INCLUSIONARY ZONING:
POLICY CONSIDERATIONS AND BEST PRACTICES

CALIFORNIA AFFORDABLE HOUSING LAW PROJECT
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Because neither the private market nor the public sector has as yet provided the levels of housing affordability necessary for the maintenance of a balanced community, local government must take an active lead to insure an adequate supply of housing for residents and working people of all income levels.

S Excerpt of Findings of the City of Napa, Ordinance 01999/20 adding Chapter 15.94

I. INTRODUCTION

Like Napa, many Bay Area governments are taking an active lead to promote the development of housing affordable to lower income families in their communities. Having survived a multi-pronged constitutional attack, the Napa inclusionary zoning ordinance provides an excellent benchmark for determining the critical components of a successful inclusionary program from a legal perspective. Many additional policy considerations must be addressed by local governments, however, in designing an ordinance that will advance their goals to include comparable, affordable homes throughout their communities.

This report reviews some of the key features of a successful inclusionary ordinance, discusses several of the policy considerations and issues that need to be addressed in establishing the policy, and offers some recommendations based on a review of many of the "Best in the Bay" inclusionary programs. Throughout the report, we also highlight several (but certainly not all) of the "best practices" different communities have employed to ensure their programs will substantially advance the fundamental goal to produce and maintain affordable homes for lower income families.[1]

II. THE BASICS RE IMPLEMENTATION: AMEND HOUSING ELEMENT & ADOPT AN ORDINANCE

Jurisdictions have generally implemented inclusionary requirements in three ways:

T Amendment of the housing element and adoption of an ordinance,
X Amendment of the housing element with project by project implementation, or
X A general statement of local housing policy with project by project implementation.

[1]We do not believe a "model" ordinance exists, nor could it given the varying needs and resources of different communities. We point to particular provisions of different ordinances only as a guide and only with respect to the issues those provisions address.

Most communities describe the basic parameters of the inclusionary obligation in a program in the housing element of their general plan. The program prescribes implementation of the obligation through the adoption of an ordinance. This is the preferred method for several reasons. It is the most legally defensible mechanism, it facilitates maximum compliance, it provides the greatest certainty for developers, and it enables conformance with housing element law.

Legal Protection. As explained in greater detail in the companion legal memorandum, a land use or zoning regulation enacted as legislation with general applicability to all developments is better protected from a legal attack under the takings clause of the state and federal constitutions than is a general statement as policy that can be applied on an *ad hoc* basis by local staff. Inclusionary requirements applied selectively on a project-by- project level could be subjected to the "heightened scrutiny" test if challenged in court. Under this test challengers would argue that the local government must demonstrate that the requirement is "roughly proportional" to the need for affordable housing created by the development. While there are good arguments that this is not the appropriate standard of review even for inclusionary obligations developed at the project level, the likelihood that a court would apply the heightened standard increases substantially if the obligation is vague or capable of selective application.

Summary housing element programs alone or other generalized local housing policy statements are similarly vulnerable to attack as violations of the constitutional right to due process and equal protection. Leaving to staff the particulars of application and implementation can result in arbitrary or unequal enforcement.

The best way to achieve the specificity and across- the- board application sufficient to survive legal attack is by adoption of an implementing ordinance. Although a housing element policy or program may apply across- the- board, the level of generality regarding requirements and implementation is usually too great to achieve the preferred specificity. An ordinance, on the other hand, affords the community the ability to provide exemptions for true hardship and alternative means of compliance, as well as clear implementation procedures. (Of course, even an ordinance that did no more that reiterate general policy language could lack sufficient specificity.)

Greater Compliance/Increased Performance. An implementing ordinance that provides clear obligations, standards for compliance and a system for monitoring compliance is a great advantage to local government. It helps ensure that the community will receive the benefit of the inclusionary requirement from all developments by making the inclusionary component part of the locality's zoning laws and development application process. It also will set out the mechanism for the community to verify compliance, including substantiation of the continued affordability of the housing it has produced.

Increased Certainty for Developers. Developers may grumble because of inclusionary requirements, but they will grumble more (and more likely in court) if the requirements do not clearly unfold until *after* they have submitted their application for any necessary development approvals or permits. The certainty that a well written ordinance enables developers to assess in advance of the application process the particular compliance options that are available. Correspondingly, it will substantially decrease the possibility of subsequent disputes and misunderstandings. And that is a plus for all concerned.

