AMENDED AGENDA - TRANSMITTAL MEMOs ADDED TO ITEM F-1 and F-3

CITY OF OXNARD
PLANNING COMMISSION
AGENDA

REGULAR MEETING
Council Chambers, 305 West Third Street
Thursday, April 6, 2023, 6:00 p.m.

The public may view the meeting from home on the City's website at Oxnard.org/city-meetings, Spectrum Channel 10, Frontier Channel 35, or YouTube at Youtube.com/oxnardnews. Video recordings are typically available online following the meeting at the City's website at http://www.oxnard.org/city-meetings

YOU MAY PARTICIPATE IN THE MEETING IN THE FOLLOWING WAYS:

1. ATTEND THE MEETING AT THE LOCATION LISTED ABOVE: Submit a speaker card.

2. EMAILING COMMENTS OR REQUESTS TO SPEAK BEFORE THE MEETING
   a. Submit an email to Planning@oxnard.org no later than 3:00 p.m. on the day of the meeting (Please indicate the agenda item number in the subject line). All email correspondence will be forwarded to the Planning Commission prior to the start of the meeting and made part of the legislative record.
   b. Submit a request to speak by no later than 3pm on the day of the meeting by using the form https://forms.gle/uUHpPrCGKNVSTYo5A, emailing the Planning office at planning@oxnard.org, or calling (805) 385-7858.

3. PROVIDING PUBLIC COMMENTS DURING THE MEETING
   a. Speakers shall have up to three minutes to speak.
   b. If you wish to speak during public comments or a particular item on the agenda, please follow the below instructions:
      1. Dial phone number (888) 475-4499
      2. Enter the meeting ID: 814 9461 8608
      3. Enter the meeting passcode: 135431
      4. Wait in the Zoom waiting room. Once the Chair calls for public speakers, press *9 to raise your hand to inform the recording secretary you would like to speak..
   c. Public comments on items not on the agenda shall be taken at the beginning of the meeting. If there are more speakers than can be accommodated during thirty minutes, additional speakers who will be given an opportunity to speak at the end of the meeting.
   d. Public comments on items on the agenda shall be taken following the announcement of the item.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in a meeting, you should contact the office of the City Clerk at (805) 385-7803. Notification 72 hours prior to the meeting will enable the City to make reasonable arrangements to assure accessibility to the meeting.

Written materials relating to an item on this agenda that are distributed to the Planning Commission within 72 hours before the item is to be considered at its regularly scheduled meeting will be made available for public inspection at 214 South C Street, during customary business hours.

A. ROLL CALL

B. PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES

C. PUBLIC COMMENTS - On Items Not On The Agenda

At this time, a person may address the Planning Commission on matters within the jurisdiction of the Planning Commission, including information/consent items and any item not appearing on the agenda. The Chair shall limit public comments to three (3) minutes. The Planning Commission cannot take action on any item presented during public comments that is not on the agenda and such item may only be referred to the Commission Secretary. Persons wishing to speak on public hearing items should do so at the time of the public hearing.

D. CONSENT AGENDA

1. APPROVAL OF MINUTES - January 5, 2023

E. EX PARTE DECLARATIONS FOR PUBLIC HEARING ITEMS

F. PUBLIC HEARING

1. **Project Name: Vista Real Charter School**; Planning and Zoning Permit No. 22-520-02 (Special Use Permit); A request to allow operation of a charter school use (Vista Real Charter High School) within an existing two-story 16,425 square-foot building (Woolworth Building). The proposed School currently occupies approximately 12,800 square feet of the building and is located at 401 South A Street, Suites 1-3 & 8-10 (APN: 202-0-104-015) within the Downtown Core (DT-C) Zone. The proposed hours of operation for the proposed use will be Monday through Friday from 8am to 6pm. The project will have 20 employees and 65 students. Filed by Tracy Woods with Learn 4 Life, on behalf of Vista Real Oxnard, applicant, 177 Holston Drive, Lancaster, CA 93535.
   City Staff: Juan Carlos Torres, Associate Planner

   Recommendation: That the Planning Commission

   a. Find the Project to be Categorically Exempt from environmental review pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15301 (Existing Facilities); and

   b. Adopt Resolution 2023-XX approving Planning and Zoning Permit No. 22-520-02 (Special Use Permit), subject to certain findings and conditions.

   Please click the following link to view the required Measure M pre-recorded presentation video: https://youtu.be/yBR1NODDtr0

2. **Project Name: Carmax Expansion Project**; Planning and Zoning Permit No. 22-550-02 (Major Modification to PZ 10-500-11 (Special Use Permit)) and 22-310-05(Lot Line Adjustment (Merger)); The proposed project includes a development proposal to demolish

an existing 38,854 square foot industrial building and related site improvements to allow for the construction of a vehicle storage yard to stage vehicles sold by the CarMax automotive dealership. The 4.27-acre site consists of three lots that will be merged into one lot. No new buildings are proposed. The Project site is located at 1975 Lockwood Street; APN(s): 213-0-011-245, -285, -310, -330, and -340 within the General Commercial Planned Development (C-2-PD) zone district and within the Commercial General land use designation. For purposes of this staff report, the foregoing Project Description shall be referred to as the "Project". Filed By Hollee King Winegar, Applicant, 7584 Eisenhower Street, Ventura, CA, 93003.
City Staff: Brenna Wengert, AICP, Contract Planner

Recommendation: That the Planning Commission:

a. Find the Projects to be Categorically Exempt from environmental review pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15332 (Infill Development); and

b. Adopt Resolution 2023-XX approving Planning and Zoning Permit No. 22-550-02 (Major Modification to PZ 10-500-11 (Special Use Permit)) and 22-310-05 (Lot Line Adjustment (Merger)), subject to certain findings and conditions.

Please click the following link to view the required Measure M pre-recorded presentation video: https://youtu.be/Ru97B_6W2Rc

3. **Project Name: Update of the City's Inclusionary Housing Ordinance.** The project implements the City of Oxnard certified and Adopted Amended 2021-2029 Housing Element, Program 10 that calls for an update to and codification of the City's Inclusionary Housing Ordinance. Filed by the City of Oxnard Long Range Planning & Sustainability Division and the Housing Department - 214 South C Street, Oxnard, CA 93030
City Staff: Kathleen mallory, Planning and Sustainability Manager

Recommendation: That the Planning Commission:

a. Open the public hearing and receive public testimony;

b. Review and provide comment on the proposed amendments to Chapter 16 of the Oxnard City Code (OCC) to codify the updated Inclusionary Housing Ordinance; and

c. Adopt Resolution 2023-XX recommending that the City Council repeal Ordinance Nos. 2506, 2545, 2615, 2688, 2721 and 2980 and approve zoning text amendments to Chapter 16 of the OCC to require affordable housing in future residential development applications of a specific size.

Please click the following link to view the required Measure M pre-recorded presentation video: https://youtu.be/WGgHcPueExE

G. STUDY SESSION/REPORTS

H. PLANNING COMMISSION BUSINESS

I. COMMUNITY DEVELOPMENT STAFF UPDATES

J. ADJOURNMENT

FUTURE MEETINGS

Regular Meeting: Thursday, April 20, 2023, 6:00 p.m., Council Chambers

MINUTES
OXNARD PLANNING COMMISSION
Thursday, January 5, 2023

A. ROLL CALL

1. At 6:01 p.m.,the Oxnard Planning Commission convened in the Oxnard Chambers.
2. Chair Chavez, Vice Chair Arruejo, Nash, Connelly, Lopez and Zielsdorf were present.
3. Staff members present were; Ken Rozell, Chief Assistant City Attorney; Joe Pearson II, Planning Environmental Services Manager; and Miriam Loera, Administrative Services Specialist.
4. Chair Chavez presided and called the meeting to order.

B. PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES

1. Commissioner Dr. Lopez led the pledge of allegiance

C. PUBLIC COMMENTS - On Items Not On The Agenda

1. None

D. CONSENT AGENDA

1. APPROVAL OF MINUTES - December 15, 2022

MOTION:
Chair Chavez moved and Commissioner Dr. Lopez seconded the motion of approval of minutes for the December 15, 2022, Planning Commission meeting.

VOTE:
Chair Chavez, Commissioner Dr. Lopez, Zielsdorf, and Nash. Vice Chair Arruejo and Commissioner Connelly abstained. The motion carried 4:0:0:2:0[1].

E. EX PARTE DECLARATIONS FOR PUBLIC HEARING ITEMS

1. None of the Planning Commissioners had any ex parte communications to report for Item F-1.

F. PUBLIC HEARING

1. Project Name: 2420 Oxnard Boulevard U-Haul Project - Located at 2420 N. Oxnard

[1] In Favor: Against: Absent: Abstain: Recused

Boulevard APNs: 142-0-010-345 and 142-0-021-010 - Planning and Zoning Permit No. 17-500-11 (Special Use Permit). The applicant requests a permit to allow for the renovation and conversion of an existing warehouse into a three story, 203,213 square feet of mini-warehouse/self-storage space, storage warehouse, and retail space on an 8.86-acre site. The large parking area on the north end of the lot would provide 46 covered recreational vehicle (RV) parking storage spaces. The request includes certification of the proposed Final Initial Study/Mitigated Negative Declaration (IS-MND) and adoption of the Mitigation Monitoring and Reporting Program (MMRP) which has been prepared pursuant to provisions of the California Environmental Quality Act (CEQA) Guidelines, Section 15063. Filed by David Randi, 2420 N Oxnard Blvd, Oxnard, CA 93036 (the "Applicant") on behalf of Amerco Real Estate Co., 2727 N. Central Avenue, 5-N, Phoenix, Arizona 85004 (the "Property Owner").

City Staff: Joe Pearson II, Planning & Environmental Services Manager and Michael Rocque, Senior Contract Planner

Recommendation: That the Planning Commission:

a. Provide direction to City staff regarding the appropriateness of the proposed project and adequateness of the Final IS-MND and direct staff to return with a resolution providing an approval recommendation or a denial recommendation to City Council; and

b. Continue the meeting to a date certain.

Micheal Rocque, Senior Contract Planner, provided the required Measure M pre-recorded presentation video outlining the request which was posted with the agenda: https://youtu.be/xOx4F8ULdPQ

City Staff and Consultants Including: Joe Pearson II, Planning & Environmental Services Manager, Michael Rocque, Senior Contract Planner, and Ken Rozell, Chief Assistant City Attorney were available for questions.

Mark Pettit the Applicant presented his powerpoint presentation.

Verbal comments and questions were received by Commissioner Nash regarding traffic flow into the site.

Chair Chavez opened the public comments portion of the public hearing.

Public verbal comment received by Larry Stein who supported the project.

Public verbal comment received by Deirdre Frank opposing the project.

Chair Chavez closed the public comments portion of the public hearing.

Discussion ensued among the Commissioners and staff about several topics, including: commercial location, traffic safety, solar, lighting, crime prevention, housing and pedestrian safety.

MOTION:

Vice Chair Arruejo moved and Commissioner Dr. Loppz seconded the motion to direct city staff to find the proposed project appropriate for the project area and find that the appropriate for the project area and find that the Final IS-MND is adequate and to include a resolution with the proposed condition forty five as it stands in our staff report and to come to the planning commission on February 2,2023 for an approval of recommendation to the City Council.

VOTE:

Vice Chair Arruejo, Commissioner Dr. Lopez, Connelly, Nash and Zielsdorf and Nash. Chair Chavez voted No. The motion carried 5:1:0:0:0[2].

G. STUDY SESSION/REPORTS

1. None

H. PLANNING COMMISSION BUSINESS

1. Commissioner Nash congratulated Dr. Lopez on his new baby arrival and congratulated Chair Chavez who received his reappointment of four more years.
2. Commissioner Dr. Lopez publicly recognized and thanked Commissioner Meyer for the time he served at the Planning Commission.

I. COMMUNITY DEVELOPMENT STAFF UPDATES

1. Joe Pearson II, Planning & Environmental Services Manager wished everyone a Happy New Year and commented on the upcoming meeting and items on the agenda.

J. ADJOURNMENT

1. At 6:49 p.m., the Planning Commission concurred to adjourn.

FUTURE MEETINGS

Regular Meeting: Thursday, January 19, 2023, 6:00 p.m., Oxnard Chambers

________________________________	ATTEST ________________________________
Ronald Arruejo, Chair	Joe Pearson II, Planning & Environmental Services Manager

[2] In Favor: Against: Absent: Abstain: Recused

COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION
214 SOUTH C STREET
OXNARD, CALIFORNIA 93030

MEMORANDUM

Agenda Item No.: F.1

Date: April 4, 2023

To: **Planning Commission**

From: **Juan Carlos Torres, Associate Planner (805) 385-8156**
Joe Pearson II, Planning & Environmental Services Manager

Subject: **Errata Memo No. 1 – 401 South A Street, Suites 1-3 & 8-10** - Planning and Zoning Permit No. 22-520-02 (Special Use Permit)- A request to allow operation of a charter school use (Vista Real Charter High School) within an existing two-story 16,425 square-foot building (Woolworth Building). The proposed School currently occupies approximately 12,800 square feet of the building and is located at 401 South A Street, Suites 1-3 & 8-10 (APN: 202-0-104-015) within the Downtown Core (DT-C) Zone. The proposed hours of operation for the proposed use will be Monday through Friday from 8am to 6pm. The project will have 20 employees and 65 students. For the purpose of this Staff Report, the foregoing project description shall be referred to as the "**Project.**" Filed by Tracy Woods with Learn 4 Life, on behalf of Vista Real Oxnard, applicant (the "**Applicant**"), 177 Holston Drive, Lancaster, CA 93535.

Subsequent to the release of the staff report, the Applicant team requested modifications to select conditions of approval included within the draft Resolution. City Departments and Divisions reviewed the request have agreed to the modified conditions as specified below in the body of this memo.

<u>Revised Resolution No. 2023-XX</u>

WHEREAS, on March 15, 2022, designated agent Tracy Woods on behalf of Vista Real-Oxnard, (the **"Applicant"** and/or **"Permittee"**) submitted Planning and Zoning Permit No. 22-520-02 (Special Use Permit), pursuant to Oxnard Downtown Code Sections 16-138, to allow for the operation of a charter school facility, Vista Real Charter High school. The school will be approximately 12,800 square feet within a site zoned Downtown Core (DT-C) located at 401 South A Street, Suites 1-3 & 8-10 (APN: 202-0-104-015)(the **"Project"**); and

Revised Conditions

Modify conditions 39(a, c, d, e, f, g, h, i, j, k, l, m, n & o), 40, 44, and 44 (e, g & h), in the draft Resolution with the following following language:

39. Security camera system should be operated 24 hours a day to monitor the activity at the site. The system shall be designed to capture images of all persons and all vehicles that enter the site. Cameras shall also be distributed throughout the site to capture general activities. The camera system shall comply with these minimum standards:

a. The camera system ~~shall~~ should be cloud based to facilitate off-site and mobile monitoring.

b. Access to the cloud based camera system may be made accessible to the Oxnard Police Department for specific areas of the property and adjacent areas that are either public, or, semi-public that include: adjacent public street, alleys, sidewalks, and within the private property the parking facility and paseo. Contact specialprojects@oxnardpd.org to participate in this program.

c. If the Police Department is provided access to the cloud based camera system, privacy of ~~residents~~ staff and students shall be taken into consideration.

d. Cameras and supporting equipment ~~shall~~ should supply digital color images under normal lighting conditions. Greyscale images are expected for infra-red lighting.

e. Cameras ~~shall~~ should be made by a reputable manufacturer and maintained to current industry standards.

f. Cameras ~~shall~~ should have low light capability to facilitate the later identification of persons involved in criminal or problem activities.

g. The video system ~~shall~~ should utilize a Digital Video Recorder (DVR). VHS and other formats are prohibited.

h. The video system ~~shall~~ should allow recording, live viewing and playback of recorded video for a period of a period of at least 30 days.

i. Recorded images ~~shall~~ should bear a date and time stamp that cannot be altered.

j. All entry doorways to the premises ~~shall~~ should be monitored by a camera or cameras that are strategically mounted for face capture of persons who enter. Such cameras shall be mounted no higher than 7-feet above the floor/ground. Face capture images shall be determined as those images where the clarity of a person’s facial image is sufficient for later identification.

k. ~~All vehicular entrances to the parking facilities shall be monitored by a camera or cameras that are placed to capture images of sufficient quality where the vehicle's license plate, make, model and color can be easily identified.~~

~~l.~~ k. Cameras in domed casings are highly encouraged as their area of focus is not easily determined by a casual observer.

