



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: October 6, 2020

TO: Mayor and Councilmembers

FROM: Planning Division, Community Development Department

SUBJECT: Discussion Of Affordable Unit Requirements For Rental Housing Projects

RECOMMENDATION:

That Council receive information regarding existing City and State requirements to provide affordable units in certain rental housing projects, and provide direction to staff regarding any potential local amendments.

DISCUSSION:

On July 28, 2020, City Council introduced ordinance amendments affecting the City's Average Unit-Size Density (AUD) Incentive Program. During its discussion about amending multi-unit residential regulations and incentivizing higher density housing in the Central Business District, Council directed staff to agendize a future discussion of local mechanisms to require affordable housing units as part of new rental housing projects (also referred to as "inclusionary housing").

Existing City Requirements

The City has had inclusionary housing requirements for ownership projects since 2004. This ordinance, Santa Barbara Municipal Code (SBMC) Chapter 30.160, requires projects with ten or more ownership units to provide at least 15 percent of the total units for sale to middle-income households¹ or, in the case of subdivisions intended for the construction of single-unit homes, to upper-middle income-households². Applicants of projects with fewer than ten, but more than one, units may either provide at least one owner-occupied middle-income restricted unit or pay an in-lieu fee for deposit into the City's Affordable Housing Inclusionary Fund. Since 2004, the inclusionary housing ordinance for ownership projects has resulted in the construction of 31 units restricted for sale to middle-income households and a current total of \$683,425 in the Affordable Housing Inclusionary Fund.

¹ Earning 121 to 160 percent of Area Median Income (AMI)

² Earning 161 to 200 percent of AMI

In July 2019, City Council adopted inclusionary housing requirements for rental projects (SBMC section 30.150.110). For all projects developed under the AUD Program with ten or more rental units, at least ten percent of the total units on site shall be offered at an affordable rent and restricted for occupancy by moderate-income households³. For projects with fewer than ten and more than four rental units, the applicant has the option to either pay an in-lieu fee to the City that is equal to an amount specified by SBMC section 30.150.120.B, or to construct and offer one of the residential units on site to moderate-income households. Since adoption of the inclusionary housing ordinance for rental projects in July 2019, two units are under construction that must be rented at rates affordable to moderate-income households; 15 additional moderate-income units will be constructed if three pending applications are ultimately approved and constructed.

Inclusionary Housing Requirements and Density Bonus Incentives

State Density Bonus Law (Government Code section 65915) provides a development incentive in the form of a “density bonus” to developers who voluntarily agree to construct and deed restrict a certain percentage of rental units to households that are low⁴ or very low⁵ income. Density bonus refers to an increase over the maximum allowable residential density on a particular parcel. For example, under State Density Bonus Law (SDBL), a developer who agrees to construct ten percent of the rental units in a development as affordable to low-income households is entitled to a 20 percent increase in density above what the City’s zoning ordinance allows for that parcel.

Developers can take advantage of SDBL to construct larger and higher-density projects; however, the moderate-income-restricted units required under the AUD Inclusionary Ordinance cannot be used to satisfy the low to very low income rental units required under SDBL. The AUD Inclusionary Ordinance specifically requires that affordable units be deed restricted at moderate income levels in order to better meet Regional Housing Needs Assessment (RHNA) requirements. As noted in the Council Agenda Report introducing the AUD Inclusionary Ordinance, the City is substantially deficient in the production of moderate income units due to a lack of financial assistance programs or local mandate requiring housing at that income level. The City’s RHNA assumed that 820 moderate income units should be constructed by 2023; since 2015, only four have been constructed. As a result, the focus and drive of the AUD Inclusionary Ordinance was to add an affordability component that required construction of much needed moderate income units.

Not allowing SDBL low to very low income rental units to satisfy the City’s inclusionary unit requirement has drawn criticism from some applicants who allege that this is contrary to state law. The City Attorney’s Office has reviewed the AUD Inclusionary Ordinance and believes that the City’s AUD Inclusionary Ordinance is compliant with state law and the City is not compelled to satisfy its moderate income inclusionary requirements with low-

³ Earning 81 to 120 percent of AMI

⁴ Earning 51 to 80 percent of AMI

⁵ Earning 31 to 50 percent of AMI

income units. There is existing case law surrounding a local agency's application of SDBL to inclusionary housing; however, the inclusionary ordinance being challenged in that case was slightly different from the City's ordinance. While the City Attorney's Office believes there is a strong argument to be made that the City's AUD Inclusionary Ordinance requiring that units be deed restricted at moderate income levels is compliant with state law, it should be noted that this question has not yet been litigated.

Apart from arguing that the City's enforcement of its inclusionary ordinance is unlawful, some applicants have also contended that the ordinance is vague with respect to whether or not SDBL units can be used to satisfy the City's inclusionary requirement. While section 30.150.110.A. of the Inclusionary Ordinance clearly provides that units "shall" be "restricted for occupancy at moderate income," applicants have pointed to section 30.150.110.C., which provides that applicants can voluntarily restrict units to less than moderate income levels. However, since the intent of the AUD Inclusionary Ordinance was to create more moderate income units to meet the City's RHNA, staff interprets this section to require the units to be deed restricted at moderate income levels per section 30.150.110, but then to allow the units to be voluntarily rented at lower income levels. If Council decides to maintain the status quo and not allow low to very low income units to satisfy its moderate income inclusionary requirements, staff recommends that any future amendments to the City's AUD Inclusionary Ordinance include language to make this explicitly clear to applicants and the public.

Economic Feasibility of Inclusionary Housing Requirements

In 2017, Assembly Bill 1505 amended Government Code section 65850 and authorized local agencies to require rental housing projects to include affordable units. Prior to that legislation, it was only lawful to require affordable units in ownership housing projects. AB 1505 also eliminated the requirement for a supporting economic feasibility analysis of low and very low income inclusionary housing units, provided that the inclusionary requirement does not exceed 15 percent of the total number of units in the development. State law does not require a supporting economic feasibility analysis for inclusionary housing requirements if the units are rented at rates affordable to moderate, middle, or upper middle income households, which is the case for the City's existing ordinances.

Although not required by state law, the Council adopted the 2019 AUD Inclusionary Ordinance based in part on an economic feasibility analysis prepared in 2017 and updated in 2019 by Keyser Marston Associates. That updated study concluded that a ten percent inclusionary requirement for rental projects, restricted to moderate income households, was economically feasible at Priority Housing Overlay densities (maximum of 63 units per acre) and would not constrain the production of multi-unit housing. The study also concluded that a 15 percent inclusionary requirement (restricted to moderate income households) was slightly marginal at Priority Housing Overlay densities and might not be feasible for a developer to realize a reasonable profit. An updated study might reach a different conclusion based on several changed circumstances, including a recent amendment to the AUD Program that makes on-site parking optional in the Central Business District.

The Council could increase the inclusionary requirement for rental housing projects without a supporting economic feasibility analysis if the inclusionary units are restricted to moderate, middle, or upper middle income households. If the Council wants to increase the inclusionary requirement to more than 15 percent of total housing units in a project, staff recommends preparing a new economic feasibility analysis to determine the point at which inclusionary housing requirements might make a development economically infeasible. The estimated cost of such a study is approximately \$60,000.

ENVIRONMENTAL REVIEW:

This discussion and any preliminary direction to staff is exempt from environment review pursuant to California Environmental Quality Act Guidelines section 15262, as it is limited to a potential feasibility or planning study for possible future actions that the agency has not yet approved, adopted, or funded.

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