Conformance with Housing Element Law. The Department of Housing and Community Development (HCD) will usually ask the local jurisdiction to analyze an inclusionary requirement as a possible governmental constraint under Government Code §65583(a)(4). The analysis must demonstrate that, on balance, the inclusionary obligation will not unduly constrain the development of affordable housing in the jurisdiction. Consequently, the existence of clear and uniform standards and procedures for application of the inclusionary requirements, exemptions, incentives and alternatives make it much easier to show that the requirements will result in an increase in the amount of affordable housing in the jurisdiction and therefore actually overcome other governmental and non-governmental constraints to development. Through a reporting and compliance monitoring mechanism, the ordinance can facilitate compilation of an organized, readily accessible source of data that can be used to demonstrate the effectiveness of the obligation in future housing elements.

Housing Element Pointers. The housing element policy and program language should set forth specific parameters in at least the following areas:

- The *percentage* of units that must be affordable in each income category
- The *duration* of the affordability requirements
- The *alternatives* to production of units (*i.e.* in lieu fees, donation of land)
- The *date* by which the community will adopt an implementing ordinance

Ordinance Basics. A good ordinance should include a clear statement of:

- The *intent and purpose* of the ordinance
- *Findings* demonstrating need for the ordinance
- Definitions of key terms (e.g., income levels, affordability, etc.)
- Specific *standards* for determining compliance
- Eligibility for exceptions or alternatives
- Step by step *procedures* for applying its provisions
- A system for *enforcing* and *monitoring* compliance

Best Practices: Benicia, Healdsburg, Napa, and Sacramento do a good job of covering several of these components.

III. KEY FEATURES AND RECOMMENDATIONS

To reach maximum effectiveness and meet the ultimate goal of "inclusion" in the community, inclusionary policies should require as many on-site, comparable affordable housing units as possible. These practices lead to sound planning by encouraging income-integrated communities and assisting in preventing the common, albeit unfounded, stigma often attached to affordable housing. The preliminary issues that should be addressed in accomplishing this goal include: (1) the extent to which the inclusionary obligation will be applied – how many units will be required; when will they be produced; what affordability levels are targeted; the size or type of developments subject to the ordinance; (2) the term the units will be required to remain affordable; and (3) features of the units to be produced (size, location, amenities).

EXTENT OF THE "INCLUSIONARY OR PRODUCTION REQUIREMENT"

- *Strive to achieve inclusionary requirements of at least 20% of new developments.*
- *Target very low income and extremely low income households.*
- *Extend the inclusionary obligation to all new residential developments and apply it equally.*
- *Require inclusionary units to be produced before or concurrently with market rate units.*

Inclusionary zoning ordinances typically require a certain percentage of all new residential development to be affordable to particular income categories. In the Bay Area, the 'total' inclusionary requirements range from 10% to 20%. Inclusionary zoning ordinances also should specify, by income category, the economic segments for whom the units must be affordable, *e.g.*, where the total requirement is 20%, the municipality may require that 10% of those units be affordable to and occupied by low income households and 10% for very low and extremely low income households. Most jurisdictions follow state income definitions for moderate, low and very low income households which are the same as HUD definitions.[2]

[2]See 25 Cal. Code of Regulations §§6930 (moderate), 6928 (low), 6926 (very low); *see also* Health & Saf. C. §50106 for a definition of extremely low income which has not yet been included in the regulations. The Department of Housing and Community Development (HCD) annually publishes the updated HUD income limits referred to in the regulations on its website. Thus, current income limits by county, broken down for varying household sizes, are available at www.hcd.ca.gov. Many public

- Moderate: 81-120% of Area Median Income (AMI)
- Low: 51-80% of AMI
- Very Low: 50% or less of AMI
- Extremely Low: 30% of AMI

Require More Units. According to *Out of Reach 2002* (NLIHC), *seventy percent* of the top ten least affordable communities in the nation are in the San Francisco Bay Area.[3] Though a number of communities have begun increasing the requirement to 20%, many Bay Area jurisdictions remain at only 10%. Given the existing affordable housing crisis in the Bay Area, and the inherent delays associated in producing affordable housing, all Bay Area jurisdictions should consider increasing their inclusionary requirements to at least 20% to assure the ordinance will assist them in meeting their regional housing needs. Moreover, California's density bonus law is triggered if 20% of the total units are affordable to low income households or 10% are available to very low income households. *See* Govt. Code §65915. The state density bonus permits a developer to secure a 25% density bonus. Thus, increasing the inclusionary obligation and targeting lower income units can significantly reduce any loss of profit to the developer.

Target Very Low and Extremely Low Income Households. When adopting inclusionary zoning ordinances, many municipalities properly cite to the housing shortage for very low and low income households within their jurisdiction as a fundamental reason to foster the development of much needed housing. As discussed in our companion report, Inclusionary Zoning - Legal Issues, a municipality's regional housing needs assessment, housing element, and consolidated plan should inform the policy decisions with respect to income targeting.