~~m.~~ l. A camera ~~shall~~ should be dedicated to face capture image of any person accessing the call system at the exterior of the primary entrance.

~~n.~~ n. Site management ~~shall~~ should provide in a timely manner any digital records of security camera or access control systems requested pursuant to a police investigation or for the periodic inspection of equipment required under these conditions.

~~o.~~ m. Security cameras ~~shall~~ should be installed to monitor activity around each side of the building's exterior.

40. The site should be equipped with an access control system that shall restrict human ~~and vehicle~~ access to semi-public areas of the site. The areas considered "semi-public" shall include: ~~parking areas restricted to residents,~~ the building lobby, ~~mailroom, shared hallways, laundry rooms, activity rooms, pool and physical fitness facilities.~~

44. A Security Plan ~~shall~~ should be submitted to specialprojects@oxnardpd.org and approved prior to the issuance of building permits. The purpose of the Security Plan is to align the applicant's need to secure the development site for its end users with current security standards and to provide the Police Department an understanding of the layout of the site in the event of a critical incident. The Security Plan, when submitted directly to the Police Department, is considered a confidential document. The plan shall include:

p. The Security Plan Sheet will identify the location of each security camera, camera recording/support equipment, all elements of an access control system, and any safe or secure room or rooms designed to maintain valuable assets or records.

q. The Security Plan shall include a chart identifying each camera by an alpha-numeric, the scope of their capture area, and placement of the camera above the floor/ground.

r. The Security Plan shall identify all doors with an alpha-numeric (e.g. D-1, D-2, etc.) that serve passage between public & semi-public, semi-public to semi-public and similar access points where tenants and their guests routinely pass without needing specific permission from a resident or property manager/responsible party or resident. This would include access to the lobby, parking garage, laundry room, mailroom, emergency exits, etc. When a camera is positioned for face capture it shall be noted on the camera chart.

s. The Security Plan shall identify any area which is served by an intrusion/burglary alarm system.

t. The Security Plan shall identify all the components of the access control system, their location and a chart that identifies each instrument with an alpha-numeric with the device name, make and model. The access control system shall provide site access to ~~tenants and persons~~ authorized persons by the site ~~management~~ staff. ~~The access control sites shall include areas deemed semi-public such as the lobby, parking garage, laundry room, mailroom and any shared facility such as an activity room or community kitchen.~~

u. Click-to-Enter technology shall be installed to provide access for first responders to all entrances to the facility that serve as an interface between public and semi-public areas. All such access points shall be identified on the Security Plan.

v. The lobby should be designed to limit access to staff and students work areas via the access control points and prevent entry via counter hopping, propped open doors, or other means.

w. ~~g.~~ The permittee/property manager/owner ~~shall~~ should maintain all security features in good working condition and consistent with industry standards.

COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION
214 SOUTH C STREET
OXNARD, CALIFORNIA 93030

MEMORANDUM

Agenda Item No.: F.3

Date: April 5, 2023

To: **Planning Commission**

From: **Kathleen Mallory, Planning and Sustainability Manager**
Joe Pearson II, Planning & Environmental Services Manager

Subject: **Transmittal Memo No. 1 – Update of the City's Inclusionary Housing Ordinance.** - PLANNING AND ZONING PERMIT No. 23-580-01 (Zone Text Amendment). The project implements the City of Oxnard certified and Adopted Amended 2021-2029 Housing Element, Program 10 that calls for an update to and codification of the City's Inclusionary Housing Ordinance. Filed by the City of Oxnard Long Range Planning & Sustainability Division and the Housing Department - 214 South C Street, Oxnard, CA 93030.

Subsequent to the release of the Staff Report, staff has received 2 communications from the public concerning the proposed project (attached).

Staff has reviewed the email and will provide a response as necessary.

Attachment

A. Letter from House Farm Workers! received April 5, 2023
B. Letter from Barbara Macri-Ortiz received April 5, 2023

April 4, 2023

Ronald Arruejo – Chair
Vincent Stewart – Vice-Chair
Katherine Connelly – Commissioner
Miguel Lopez –Commissioner
Daniel Chavez Jr. – Commissioner
Steve Nash – Commissioner
Anna Zielsdorf – Commissioner

City of Oxnard Planning Commission
planning@Oxnard.org
(805) 385-7858

Re: Inclusionary Housing Ordinance- Proposed Revisions

Planning Commissioners,

The *House Farm Workers!* Oxnard City Committee is a volunteer-driven committee made up of Oxnard residents, advocates, employees, housing developers, and homeowners. The Committee has played a critical role in advocating on behalf of the farm worker community since 2004. We appreciate our collegial working relationships with Emilio Ramirez and Kathleen Mallory during the Housing Element 2021-2029 update process.

Along with The Central Coast Alliance United for A Sustainable Economy (CAUSE), we submitted a letter to the City of Oxnard on February 8, 2023, which includes our ideas on the draft Inclusionary Housing Ordinance (IHO) (attached). Emilio Ramirez, and Kathleen Mallory met with us on January 31st and March 8th to discuss the letter and explain Emilio's statewide research behind some of the proposed concepts. The public hearing format of one-time comments limited to three minutes is not conducive to a true discussion, and we are grateful to staff for scheduling the additional meeting in a more flexible format.

However, we request your consideration of four revisions to the draft ordinance:

1. **We ask that the inclusionary housing ordinance requirement be 20%.**

The vast majority of Oxnard families qualify for affordable housing. The County Median (or AMI) for a family of four is $115,400.[1] The County median is so disproportionately high that a family of four making $103,850 is considered a low-income household.[2] Compare this with

[1] https://www.hcd.ca.gov/docs/grants-and-funding/inc2k22.pdf
[2] Ibid

Oxnard, where, as of 2021, the median household income for a family of four is $83,180.[3] If the median income in Oxnard is $20,000 lower than the county's low-income threshold, then a vast majority of Oxnard households qualify for the low-income and very low-income affordability thresholds. Very simply put, few Oxnard residents could afford market rate developments. We are losing our local population because they cannot afford to live here.

Any new development in the city should reflect this reality. There are very limited sites for development in Oxnard, and affordable housing development has historically not met the RHNA requirements. We ask that planning commission increase Inclusionary Requirement to 20%. The required level of affordability should be 10% low and 10% moderate for for-sale developments and 10% very low and 10% low income for rental developments.

2. **We ask that resale restrictions be used instead of equity shares.**

We believe that the equity share would undermine the objective of the IHO - which is to increase the stock of affordable housing. Although equity share may increase revenue for the homeowner at the time of sale (assuming the property increases in value), it would come at the cost of permanently removing many units of affordable housing from the housing stock over the long run, which can never be recovered. This policy will harm the affordability of Oxnard for future generations of homebuyers by prioritizing housing as an investment rather than a human right. Thank you for the consideration provided, but we feel it best serves the public interest to maintain the long-term affordability of the unit for lower income households.

3. **The Inclusionary requirement should be lowered if a development includes deeper levels of affordability.**

For example, if a developer were to include 15% very low-income units instead of 10% low and 10% very low income; then the city may consider waiving the remaining low-income requirement. We suggest that the IHO include an exchange table for the recommended percentage requirements (i.e., 10% low income can be exchanged to 7% very low income). However, the floor would be a 15% inclusionary requirement.

