCUSSION:**

At the last City Council meeting, staff presented the 2018 Annual Progress Report on the City's Housing Element, which concluded, in part, that while the City has seen the construction of 489 market rate ("above moderate income") units since the beginning of the 2015-2023 Housing Element cycle, only 1 affordable unit has been created. The 2015-2023 Housing Element called for a total of 682 units to be constructed, of which the majority are for very low, low, and moderate income households, as summarized in the table below:

2015-2023 Permitted Housing Units (From 2018 Annual Progress Report, Table B)	RHNA Allocation by Income Level	Units Produced Through 2018	Remaining Surplus / (Deficit)
Very Low	220	0	(220)
Low	118	1	(117)

Moderate	100	0	(100)
<b>Subtotal Affordable</b>	<b>438</b>	<b>1</b>	<b>(437)</b>
Above Moderate	244	489	245
<b>TOTAL</b>	<b>682</b>	<b>490</b>	<b>(192)</b>

As shown above, the City's current RHNA obligation is for 437 affordable units to be constructed in the City by 2023; with a lack of local funding and staff resources to create such a project, other means will need to be used to achieve these goals. Failure to do so may cause the City to be subject to streamlining applications.

On July 10, 2018, the City Council requested a future agenda item to allow for a discussion of the implementation of affordable housing provisions under development agreements. There are two projects which currently have development agreements with affordable housing requirements: Bayfront, and Hilltown. This staff report includes information to facilitate the City Council's desired discussion.

Inclusionary housing is a method for creating affordable, income-restricted housing, for specific households in new residential projects. Typically, the percentage and affordability of the inclusionary units depends on project size, but generally a 10 percent inclusionary requirement (meaning that 10 percent of the total units constructed) is a standard practice. Affordability usually includes units restricted, by a recorded covenant or affordable housing agreement, for a period of 45-55 years; these restricted units are specifically restricted to moderate, low, very low, and, more frequently, extremely-low income households.

In markets where housing is being constructed, planners and affordable housing advocates find that this can be one way to effectively deliver affordable units even without any financial subsidies. Since the elimination of the largest source of California's affordable housing funds with the dissolution or redevelopment agencies, finding creative means to construct new units has shifted towards inclusionary practices.

Commonly, inclusionary housing is a requirement of discretionary project approvals, density bonuses, and, in more cases, codified in local zoning codes. While the City Zoning Ordinance does not presently contain an inclusionary housing requirement for new residential construction, recent changes in state law have clarified that cities now have the right to do so for both for-sale and rental housing.

When the affordable units are created, it is often the responsibility of the City to oversee the management, tenancy and condition of affordable units during their restricted period. For for-sale housing, this often means working with the property owner to coordinate and transfer the restriction of the covenant to an eligible household. However, for rental housing, the administrative burden can be more complex, because of the higher turnover associated with rental housing and the role of third parties (e.g. property managers). As a result of the potential complexity of managing a portfolio of affordable inclusionary restrictions, cities often adopt policies to guide the implementation of inclusionary zoning practices to ensure that the inclusionary units remain affordable.

The City of Hercules had an Inclusionary Housing requirement on the books as adopted in 2006 by Ordinance No. 416. Those inclusionary housing requirements applied to those projects outside of redevelopment project areas where a State-imposed inclusionary requirement already existed, and provided guidance to both redevelopment and non-redevelopment inclusionary units. In June of 2012, the City

Council adopted Ordinance No. 469, which suspended Chapter 10.19, of the Municipal Code, which is the inclusionary housing provisions. This suspension was in response to the elimination of redevelopment and the state of the economy in a post-Great Recession environment. The language added to Section 10.19 reads:

**Sec. 10-19.113 Suspension.**

The provisions of this Chapter 10.19 are suspended as of the effective date of Ordinance No. 469 and shall become reinstituted by the City Council except by subsequent Ordinance.

Staff is recommending that the City Council consider adoption of a uniform policy to ensure consistency, equity, and transparency when working with developers and property managers on inclusionary units. This policy would apply to all inclusionary projects in the City, as required currently under development agreements, or in the future should additional affordable units be proposed.

The policy recommendations revolve around the following three areas:

1. **Location of affordable units** – does the city wish to allow a developer to choose where to locate the inclusionary units within a project, which can often lead to concentration of the affordable units in a part of the project.
2. **Type of affordable units** – does the city wish to allow a developer to select which size of units may be made to be affordable in inclusionary projects, thereby allowing a developer to effectively limit the household sizes that may be able to secure affordable housing in the city.
3. **Means for securing affordability** – state law does not require that inclusionary units be deed-restricted, meaning that these units may perpetually be at risk from being lost when the household turns over.

Attached to this staff report is a compilation of research on these housing issues prepared by the City's consultant, who evaluated several California cities inclusionary housing practices. In short, the recommendation from the research is that the City formulate a policy that achieves the following goals:

1. Location of affordable units should be interspersed throughout the project, both by building and in the project as a whole.
2. The type of inclusionary units should be directly proportional to the project as a whole, both in terms of size and number of bedrooms, so that a variety of households may be able to have access to affordable housing.
3. Staff and legal counsel recommend a single means for ensuring that an inclusionary unit is kept affordable for the intended duration, typically 45 years for ownership housing and 55 years for rental housing. Without a covenant recorded on the property, the units are perpetually at risk of being lost.
4. That any projects which produce inclusionary housing should be required to enter into an implementation agreement to ensure conformity with the City's policies and to ensure project developers and future owners are aware of how the inclusionary housing requirements and policies will be implemented and administered.

The City's now suspended Inclusionary Housing Ordinance reflected these best practices and should continue to guide the City's efforts. Staff would recommend that the City Council provide direction to bring back an inclusionary housing policy containing these and other provisions for consideration for adoption at a future City Council meeting. In addition, recommendations can also be provided by staff as to the best means to implement, monitor, and manage the units produced on a forward-going basis.

**ATTACHMENTS:**

1. Ordinance No. 469
2. RSG Memorandum to City Manager dated March 19, 2019

<i>Financial Impact</i>			
<b>Description:</b>			
<b>Funding Source:</b>			
<b>Budget Recap:</b>			
Total Estimated cost:	\$	New Revenue:	\$
Amount Budgeted:	\$	Lost Revenue:	\$
New funding required:	\$	New Personnel:	\$
Council Policy Change: Yes <input type="checkbox"/> No <input type="checkbox"/>			