Several jurisdictions target too many of the inclusionary units to moderate income households. If an inclusionary requirement is set at 20% (10% moderate, 5% low, and 5% very low), but the findings set forth a primary goal of producing low and very low income households because that is where the need is greatest, targeting the inclusionary units for moderate income households is inconsistent with the goal. Moreover, homes affordable to moderate income households are more likely to be produced by the market than are very low income units and far more likely than homes affordable to extremely low income families.

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funding sources also rely on state "income" and "affordability" definitions in providing funds for affordable housing development. It is therefor recommended that jurisdictions also include the state definitions of affordable housing cost and affordable rent in their ordinance to enhance consistency with requirements of public funds. *See* 25 Cal. Code of Regulations §§6924 (affordable housing cost); 6922 (affordable rent).

[3]National Low Income Housing Coalition, Rental Housing for America's Poor Families: *Farther Out of Reach than Ever*, 2002, available at www.nlihc.org.

Similarly, many first-time homebuyer and other home ownership programs are more readily available to moderate income households offering greater opportunities to meet moderate income housing needs. The difficulty of producing very low and extremely low income units and the failure of the market to address this need, absent programs like inclusionary zoning, warrant targeting inclusionary programs to very low and extremely low income households to the greatest extent possible.

If a municipality does not sufficiently and *specifically* target its ordinance to require extremely low and very low income units, those units will not be produced. For example, a non-specific ordinance that permits the inclusionary obligation to be met with extremely low, very low, low, *or* moderate income units will be ineffective to produce units on the lowest end. (Production of the market rate units will cost the developer less since they can be sold or rented at higher prices than the lower income units.) One effect is that very low income residents and workers will simply be priced out of the area. The current area median income in Oakland is $74,500.[4] Thus, a family of four earning less than $37,250 is considered very low income. Many families in this income range likely work in the community – as child care workers, retail salespeople, medical assistants, and the like.[5] Another effect is that a key purpose of the ordinance – premised on a housing shortage which critically impacts very low income households – will not be served.

Recognizing that developer opposition to producing very low and extremely low income units exists, a municipality can ease the cost to the developer by considering 'income targeting' incentives (in addition to many other incentives) to encourage the creation of very low and extremely low income units. First, as discussed above, increasing the very low income requirement to at least 10% will result in a state density bonus of 25% which in turn can reduce the cost to the developer of meeting the inclusionary requirement for the lower income units. In addition, the ordinance could provide for a credit against part of the moderate income obligation in return for producing a greater number of very low or extremely low income units. Thus, if a city requires 20% of the housing in a development to be moderate, low and very low income (10/5/5), but a developer exceeds the 5% very low income requirement, the 10% obligation on the moderate end might be proportionately reduced.

Apply the Ordinance Equally to All New Residential Development. Several jurisdictions apply their inclusionary ordinances across-the-board to all new residential development. Others exempt some residential developments, in whole or in part, based on various 'threshold triggers'. For example, some municipalities apply the ordinance only to developments above a particular number of units; others apply it only to high density developments'; and at least one Bay Area municipality splits the inclusionary obligation and its income targeting requirements between for-sale and rental developments. For the reasons

[4]http://www.huduser.org/datasets/il/fmr02/hud02ca.pdf.

[5]*See, e.g.*, NPH, *San Francisco Bay Area Housing Crisis Report Card* (2002) at 7.

discussed below, we strongly recommend that the ordinance be applied equally to all residential development with variations only on the manner in which the obligation can be met by smaller developments.

Number of Units 'Thresholds'. Some municipalities have a threshold number of units above which the inclusionary requirements are triggered. Eleven Bay Area ordinances include thresholds ranging from 2 units to 30. The argument advanced for establishing threshold numbers is to increase the feasibility of small developments. The primary problem with such provisions is the loss of units which might otherwise assist the community in achieving its affordable housing goals. In addition, developers may tend to build developments just below the threshold, particularly where the threshold is as high as 30. On the other hand, a development of between one and ten units will result in fractions of units rather than complete units. Requiring in-lieu fees (discussed below) for smaller developments of up to 10 units can address the issue of infeasibility while assuring that all developments assist the community in meeting its goals. Thus, we recommend that the inclusionary obligation extend to all residential development, and that municipalities consider in-lieu fees and other developer alternatives for smaller developments.

Density Based 'Thresholds'. One Bay Area ordinance imposes a threshold based on the permitted density applicable to the development (*e.g.*, the ordinance only applies to areas or sites zoned for high density development). Such a requirement is akin to imposing greater requirements on multifamily than single-family developments, may serve to encourage only low-density developments, and defeats a fundamental purpose of inclusionary zoning – the dispersal of housing affordable to all income categories throughout the community. Accordingly, we recommend against a 'density-based' threshold.