4. **Density Bonus**

Whether or not a developer applies for and receives a density bonus, the inclusionary requirement (i.e. the number of affordable units required), should be based on the total number of units in the development, including any density bonus units awarded. For example, under Govt. Code 65915(f)(1), if the zoning would allow 100 units, and the developer agrees to provide 20%

[3] https://www.census.gov/quickfacts/fact/table/oxnardcitycalifornia/RHI725221

low-income units (20 low-income units), the development would receive a 35% density bonus. Thus, the development would be entitled to 35 extra units. So, under density bonus law, the development would be allowed to have 135 units (100 + 35), and 20 of those units would have to be affordable to low income.

The City's Inclusionary Housing Ordinance should apply to all the units in the development. So, if the inclusionary requirement is established at 20%, the project would have to provide 27 affordable units. (135 x .20 = 27). The developer could count the 20 low-income units (under density bonus law) toward meeting this requirement but would still have to provide an additional 7 affordable units. Note that if the inclusionary requirement is only 15%, a 135-unit project would only yield 20 deed restricted affordable units (135 x 15% = 20.25). This is another reason why the inclusionary requirement should be at least 20%. Otherwise, the inclusionary ordinance would likely yield very little or no units beyond those required under state density bonus law. However, that is contrary to the intent of Program 10 in the Housing Element. Furthermore, the inclusionary ordinance is the City's most effective tool to comply with our obligation to affirmatively further fair housing. If the percentage is set at 15%, we give up this most effective fair housing tool, for all practical purposes.

Thank you,

The *House Farm Workers!* Oxnard City Committee

The Ventura County Housing Coalition (VCHC)

February 8, 2023

City of Oxnard
300 W 3rd. St,
Oxnard, CA 93030

Via Email

Re: Comments on Draft Inclusionary Housing Ordinance

As affordable housing activists and Oxnard community members who advocate in support of affordable housing developments and programs, we appreciate Oxnard staff for updating the Oxnard Inclusionary Housing Ordinance (IHO) and for including us in open and frank discussions of ordinance drafts- outside the narrow structure of three-minute comment periods in formal public meetings. There is no one-size-fits-all IHO. Emilio's wide-ranging research among IHOs in the state to examine policy options adopted in other cities is impressive.

As a policy intended to leverage the rising value of land and development potential in the city, the IHO proves to be a crucial tool to increase the city's affordable housing stock. We offer the following recommendations which would greatly strengthen the IHO's intent and future outcomes outlined in Sec.16-415A of the draft ordinance.

Increasing the inclusionary requirement from 15% to 20% for both for-sale and rental units.

Oxnard's median household income falls well below that of Ventura County. As such, a large percentage of Oxnard's households qualify for affordable housing, and more families are in need of affordable housing. Since the primary objective of the Inclusionary Housing Ordinance is to increase the stock of affordable housing, we request that the affordability threshold be increased to at least 20%. The required level of affordability should be 10% low and 10% moderate for for-sale developments and 10% very low and 10% low income for rental developments. *The Inclusionary requirement should be lowered if a development includes deeper levels of affordability.* For example, if a developer were to include 15% very low income units instead of 10% low and 10% very low income; then the City may consider waiving the remaining low income requirement. We suggest that the IHO include an exchange table for the recommended percentage requirements (i.e. 10% low income can be exchanged to 7% very low income).

Finally, the applicable development threshold for the IHO should be decreased from six units to five units. This is consistent with multifamily housing definitions and ease of calculating the number of IHO required units with a 20% affordability requirement**.**

The inclusionary units should be made affordable through a resale restriction and not an equity share.

We believe that the equity share would undermine the objective of the IHO - which is to increase the stock of affordable housing. Although equity share may increase revenue for the homeowner at the time of sale (assuming the property increases in value), it would come at the cost of permanently removing many units of affordable housing from the housing stock over the long run, which can never be recovered. This policy will harm the affordability of Oxnard for future generations of homebuyers by prioritizing housing as an investment rather than a human right. Thank you for the consideration provided, but we feel it best serves the public interest to maintain the long-term affordability of the unit for lower income households.

Density bonus units should be counted towards in-lieu and inclusionary requirements. All units, including density bonus units, in a proposed development should be counted towards the inclusionary requirement. Affordable housing units built to meet the density bonus laws count towards meeting the IHO requirements.

> For example, if a 100 unit development sought a 50% density bonus by designating 24 units as low-income, then the development would have a total 150 market-rate units and 24 low-income units [per density bonus law, § 65915(f)(1)]. Based on the 150 unit project, and a 20% inclusionary requirement, the developer must provide 30 units of affordable housing (150 unit project x .20 Inclusionary requirement = 30 affordable units) 25.2 units of affordable housing. This would mean that they would have to provide an additional six (6) low-income units or pay for the in-lieu fee.

In addition to the above, VCHC fully supports Barbara Macri-Ortiz's comments regarding:

- Exceptions from occupancy requirements for military service or temporary job relocation, under SEC 16-415E(B)(1)(b). The affordable unit should be rented to tenants in the designated income bracket, not market rate.
- SEC 16-415I- Including the City's progress on the development of extremely low, very low and low income requirements as a factor for granting an in-lieu fee request. "If the City is not making significant progress on its housing element goals for very low, low and moderate income households, in lieu should NOT be allowed. That should be the policy that is written into the ordinance."
- SEC 16-415I (F). Specify land donation to be "vacant land."

In community,
The *House Farm Workers!* Oxnard City Committee
The Central Coast Alliance United for A Sustainable Economy

Law Office of
BARBARA MACRI-ORTIZ
P.O. Box 6432
Oxnard, California 93031

Telephone: (805) 486-9665 ***Facsimile: (805) 487-1409***
E-mail: b.macriortiz@verizon.net

Via Email to <u>planning@oxnard.org</u> & U.S. MAIL

April 4, 2023

Mr. Ronald Arruejo, Chairman
Oxnard Planning Commission
City of Oxnard
214 South C Street
Oxnard, CA 93030

RE: Update to Oxnard's Inclusionary Housing Ordinance
<u>Planning & Zoning (PZ) Permit No. 23-580-01</u>
<u>April 6, 2023, Agenda Item F.3.</u>

Dear Chairman Arruejo and Commissioners:

I am an Oxnard resident and an affordable housing attorney who has practiced in Ventura County, and particularly in Oxnard for the last thirty-three years of my career. After providing input and working with the Planning Department staff and Housing Department Director on the update of the Inclusionary Housing Ordinance for at least a year, I am very disappointed with the content of the draft Ordinance that is before you tonight.

You may recall that one of the reasons HCD did not approve the City's 2021 - 2029 Housing Element that was originally adopted on October 5, 2021, was because the City's Element did not adequately address its duty to "affirmatively further fair housing," [AFFH]. The City was supposed to "include goals and actions sufficient to overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity." While we worked on revising the Housing Element we recognized that realistically, Program 10, the update of the Inclusionary Housing Ordinance, is one of the few tools available to our community to begin to address our AFFH obligations. Inclusionary housing is a very effective method to open up high opportunity housing opportunities to our lower income community, and in so doing we can begin to make progress on the difficult task of fostering inclusive communities by removing barriers that restrict access to opportunity.

With the AFFH mandate before us, the 15% affordability requirement contained in the draft ordinance is very weak, especially because for many years in the majority of development areas in the City, we already operated under a state mandated 15% affordability requirement in Oxnard's redevelopment project areas. The affordability requirements in the Inclusionary Housing Ordinance were not updated after the demise of redevelopment in 2011. Now ten years later the proposal to go back to the RDA standards makes no sense. Since then we have seen rents and home prices skyrocket, leaving many in our community on the cusp of homelessness. Folks, we are in a housing crisis! Our housing policies must reflect the realities of today.

CONSIDER OXNARD'S RHNA.

If we were operating in a logical, rational environment, the City's inclusionary requirements should reflect the same percentages as the RHNA objectives in our Housing Element: 21.5% very low, 12.5% low, 18% moderate and 48% above moderate.[1].

Instead, the Ordinance proposes to raise the inclusionary requirement from 10% to 15% to address 52% of our housing need, leaving 85% of our housing production to address only 48% of the housing need. What is wrong with this picture? Throwing out a crumb of bread to feed a starving community would be seen as intolerable or unacceptable. Why is that not the case when addressing our housing needs?

THE STAFF REPORT TAINTS THE COMMISSION'S REVIEW.

I am particularly distressed with assertions in the Staff Report and Attachment 8 concerning the community's request to increase the inclusionary housing requirement from the proposed 15% to 20%. The Staff Report and Attachment 8 attempt to sway the Commission by making assertions concerning AB 1505 and its impact on Oxnard that are

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[1]. City of Oxnard 2021 - 2029 Housing Element, Table D-1, Ventura County 2021-2029 Regional Needs Assessment Allocation for Oxnard. Total Units 8,549, distributed as follows: 920 units extremely low income (10.8%); 920 units very low income (10.8%); 1,071 low income (12.5%); 1,538 Moderate income (18%); and 4,100 above moderate income (48%).

simply not true.

Attachment 8, Point 1. *Affordability Requirements.* makes the following claims:

1. Oxnard has not met at least 75% of its share of the RHNA for above moderate income housing over at least a five-year period, and states that during the 2014 to 2021 Housing Element Cycle, the City met only 31% of the RHNA for above moderate income housing. NOT TRUE ON BOTH COUNTS.

Let's look at Oxnard's track record in the production of above moderate income housing from 1998 to 2022, as reported in the City's Housing Elements:

2006 - 2014 Housing Element reports the following:

Table A-1 Comparison of Housing Unit production with RHNA Housing Needs (1998 - 2005) - Total Units Constructed for Above Moderate income were 4,452, which was ***295% of the 1,507 RHNA Goal***; see pg. 8A-2

Table D-6 Remaining RHNA Allocation as of October 2011; Above moderate RHNA Allocation (2006-2014) was 2,936; number of above moderate units completed during 2006- 2010 were 1,926 and number of units approved and/or under construction was an additional 3,743, for a total of 5,669 units, or ***193% of the RHNA Goal,*** see pg. 8D-4

2017 Mid-Cycle 2013-2021 Housing Element Update

Table D-4. Remaining RHNA through March 2017; Above Moderate RHNA Allocation (2014 - 2021) was 3,102; number of above moderate units completed during 1/2014 - 3/2017 were 592, and the number of units approved or under construction was an additional 2,457, for a total of 3,049 above moderate units, or ***98.3% of the RHNA Goal,*** see pg. D-5.

2021 - 2029 Housing Element - Amended Housing Element Draft July 2022

Table D-3 Remaining RHNA as of February 28, 2022; Above Moderate RHNA Allocation (2021 - 2029) was 4,100; number of above moderate units completed in the one year were 70 units out of a total of 107 units completed for all income categories. So as of 2/28/22 , just one year into the planning period, ***the above moderate category represented 65.4% of all the production in the City***. Furthermore, this particular time period is the least appropriate to scrutinize as California was just emerging from the effects of Covid on our economy, and especially since the above moderate category has consistently over performed in every Housing Element cycle since 1998!

2. An inclusionary requirement greater than 15% of rental units would ***trigger*** a requirement for the City to submit the ordinance for review, ***along with an economic feasibility study.*** NOT TRUE

The Staff Report references AB 1505, and cites to HCD's October 21, 2019 Memorandum for Planning Directors, regarding Rental Inclusionary Housing. See Attachment]. That memorandum states at page 5 the following:

HCD ***may*** review any inclusionary rental housing ordinance if it finds either of the following apply:

(1) The City failed to meet at least 75% of its share of the above moderate income RHNA (prorated based on the length of time within the planning period) ***over at least a five year period***; or

(2) The City failed to submit the annual Housing Element report for at least two consecutive years.

In view of Oxnard's historically high production of above moderate income housing, and the fact that HCD ***must*** consider a period of time of ***at least five*** years, **HCD simply does not have jurisdiction to review Oxnard's inclusionary rental housing ordinance,** unless the City fails to submit the annual Housing Element report for ***at least*** two consecutive years, which is not and should not be the case.

Furthermore, the HCD memorandum clearly states:

"Local governments are ***only required to submit*** an economic feasibility study ***upon HCD request***." (Memo, p. 5); and

> "***If HCD requests evidence*** that the ordinance does not unduly constrain the production of housing, the jurisdiction must submit an economic feasibility study to HCD ***within 180 days from its receipt of HCD's request.***" (Memo, p.6).

City staff is apparently running scared for no good reason and would choose to sacrifice an opportunity to affirmatively further the fair housing needs of our lower income residents, and the best interests of the our community simply because it is easier to do so. However, ***we call on the Planning Commissioners to insist on a 20% inclusionary requirement, not because it is easy or hard, but because it is the right thing to do.***

Furthermore, since AB 1505 and HCD are only concerned with ***rental*** housing ordinances, **there is no impediment to the City providing a 20% or even a 25% inclusionary requirement for for-sale housing.** In fact, in order to provide more opportunities for our residents to get into home ownership, a higher inclusionary requirement for ownership housing would definitely be consistent with our obligation to affirmatively further fair housing. At a minimum, the ordinance should provide for 15% for rental housing (10% for very low income and 5% for low income), which would obviously pass HCD muster, and increase the percentage for for-sale housing to 25% (15% for low income and 10% for moderate income).

DENSITY BONUS UNITS SHOULD BE SUBJECT TO THE ORDINANCE.

SEC. 16-415.2 (E), defines a "density bonus unit" as a dwelling unit granted pursuant to state density bonus law "**<u>which exceeds the otherwise maximum allowable residential density</u>**." A density bonus unit ***IS NOT*** a deed restricted affordable unit, but rather the density bonus units are market rate units that are awarded to the development in exchange for providing a certain level of affordability as set forth in the statute.

For instance, under Govt. Code 65915(f)(1), if the zoning would allow 100 units, and the developer agrees to provide 20% low income units (20 low income units), the development would receive a 35% density bonus. Thus the development would be entitled to build 35 extra units. So under density bonus law, the development would be allowed to have 135 units (100 + 35), and 20 of those units would have to be affordable to low income.

SEC. 16-415.2 ®, defines "Total units and total dwelling units" as "dwelling units other than density bonus units" This section also needs to be changed. [2] The City's Inclusionary Housing Ordinance should apply to ***all the units*** in the development. The inclusionary requirement, i.e. the number of affordable units required under the ordinance), should be based on the **total number of actual units** in the development, including any density bonus units awarded under density bonus law, and whether or not a developer applies for and receives a density bonus, Thus, if the inclusionary requirement is established at 20%, using the example above, the project would have to provide 27 affordable units. (135 x .20 = 27). The developer could count the 20 low income units (under density bonus law) toward meeting this requirement, but would still have to provide an additional 7 affordable units. Note that if the inclusionary requirement is only 15%, a 135 unit project would only yield 21 affordable units (135 x .15 = 20.25, rounded up to 21). So at 15% the ordinance would essentially be meaningless.

Commissioners, as you know from your experience on the Planning Commission, most projects tend to apply for a density bonus, in order to maximize the number of units they can build. This is another reason why the inclusionary requirement should be at least 20%. Otherwise, the inclusionary ordinance would likely yield very little or no units beyond those required under state density bonus law. However, that is contrary to the intent of Program 10 in the Housing Element. Furthermore, the inclusionary housing ordinance is the City's most effective tool to comply with our obligation to affirmatively further fair housing. If the percentage is set at 15%, we give up this most effective fair housing tool, for all practical purposes.