Rental vs. Ownership 'Thresholds'. A similar issue involves whether the ordinance extends to rental developments, ownership developments, or both and to what extent. In one Bay Area jurisdiction, the ordinance imposes an inclusionary obligation on ownership developments to produce only moderate income units, and requires rental developments to produce low and very low income units. Structuring an ordinance in this way may result in fair housing violations.

For example, census data reflects that many single female-headed households fall into very low and low income categories for the simple reason that such households frequently have only one income. An ordinance which requires the production of very low and low income units only in *rental* developments may severely restrict housing opportunities for single female-headed households and their children if most of the housing being developed is ownership housing. Other protected classes, including persons with disabilities, also are negatively impacted by such an ordinance. A fundamental purpose of the Fair Housing Amendments Act of 1988, for example, is to prohibit land use and zoning policies or practices that discourage or obstruct housing choice opportunities for persons with disabilities. *See* 42 U.S.C. §3601 et seq. Many persons with disabilities have lower fixed incomes as well as the need for physically

accessible units. Thus, an ordinance which requires only *rental* developments to produce lower income units will likely obstruct housing opportunities for persons with disabilities.

Finally, requiring only rental developments to produce the lower income units also defeats the goal of dispersing affordable housing units throughout the community. Promoting affordable for-sale units for the low and very low income families (not just moderate income households) can help to promote community stability and expand housing opportunities.[6] While it will be more costly to produce single-family "ownership" homes and deeper subsidies will be necessary to assure that such ownership units are affordable to lower income families, some housing programs, such as the Section 8 home ownership program, exist to enable lower income families to purchase homes that are affordable to low and very low income households. An additional option is to permit developers to meet inclusionary requirements by producing different types of housing within the same development (*e.g.*, multifamily rental units within a single-family development). As discussed more fully below, such policies encourage the development of mixed income communities.

For these reasons, the 'income targeting' requirements of an inclusionary zoning ordinance, should be equally applied throughout the community regardless of whether a development involves rental or ownership units.

Require Prior or Concurrent Production of Inclusionary Units. An important issue which should be spelled out in the ordinance is the timing requirement for production of the inclusionary units versus development of the market rate units. Most jurisdictions require the inclusionary units to be produced at least concurrently with the market rate units -- if not before. Others sometimes permit "phasing" of inclusionary units for larger developments. 'Phasing' means that a developer is permitted to stagger production of the inclusionary units, producing only a portion of the total inclusionary obligation with each phase of the market rate development. Phasing impedes a community's ability to meet its regional housing needs due to what could be considerable construction delays. Worse, permitting phasing or other postponement of the inclusionary obligation can result in a developer walking away from the development after completion and sale of many market rate units, but few or no inclusionary units. Though the jurisdiction may well (and should) have an enforceable development agreement, enforcement of the inclusionary obligations through a breach of contract action will not necessarily produce the desired results -- actual *production* of the inclusionary units – and most certainly not within the time frame necessary for a jurisdiction to comply with housing element law mandates. A better practice is to require the inclusionary units to be developed before issuance of the building permits for the market rate units.

[6]For more information on the benefits of home ownership, see chapter 2 of Freddie Mac, Financing Affordable Homeownership Programs: A Mortgage Financing Primer for Affordable Housing Providers.

Best Practices: San Mateo County

Several Bay Area communities now require 20% of all residential development to include affordable units. San Mateo County imposes a low threshold (5 or more units) and imposes a 20% inclusionary obligation, targeting 10% for low income and 10% for very low income.

TERM OF AFFORDABILITY

- *Require units to remain affordable for the longest feasible time -- and not less than 55 years*

In order to ensure that affordable units remain affordable to the same income population for whom they were targeted, inclusionary zoning ordinances must include provisions for maintaining affordability for a specified period. These restrictions often come in the form of deed restrictions, resale controls and rental restriction agreements. If no enforceable restrictions are created, the ordinance benefits only the initial renter or purchaser and, therefore, may be vulnerable for failure to substantially advance a legitimate state interest.[7]

In the Bay Area, the length of affordability ranges from no restrictions (with respect to for-sale units in one jurisdiction) to 'in perpetuity' for all units. In one jurisdiction, the affordability requirement is "for as long as practicable" which is virtually unenforceable, vulnerable to attack as vague, and not likely to advance a legitimate interest.