The law is clear that the City must count any and all affordable units generated under density bonus law toward the developer's inclusionary housing obligations. It should also be noted that Government Code § 65915.1 makes clear that a jurisdiction may not impose affordable housing impact fees, i.e. in lieu fees, on affordable units. So the interconnection between density bonus law and the City's inclusionary ordinance is not an issue.

I reviewed the City's responses to my comments contained in my email of Saturday, January 28, 2023 at 4:34 p.m., and all I can do is shake my head. These responses are not

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[2]. Note that SEC 16-415.3 (A) and (B) should also be edited to delete the phrase "not inclusive of density bonus units" that are offered for sale or rent.

well thought out and some do not even make any sense. [3]

It always amazes me how cities, including Oxnard, oftentimes whine about the "loss of local control." Yet, when there is an opportunity to do something better, they pass on the opportunity, relying instead on state law, in this case using density bonus law as their excuse. Why is it that no one is interested or has the tenacity to try to raise the bar?

On Monday, the Ventura Star ran an article about the rise of homelessness in Ventura County. The article printed the homeless count by city for the years 2017 - 2023. Oxnard's count in 2023 was 838, compared to 461 in 2017. **This represents an 81.7% increase in six years.** Our rent stabilization and just cause eviction ordinances were not passed a day too soon. I now find myself representing tenants whose landlords are terminating their tenancies based on "No Fault Just Cause" under SEC. 27-4 of our ordinance, and my clients literally cannot find any alternate housing in Oxnard. We are increasingly losing our long term residents to other states, simply because they cannot find a housing option in Oxnard or Ventura County or even in Bakersfield, that they can afford.

I hope you can sense my frustration as well as appreciate the need for our City to make better housing policy decisions.

I appreciate your service as Planning Commissioners. I know that it can be difficult or confusing to have to deal with all these serious issues within a short time frame. If my

[3]. For example, I suggested that under SEC 16-415.5(B)(1)(b), exceptions listed for occupancy, we should allow an exception for reassignment due to military service, or temporary job relocation, and that the prospective renter would have to be in the eligible income category of the inclusionary unit and the unit would have to be rented at a rate that is affordable at that income category. My comment was specifically based on my experiences with service men and women who are deployed to other areas and then return to Ventura County. The City's response suggests that such an exception "defeats the purpose of the owner occupancy requirement." However, under the City's logic, the practical solution for the enlisted person would be to just sell the home and take the equity share, even though such a sale would totally remove the home from the City's affordable housing stock. This is in stark contrast to a rental arrangement that would actually keep the home available as affordable housing in our community while the owner is away from the area, not to mention that if the owner had to sell the home, his or her chances of finding comparable housing in Oxnard upon return from duty, would be slim to none.

letter has raised any concerns or issues that may require further explanation, please know that you can call me at (805) 486-9665 and I will be available at the hearing to answer any questions you may have.

Thank you for your hard work on behalf of the City.

Sincerely,

Barbara Macri-Ortiz

Enclosure

Copies via email only to:

Emilio Ramirez, Housing Director; emilio.ramirez@oxnard.org
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October 21, 2019

MEMORANDUM FOR: Planning Directors and Interested Parties

FROM: Zachary Olmstead, Deputy Director
Division of Housing Policy Development

SUBJECT: **Rental Inclusionary Housing**
Chapter 486, Statutes of 2017 (Assembly Bill 1505)

This memorandum provides guidance regarding Assembly Bill (AB) 1505 (Chapter 486, Statutes of 2017), effective January 1, 2018.

AB 1505 authorizes the legislative body of any city or county to adopt an inclusionary housing ordinance that includes residential rental units affordable to lower- and moderate-income households (Government Code, § 65850, subd. (g).)

Among other things, this bill specifies:

- requirements for alternative means of compliance for inclusionary ordinances,
- parameters for the California Department of Housing and Community Development (HCD) review of inclusionary housing ordinances, under limited circumstances, by requesting the submittal of an economic feasibility study to ensure the ordinance does not unduly constrain the production of housing, and
- criteria for HCD to review economic feasibility studies.

Copies of bills and other materials from the 2017-2018 session can be obtained at http://leginfo.legislature.ca.gov/ or the legislative Bill Room at 916-445-2323. For additional information or questions, please contact the Division of Housing Policy Development at (916) 263-2911.

BACKGROUND AND INTENT OF AB 1505

Article XI, section 7 of the California Constitution grants each city and county the power "to make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws." This is generally referred to as the police power of local governments. The Planning and Zoning Law (Gov. Code, §§ 65000 to 66035) sets forth minimum standards for cities and counties to follow in land use regulation, but the law also establishes the Legislature's intent to "provide only a minimum of limitation in order that counties and cities may exercise the maximum degree of control over local zoning matters." (Government Code § 65800).

Many jurisdictions, pursuant to their police power, adopted inclusionary housing requirements that require developers to ensure that a certain percentage of housing units in a new development be affordable to moderate- and lower-income households. Most, if not all, of such requirements applied to both rental and ownership housing.

Legislative Findings on AB 1505

"Inclusionary housing ordinances have provided quality affordable housing to over 80,000 Californians, including the production of an estimated 30,000 units of affordable housing in the last decade alone. Since the 1970s, over 170 jurisdictions have enacted inclusionary housing ordinances to meet their affordable housing needs."

Despite the many local inclusionary requirements, court decisions changed the environment regarding rental inclusionary requirements. In 2009, in *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles* (2009) 175 Cal.App.4th 1396, the Second District California Court of Appeal opined that the city's inclusionary housing requirements associated with a specific plan, as applied to rental housing, conflicted with, and were preempted by, a state law known as the Costa-Hawkins Rental Housing Act. (Civil Code, §§ 1954.50 to 1954.535.)

The Costa-Hawkins Act, adopted in 1995, allows landlords to set the initial rent for a new unit and to increase the rent to market levels whenever a unit is vacated. The Court of Appeal concluded that the city's inclusionary requirement clearly conflicted with Palmer's right to set the rental rate for his units because the City would limit the rent that he could charge for the affordable units. After the *Palmer* decision, most jurisdictions with inclusionary housing ordinances that included rental housing stopped applying the inclusionary requirements on rental housing development.

In response to the court cases, AB 1505 supersedes the holding and dicta in the *Palmer/Sixth Street Properties* case to the extent that the decision conflicts with a local jurisdiction's authority to adopt inclusionary housing ordinances on residential rental unit developments. The enactment of AB 1505 reaffirms the authority of local governments to include rental units within inclusionary ordinance requirements and adds a limited HCD review, under certain circumstances, of economic feasibility studies to demonstrate the ordinance does not unduly constrain the production of housing.

LOCAL AUTHORITY

While local governments have long held the authority to adopt ordinances and regulate land use, recent court cases made that authority relative to rental inclusionary housing less clear. In response, AB 1505 provides clear authority that all cities and counties, including charter cities and counties, may adopt ordinances that require, as a condition of development, a certain percentage of rental units affordable to lower- or moderate-income households, including very low and extremely low- income households, and to reaffirm adoption of the same be conducted openly, consistent with the Ralph M. Brown Act.

> *California Building Assn. V. of San Jose*
> (2015) 61 Cal.4th 435
>
> In 2010, the City of San Jose adopted an inclusionary housing ordinance that applied a 15 percent inclusionary requirement for lower- and moderate-income households. The California Building Industry Association (CBIA) filed a lawsuit alleging that inclusionary requirements were an "exaction" that needed to be justified by the impact of the project, like traffic fees. The California Supreme Court ruled that inclusionary requirements are not "exactions." Rather, the ruling stated that enforcing affordable housing requirements to address a growing housing problem is "constitutionally legitimate" so long as it "bears a real and substantial relationship to the public interest", and cited the need to increase the number of affordable units given the severe scarcity of affordable housing in California, and the desirability of having economically diverse communities.

In clarifying this authority, AB 1505 also recognizes the importance of flexibility and mitigating development costs in meeting inclusionary requirements. The law states that inclusionary ordinances with rental housing must provide alternative means for compliance. Local governments may seek alternative means of compliance such as in-lieu fees, land dedication, off-site construction, or acquisition and rehabilitation of existing units. This list of alternative means is not exhaustive, and a local government could include additional means. A local government may also wish to consider other factors when allowing alternative means such as land dedication, off-site construction, and acquisition and rehabilitation. Examples include strategic locations that minimize displacement, improve access to jobs and transportation, or improve a community's inclusiveness.

HCD REVIEW AUTHORITY

Since 1969, California has required that all jurisdictions (cities and counties) adequately plan to meet the housing needs of everyone in the community. California's local governments meet this requirement by adopting Housing Elements as part of their general plan pursuant to Gov. Code section 65580. Housing Elements are adopted every five to eight years and are subject to HCD review.

Pursuant to Government Code section 65583(a)(5), a jurisdiction's Housing Element must include an analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including, but not limited to, land use controls, fees and other exactions required of developers, local processing and permit procedures, and any locally adopted ordinances that directly impact the cost and supply of residential development. The element must also address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing. As an inclusionary ordinance falls under this requirement, the Housing Element must include a description and analysis of the inclusionary housing ordinance framework, which would then be subject to HCD review. For more guidance on this analysis, please see the HCD's Building Blocks Webpage.

AB 1505 provides HCD authority to review economic feasibility studies related to rental inclusionary housing ordinances. However, HCD is not required to review these economic feasibility studies and local governments are only required to submit the studies upon HCD request after meeting several other conditions (see below). Further, HCD will not review the actual inclusionary ordinance pursuant to AB 1505. HCD's review is limited to a review of an economic feasibility study that provides evidence that the ordinance does not unduly constrain the production of housing. AB 1505 did not alter HCD's review authority of inclusionary ordinances, rental and owner, as part of its obligation to review Housing Elements of the general plan.

CONDITIONS TRIGGERING SUBMITTAL TO HCD

Local governments are only required to submit economic feasibility studies if specified conditions exist:

- *Rental Inclusionary*: AB 1505 only applies to ordinances with rental inclusionary requirements. Ordinances with only ownership housing do not trigger requirements under AB 1505.

- *Adopted or Amended Post September 15, 2017*: Local governments who do not adopt or amend ordinances after September 15, 2017, do not trigger AB 1505 and are not required to prepare or submit economic feasibility studies to HCD.

Jurisdictions adopting or amending ordinances after September 15, 2017, may consider conducting an economic feasibility study prior to the adoption or amendment of an inclusionary housing ordinance, but are not required to do so.

- *Level of Affordability*: Only inclusionary ordinances that require more than 15 percent of the total number of units to be rented by households at 80 percent or less of area median income (AMI) are subject to AB 1505. Inclusionary ordinances that require less than 15 percent for 80 percent or less AMI household, or solely target household above 80 percent of AMI, do not trigger a submittal or review by HCD under AB 1505.

- *HCD Findings*: HCD may review any inclusionary rental-housing ordinance if it finds either of the following apply:

  (1) The jurisdiction failed to meet at least 75 percent of its share of its above-moderate income Regional Housing Need Allocation (RHNA) (prorated based on the length of time within the planning period) over at least a five-year period, based on the jurisdiction's annual Housing Element report; or

  (2) The jurisdiction failed to submit the annual Housing Element report for at least two consecutive years.

> *Annual Progress Reports*
>
> Local governments are required to submit Annual Progress Reports on implementation of the general plan pursuant to Gov. Code section 65400. The report includes progress toward the RHNA by income group. HCD makes that data available through interactive maps at Interactive RHNA Maps. For assistance on annual reports, contact APR@hcd.ca.gov.

- *HCD Request and Time Limits*: Local governments are only required to submit an economic feasibility study upon HCD request. HCD cannot request to review an economic feasibility study for an ordinance if more than 10 years have passed since the adoption or amendment of that ordinance, whichever is later.

Examples of when the review provisions of AB 1505 apply:

- Jurisdiction adopted an inclusionary housing ordinance for both ownership and rental units in 2003. Due to the results of the *Palmer/Sixth Street Properties* case, the jurisdiction deleted the reference to rental units in the inclusionary housing ordinance. In 2019, the jurisdiction amends the inclusionary housing ordinance to reinstate its application to rental units.

- Jurisdiction adopted an inclusionary housing ordinance for both ownership and rental units in 2003. The ordinance requires on-site construction of the affordable rental units and does not provide for alternative means of compliance to the on-site requirement for rental units. In 2019, the jurisdiction amends the inclusionary housing ordinance to include alternative means of compliance to the on-site requirement for rental units.

- Jurisdiction adopts a new inclusionary housing ordinance for rental units in 2018.

Examples of when the review provisions of AB 1505 do not apply:

- Enforcement of a preexisting ordinance: A jurisdiction with an inclusionary housing ordinance adopted in 2003 for both ownership and rental units did not enforce the inclusionary requirement for rental units due to the results of the *Palmer/Sixth Street Properties* case. Now, the jurisdiction is enforcing the inclusionary requirement for rental units without adopting or amending the ordinance.

- Reinstatement of a previously suspended ordinance: A jurisdiction with an inclusionary housing ordinance adopted in 2008 for both ownership and rental units suspended the inclusionary requirement for rental units due to the results of the *Palmer/Sixth Street Properties* case. Now, the jurisdiction is reinstating the suspended inclusionary requirement for rental units without adopting an, or amending the, inclusionary housing ordinance.

HCD REVIEW PROCESS, CRITERIA AND TIMING

Review Process

Step 1: Evaluate applicability of AB 1505 review to subject inclusionary ordinance.

Third parties can request HCD's evaluation of a jurisdiction's rental inclusionary housing ordinance by submitting a request to the HCD's accountability and enforcement email address, ComplianceReview@hcd.ca.gov. HCD may also initiate an evaluation of an inclusionary housing ordinance based on information contained within a Housing Element, Annual Progress Report, stakeholder comment letter, phone call, news article, or additional source.

Step 2: If HCD requests evidence that the ordinance does not unduly constrain the production of housing, the jurisdiction must submit an economic feasibility study to HCD within 180 days from its receipt of HCD's request. When complying with the HCD request, the jurisdiction should submit sufficient information to demonstrate how the study meets the specified criteria below.

Step 3: Upon submission of an economic feasibility study, HCD has 90 days to issue a finding as to whether or not the study meets all specified criteria. During its review, HCD may consult with any local government, agency, group, or person prior to issuance of its findings.

Specified Criteria

- A qualified entity with demonstrated expertise in the preparation of economic feasibility studies prepared the economic feasibility study.

- The study methodology followed best professional practices and was sufficiently rigorous to allow an assessment of whether the rental inclusionary requirement, in combination with other factors that influence feasibility, is economically feasible.

- If the economic feasibility study was prepared after September 15, 2017, the jurisdiction must have made it available on its website for at least 30 days. After the 30-day period expired, the study must have been placed on the agenda of a regularly scheduled meeting of the jurisdiction's legislative body for consideration and approval.

The economic feasibility study should not be confused with a "nexus study" required when a jurisdiction seeks to justify impact mitigation fees, such as commercial linkage fees, prepared pursuant to Government Code section 66000. Inclusionary requirements may be based on the existing and projected housing needs of the region and other factors reasonably related to the regional welfare. They need not be based on a demonstration of the additional need for affordable housing generated by new residential development.

If a jurisdiction fails to submit an economic feasibility study to HCD within 180 days of receiving HCD's request, or if HCD makes a final decision that the economic feasibility study does not meet the statutory requirements, the jurisdiction's rental inclusionary requirement cannot require more than 15 percent of the total number of units in a development be affordable to households at 80 percent of the area median income. The jurisdiction may continue implementing a requirement at more than 15 percent once it has submitted an economic feasibility study to HCD providing evidence that the inclusionary housing ordinance does not unduly constrain housing production, and HCD makes a finding that the study meets the statutory requirements.