It makes little sense to have a short period of affordability given the goal of creating lower income homes, the ongoing need to meet regional housing needs allocations, and the considerable time, effort and resources expended to achieve affordable housing goals. Moreover, thousands of subsidized housing units that were produced 30 or more years ago have already converted (or are at risk of conversion) to market rate precisely because the term of affordability (many of them 30 years) was too short. The California Community Redevelopment Law currently requires rental units to remain affordable for "the longest feasible time and not less than 55 years"; owner-occupied units are restricted for a minimum of 45 years.[8] Inclusionary zoning ordinances should require no less.

[7] *See Yee v. City of Escondido* (1992) 503 U.S. 519.

[8] Health & Safety Code § 33487(a), as amended by SB 701, §19 (Sept. 2002).

Fortunately, several Bay Area jurisdictions agree and require units to remain affordable "in perpetuity". Some jurisdictions define "in perpetuity" to mean that a unit shall remain affordable for the 'life of the project' and provide a corresponding definition of the 'life of the project' (e.g., 50 years, 99 years, etc.). Others achieve lengthy affordability terms through resale restrictions that essentially "reset the clock" for the affordability term with each subsequent sale. Thus, for example, a jurisdiction may have an affordability term of 55 years, but with each sale, the 55 year term begins anew and must be recorded prior to close of escrow. Such provisions assure that an initial purchaser does not obtain a 'premium price' at the time of purchase and then receive a windfall by selling the unit at market rate shortly thereafter. More importantly, an affordability term that renews with each sale assures that the affordable unit will not convert to market rate.

Best Practices:
Half Moon Bay and Pleasanton require affordability in perpetuity.

ON-SITE UNITS -- LOCATION, SIZE AND AMENITIES.

- ***T*** *Strive for on-site development*
- ***T*** *Affordable units should be comparable to market rate units*
- ***T*** *Discourage 'illusory' accessory units*

To meet their goals of 'inclusion', municipalities should encourage developers to construct and disperse inclusionary units on-site and to encourage the same size, outward appearance and basic amenities as market-rate units. Moreover, local jurisdictions should discourage the frequent use of alternatives, such as accessory dwelling units, unless necessary to achieve the ultimate goals of the inclusionary housing program.

Dispersing Affordable Units On-Site Throughout the Development. Inclusionary zoning practices are intended to ameliorate the results of past exclusionary practices. Ironically, inclusionary zoning provisions may actually result in exclusionary effects if the ordinance does either of the following: (1) permits the development of "inclusionary" units in other areas outside the development boundaries, also known as "off-site" housing, or (2) allows the developer to locate all of the affordable units in a certain building, complex or area of the residential project. In some situations, these exclusionary practices may be discriminatory under state law which prohibits any governmental land use action (including the enactment or administration of ordinances) that denies rental housing or home ownership opportunities to any individual or group of individuals if the action is taken because of (1) the race, familial status, age or

disability, among other things, of the individual or group; (2) the method of financing of a residential development or (3) the *intended occupancy* of any residential development by persons or families of low, moderate or middle incomes. Cal. Gov't Code §65008 (2002). More information about the pros and cons of permitting off-site housing is discussed below.

On the other hand, by requiring inclusionary units to be developed "on site" and mandating dispersal throughout the development, planners can achieve income integration while avoiding the isolation, poverty concentration and "ghettoization" which has historically plagued lower income housing. In addition to dispelling the stigma and overcoming the recognized exclusionary effects of past zoning practices, on-site inclusionary policies create healthy, integrated and diverse communities. When housing units for low and moderate households are mixed with market-rate units in the same development, housing becomes available for a number of different households including, among others, first time homeowners, single parent families, people with disabilities and seniors. These households, if on limited incomes, have been traditionally excluded from market-rate developments.

The social and economic benefits resulting from income-integrated communities are substantial. Lower -income families are provided increased access to employment, public and social services, better school systems and health care, increased public transportation and transit centers and more structured "after-school" activities for children. Income integration provides local businesses with a larger workforce and further promotes new business. In addition, smart growth principles dictate that on-site development of inclusionary units is usually necessary to achieve regional housing needs in areas with limited land supply.

Even if solely a single family residential development, much can be gained by requiring affordable rental housing on-site in the development. Although rental housing in these developments may have to be "clustered" to achieve affordability, the multi-family "clusters" can still be appropriately dispersed throughout the development. Retaining flexibility regarding this issue can help further affordable housing opportunities.

Best Practices: East Palo Alto, Davis, Napa:

East Palo Alto (EPA) found that "the need for affordable housing in the City is acute" and as a result, many long term residents were being forced to move away from the area. Accordingly, EPA's ordinance mandates that a minimum of 20% of all new residential units in residential projects must be affordable. Moreover, the City's ordinance requires all inclusionary units to be developed on-site unless the residential development contains four or fewer units. In those cases, the developer is permitted to pay a substantial in lieu fee upon issuance of the building permits for the market-rate units. Similarly, in the City of Davis, inclusionary units must be constructed on-site and a mix of unit sizes must be dispersed throughout the development. The dispersal efforts must be approved by staff. In addition, affordable housing units "cannot be clustered together in any building, complex or area of the development." Napa permits clustering of affordable housing units if it "furthers affordable housing opportunities."

Inclusionary Units Should Harmonize with Market-Rate Units. Another important factor in avoiding stigmatization of affordable housing is to ensure that mandated inclusionary units are the same size and have the same outward appearance of the market-rate units in the development. These requirements should be applicable to both single family dwellings and multi-family developments as well as home ownership and rental units. In addition to dispersing inclusionary units throughout the development, the units should also be built prior to, or at least simultaneously with, the market rate units. Strict production time lines are imperative to ensure that the developer complies with the affordability and design requirements of the inclusionary program. Construction of affordable units prior to the market-rate units avoids both neighbor and community opposition and ordinance enforcement issues.

The ordinance should also set comparability requirements to ensure that the affordable units cannot be distinguished, or publicly identified, from the market-rate units. First, equitable disbursement throughout the development helps obtain the desired anonymity of the affordable units. Other mandatory features are necessary, however, to fully meet the goal of obtaining comparable units. Optimal comparability requirements include identical bedroom sizes, similar square footage requirements and the same outward design appearance of both the inclusionary and the market-rate units. At a minimum, the inclusionary units should produce the same number of bedrooms as the market rate units even if the square footage of the units is reduced for economic feasibility. For example, if 25% of the market rate units in the development are 3 bedroom units, 25% of the inclusionary units are required to be 3 bedroom units with similar square footage and the identical architectural design.

A jurisdiction may wisely utilize inclusionary zoning to mitigate any difficulties it encounters in meeting special housing needs identified in its housing element. For example, it may be particularly difficult for certain lower income individuals, such as people with disabilities, or extended family households to find accessible rental housing of an adequate size. Some jurisdictions have addressed special housing needs in their inclusionary zoning programs by requiring a certain mix of affordable units by size as illustrated in the Benicia ordinance.

Best Practice: Benicia

Benicia's ordinance requires that at least 10% of the units in new residential housing developments are affordable to low (up to 60% of median income) and very low income households. With limited exceptions, the inclusionary units must be developed on-site and constructed concurrently with, or prior to, the construction of the market rate units. Moreover, all inclusionary units must be dispersed within the development and "shall be comparable to the design of market rate units in terms of number of bedrooms, appearance, materials and finished quality." At a minimum, however, 5% of the inclusionary units must be four-bedroom units, 25% must have three bedrooms and 40% of the inclusionary units must have at least two bedrooms. The remaining

inclusionary units may be of any bedroom size category; however, a minimum of 20% of the remaining inclusionary units must have at least one bedroom.

Inclusionary Units Should Retain the Same Basic Amenities as the Market-Rate Units. In addition to size and location, inclusionary units should also possess the same basic amenities as the market rate units in the development. Again, these requirements serve to discourage the stigma and "ghettoizing" of the affordable units. The only exception to these requirements should be a relaxation of luxury amenities provided in estate or similar type housing.

Relaxation of amenity requirements also should be avoided if possible. However, it is recognized that some requirements imposed on the market-rate units may be extraordinarily burdensome. For example, parking requirements for the market-rate units may exceed the needs of lower income households who may, as a general rule, have less vehicles than richer families. Similarly, three or four car garages may be an unnecessary amenity for affordable units. The municipality should retain flexibility to lessen such requirements as necessary to further affordable housing opportunities. Indeed, the local government should retain the flexibility to encourage developers to develop *additional* affordable units if possible. For example, the developer may develop more affordable housing on the excess land saved from relaxing the 3-car garage requirements for inclusionary units.

On the other hand, some amenities cannot be reduced without affecting the quality of the housing unit. Municipalities should mandate comparable infrastructure, including sewer and water systems, and building materials for both affordable and market-rate units. Permitting a reduction of quality in these types of amenities would again distinguish the affordable units in the residential project.

Best Practice: County of Napa.