APPEALS

A jurisdiction can appeal HCD's finding that the economic feasibility study does not meet the statutory requirements by submitting an appeal to the Director of HCD. Once HCD receives the appeal, it has 90 days to issue a final decision, unless the timeline is extended by a mutual agreement between the jurisdiction and HCD.

Attachment A

AB 1505 Revisions to Sections 65850, 65850.01, and Section 3

SECTION 1. Section 65850 of the Government Code is amended to read:

65850. The legislative body of any county or city may, pursuant to this chapter, adopt ordinances that do any of the following:
(a) Regulate the use of buildings, structures, and land as between industry, business, residences, open space, including agriculture, recreation, enjoyment of scenic beauty, use of natural resources, and other purposes.
(b) Regulate signs and billboards.
(c) Regulate all of the following:
(1) The location, height, bulk, number of stories, and size of buildings and structures.
(2) The size and use of lots, yards, courts, and other open spaces.
(3) The percentage of a lot which may be occupied by a building or structure.
(4) The intensity of land use.
(d) Establish requirements for off street parking and loading.
(e) Establish and maintain building setback lines.
(f) Create civic districts around civic centers, public parks, public buildings, or public grounds, and establish regulations for
those civic districts.
(g) Require, as a condition of the development of residential rental units, that the development include a certain percentage of residential rental units affordable to, and occupied by, households with incomes that do not exceed the limits for moderate income, lower income, very low income, or extremely low income households specified in Sections 50079.5, 50093, 50105, and 50106 of the Health and Safety Code. The ordinance shall provide alternative means of compliance that may include, but are not limited to, in-lieu fees, land dedication, off-site construction, or acquisition and rehabilitation of existing units.

SECTION. 2.

Section 65850.01 is added to the Government Code, to read:

***65850.01.** (a) The Department of Housing and Community Development, hereafter referred to as "the department" in this section, shall have the authority to review an ordinance adopted or amended by a county or city after September 15, 2017, that requires as a condition of the development of residential rental units that more than 15 percent of the total number of units rented in a development be affordable to, and occupied by, households at 80 percent or less of the area median income if either of the following apply:*
(1) The county or city has failed to meet at least 75 percent of its share of the regional housing need allocated pursuant to Sections 65584.04, 65584.05, and 65584.06, as applicable for the above-moderate income category specified in Section 50093 of the Health and Safety Code, prorated based on the length of time within the planning period pursuant to paragraph (1) of subdivision (f) of Section 65588, over at least a five-year period. This determination shall be made based on the annual housing element report submitted to the department pursuant to paragraph (2) of subdivision (a) of Section 65400.
(2) The department finds that the jurisdiction has not submitted the annual housing element report as required by paragraph (2) of subdivision (a) of Section 65400 for at least two consecutive years.

(b) Based on a finding pursuant to subdivision (a), the department may request, and the county or city shall provide, evidence that the ordinance does not unduly constrain the production of housing by submitting an economic feasibility study. The county or city shall submit the study within 180 days from receipt of the department's request. The department's review of the feasibility study shall be limited to determining whether or not the study meets the following standards:
(1) A qualified entity with demonstrated expertise preparing economic feasibility studies prepared the study.
(2) If the economic feasibility study is prepared after September 15, 2017, the county or city has made the economic feasibility study available for at least 30 days on its Internet Web site. After 30 days, the county or city shall include consideration of the economic feasibility study on the agenda for a regularly scheduled meeting of the legislative body of the county or city prior to consideration and approval. This paragraph applies when an economic feasibility study is completed at the request of the department or prepared in connection with the ordinance.
(3) The study methodology followed best professional practices and was sufficiently rigorous to allow an assessment of whether the rental inclusionary requirement, in combination with other factors that influence feasibility, is economically feasible.
(c) If the economic feasibility study requested pursuant to subdivision (b) has not been submitted to the department within 180 days, the jurisdiction shall limit any requirement to provide rental units in a development affordable to households at 80 percent of the area median income to no more than 15 percent of the total number of units in a development until an economic feasibility study has been submitted to the department and the department makes a finding that the study meets the standards specified in paragraphs (1), (3), and, if applicable, (2), of subdivision (b).
(d) (1) Within 90 days of submission, the department shall make a finding as to whether or not the economic feasibility study meets the standards specified in paragraphs (1), (3), and, if applicable, (2), of subdivision (b).
(2) If the department finds that the jurisdiction's economic feasibility study does not meet the standards in paragraphs (1), (3), and, if applicable, (2), of subdivision (b), the jurisdiction shall have the right to appeal the decision to the Director of Housing and Community Development or his or her designee. The director or his or her designee shall issue a final decision within 90 days of the department's receipt of the appeal unless extended by mutual agreement of the jurisdiction and the department.
(3) If in its final decision the department finds that jurisdiction's economic feasibility study does not meet the standards in paragraphs (1), (3), and, if applicable, (2), of subdivision (b), the jurisdiction shall limit any requirement to provide rental units in a development affordable to households at 80 percent of the area median income to no more than 15 percent of the total number of units in a development until such time as the jurisdiction submits an economic feasibility study that supports the ordinance under review and the department issues a finding that the study meets the standards in paragraphs (1), (3), and, if applicable, (2), of subdivision (b).
(e) The department shall not request to review an economic feasibility study for an ordinance more than 10 years from the date of adoption or amendment of the ordinance, whichever is later.
(f) The department shall annually report any findings made pursuant to this section to the Legislature. The report required by this subdivision shall be submitted in compliance with Section 9795.
(g) The Legislature finds and declares that ensuring access to affordable housing is a matter of statewide concern and not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this section shall apply to an ordinance proposed or adopted by any city, including a charter city.

SEC. 3. *The Legislature finds and declares all of the following:*

(a) Inclusionary housing ordinances have provided quality affordable housing to over 80,000 Californians, including the production of an estimated 30,000 units of affordable housing in the last decade alone.
(b) Since the 1970s, over 170 jurisdictions have enacted inclusionary housing ordinances to meet their affordable housing needs.
(c) While many of these local programs have been in place for decades, a 2009 appellate court decision has created uncertainty and confusion for local governments regarding the use of this tool to ensure the inclusion of affordable rental units in residential developments.
(d) It is the intent of the Legislature to reaffirm the authority of local jurisdictions to include within these inclusionary housing ordinances requirements related to the provision of rental units.
(e) The Legislature declares its intent in adding subdivision (g) to Section 65850 of the Government Code, pursuant to Section 1 of this act, to supersede the holding and dicta in the court decision of Palmer/Sixth Street Properties, L.P. v. City of Los Angeles (2009) 175 Cal.App.4th 1396 to the extent that the decision conflicts with a local jurisdiction's authority to impose inclusionary housing ordinances pursuant to subdivision (g) of Section 65850 of the Government Code, as added pursuant to Section 1 of this act.
(f) In no case is it the intent of the Legislature in adding subdivision (g) to Section 65850 of the Government Code, pursuant to Section 1 of this act, to enlarge, diminish, or modify in any way the existing authority of local jurisdictions to establish, as a condition of development, inclusionary housing requirements, beyond reaffirming their applicability to rental units.
(g) This act does not modify or in any way change or affect the authority of local jurisdictions to require, as a condition of the development of residential units, that the development include a certain percentage of residential for-sale units affordable to, and occupied by, households with incomes that do not exceed the limits for moderate-income, lower income, very low income, or extremely low income households.
(h) It is the intent of the Legislature to reaffirm that existing law requires that the action of any legislative body of any city, county, or city and county to adopt a new inclusionary housing ordinance be taken openly and that their deliberations be conducted openly consistent with the requirements of the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).
(i) Except as provided in subdivision (e), in no case is it the intent of the Legislature in adding subdivision (g) to Section 65850 of the Government Code, pursuant to Section 1 of this act, to enlarge, diminish, or modify in any way the existing rights of an owner of residential real property under Sections 1954.50 to 1954.535, inclusive, of the Civil Code and Sections 7060 to 7060.7, inclusive, of the Government Code.