Quality materials, design comparability and appropriate unit size are important factors in inclusionary planning. The County of Napa requires that all affordable units developed as a result of its inclusionary zoning ordinance comply with these mandates. The ordinance also requires that the affordable units are comparable in the number of bedrooms, exterior appearance and overall quality of construction to the market rate units in the same project. The ordinance provides the City with the discretion, under certain circumstances, to permit a reduction in square footage and interior features in the affordable units which must be approved by staff. However, approval cannot be given unless the affordable units are developed with "good quality" materials and are consistent with contemporary standards for new housing. Napa also requires affordable units to be dispersed throughout the project but permits clustering, with approval, when it "furthers affordable housing opportunities."

Limiting Use of Accessory Units to Meet Inclusionary Obligations. A common form of housing in some communities is the siting of individual housing units that are either attached to, or included within, a single family dwelling (SFD). This type of housing is known as accessory units, "granny units", secondary units or accessory dwelling units. In addition to being attached to SFDs, accessory units may also be detached from the main home but located on the same single family zoned parcel.

In general, the use of accessory units on single family lots is beneficial in developing and maintaining affordable housing stock. Local jurisdictions should encourage the general development of accessory units by established private property owners and amend any existing zoning policies that prohibit and discourage these units. (*See* Cal. Gov't Code §65852.2 (2002).)

However, the use of accessory units to *satisfy inclusionary zoning requirements should be prohibited or severely limited*. Accessory units are usually designed for single individuals (including seniors) or couples. As a result, by permitting these units as inclusionary housing, the municipality is limiting the availability of housing for people in need of larger homes or space, including families with children or people with live-in caregiver needs. Moreover, accessory units cannot usually achieve the same outward appearance, compatibility features and basic amenities, as discussed above, that will be used in market-rate units. Finally, because inclusionary accessory units are most likely to be attached to the market-rate housing sold in the residential project, it is unfeasible to require the new home purchasers to rent their property at a certain rent to a household with a specific income. At best, enforcement and monitoring of affordability for these units is difficult and often the accessory units in market rate housing are not rented at all.

The better practice is to avoid the use of accessory units entirely when implementing inclusionary zoning practices. Indeed, most municipalities recognize the ineffectiveness of using secondary units to meet inclusionary zoning mandates and do not provide for this option in their ordinances. A few jurisdictions, however, allow the use of accessory units to meet affordable housing requirements but limit the percentage of affordable units that can be met with accessory units.

IV. WAIVER OR REDUCTION OF THE INCLUSIONARY REQUIREMENT.

T *Establish a procedure and standards for requesting an exemption, reduction or alternatives to the inclusionary requirement*

As discussed in our companion report, Inclusionary Zoning: Legal Issues, the Napa ordinance survived the Homebuilders' constitutional challenge, in part, because it included a procedure under which developers could apply for a waiver or reduction of the inclusionary requirements. Thus, including a 'waiver' or 'exemption' provision in the ordinance is critical to assure that the municipality will avoid any unconstitutional application of the ordinance. Of course, the waiver provision should not be vague or

defeat the purposes of the ordinance. It should include clear and efficient procedures for a developer to seek an exemption or reduction in the inclusionary requirements, and it should spell out the *standards* the jurisdiction will apply in determining whether a waiver or reduction of the inclusionary requirement is warranted.

A strict standard will assure that waiver or reduction of the inclusionary requirement will be the *exception*, not the rule. For example, the best practice is to use the state and federal constitutional standard – as in Napa. Here, the ordinance would provide that the inclusionary requirements will not be waived or reduced unless the developer demonstrates that the requirement is unconstitutional (e.g., that no nexus exists between the inclusionary requirement and the development). Another example is to permit a waiver or reduction for economic hardship. However, the test for determining economic hardship also should be strict – that the developer would be deprived of all economically viable use of the land (*not* that the developer's profit margin would be reduced). The burden, of course, should be on the developer to meet the standard for a waiver or reduction by producing detailed, verifiable financial information showing costs, profits, etc. A successful ordinance also will include a clear and expeditious process for the developer to appeal the denial of a request for waiver or exemption.

Best Practice & Legal Award Winner: Napa

Napa's hardship waiver and reduction process, of course, paved the way for the adoption and implementation of successful inclusionary programs.

V. DEVELOPER ALTERNATIVES

As discussed in Section III, on-site development of inclusionary units serves the fundamental 'inclusionary' interests of the community, and is frequently the preferred route towards accomplishing that goal. Homebuilders' unsuccessful challenge against the Napa ordinance (discussed in Inclusionary Zoning - Legal Issues) demonstrates that 'developer alternatives' to on-site development of the mandated units are not required where the ordinance provides a procedure for the developer to claim a clearly established waiver or reduction of the requirement. That does not mean, of course, that a jurisdiction should not include alternatives to on-site development such as in-lieu fee options, land dedication, off-site development, transfer credits or combinations thereof. Indeed, development of all or some of the mandated units through other alternatives may be preferable. For example, where a developer opts to donate land and in-lieu fees that will result in deeper targeting or more affordable units than the ordinance would otherwise require, the alternative may well be acceptable. Thus, including developer alternatives in the ordinance can provide the flexibility necessary to substantially further the goals of the ordinance.

General Considerations.

- *Include alternatives to compliance options*
- *Selected alternative(s) must be sufficient to satisfy the inclusionary obligation*
- *Alternatives should be optional but subject to the consent of the municipality*
- *Require compliance with the alternative(s) prior to or concurrent with development of the market rate units*

Care should be taken, of course, to assure that the developer alternatives selected are reasonably related to and actually serve the underlying purpose of the inclusionary ordinance. They should not provide a loophole to the ordinance, but rather be made available where a developer can demonstrate the infeasibility of compliance with the on-site requirements or that it can exceed the compliance requirements if permitted to develop or donate a different site.

On the other hand, the alternatives selected must be sufficient to fully comply with the inclusionary requirement. Thus, if 20 very low income units must be produced under the inclusionary requirement, donation of a site that can *actually* only accommodate 10 lower income units is inadequate. (Though the zoning for the site may support the 20 units, other development standards such as parking, landscaping or setback requirements will likely reduce the number of units that can *actually* be produced.) To ensure compliance with the ordinance and avoid subsequent enforcement problems, the alternatives selected also should be met prior to or, at a minimum, concurrent with development of the market rate units.

Further, in order to assure that the in-lieu options are not construed as "exactions" (and therefore possibly subject to a higher level of scrutiny if challenged), the developer should have the *option* of selecting from the menu of features to meet the underlying inclusionary requirements. However, the municipality should retain the right to accept or reject the 'in-lieu' package offered by the developer if it is not substantially equivalent to the inclusionary requirement.

***In-lieu Fee Options*.** An in-lieu fee option permits the developer to pay an amount equivalent to the cost of producing the mandated units. The municipality should determine whether it will allow such fees for all developments, limit the option to smaller developments, and/or permit in-lieu fees for 'fractions' of units. The fee option may provide jurisdictions greater flexibility to assure that units are actually produced (*e.g.*, by providing funds for development of the units by non-profit developers). Coupled with that flexibility, however, is the obligation to *assure* that the units are produced.

The amount of the fees must be sufficient to cover the affordability gap for producing the units, *i.e.*, sufficient to provide the same number and type of inclusionary units, at the appropriate income levels, which would otherwise be required. Although the actual amount of the fees can be established by resolution, the ordinance must contain explicit language that explains the formula used to set those fees. That formula must

taken into consideration all factors related to the actual cost of producing the inclusionary units (e.g., land values, construction costs, financing, maintenance and management, maintaining long-term affordability, etc.). And, the formula should be supported with factual data as discussed in Inclusionary Zoning - Legal Issues. 'Flat fees' that apply across-the-board to all foregone units (regardless of the affordability level of the unit) or fees that are not annually adjusted would be difficult to justify (*e.g.*, the cost of producing lower income units would differ from moderate income units and factors such as land values may fluctuate). A careful analysis of the actual cost of producing the requisite units is critical to assuring that the goal of the ordinance – actual production of the units – can be met.

The fees also must be deposited into a fund that must be used to develop housing of equivalent affordability, and a time certain for the units to be produced should be established. Where fees are paid to comply with an obligation to produce very low income units, for example, the funds must be spent for very low income units, not low income or moderate units. Similarly, active steps should be taken to assure the in-lieu fees are expeditiously spent to produce affordable units (*e.g.*, a "request for proposal" process should be developed that encourages non-profit developers to access funds for the development of affordable units). Procedures and policies regarding administration of the 'in-lieu' fund also should be adopted to assure the funds are equitably and timely disbursed and expended for the intended purposes.

***Land Dedication*.** This option permits a developer to donate a site to the municipality on which the mandated inclusionary units can be built. Frequently, the municipality will then donate the site to a non-profit developer to produce the units. As with an in-lieu fee option, jurisdictions must preliminarily decide whether to allow land dedications as an alternative, and if so, to what extent (i.e., for all developments, smaller developments, etc.). If so, critical components of the option must require that the land is sufficient to assure the actual production of the inclusionary units at the requisite affordability levels.

The site must be physically suitable for development at the time of conveyance. It must be more than just a sufficient size with proper zoning to accommodate the requisite number of units. For example, it must already have access to water and sewer, be adequately zoned, have access to public services, etc. It should not have physical constraints that cause delay or increase construction costs (*e.g.*, it should not require grading) or be unsuitable for residential development (*e.g.*, contain toxics).

It also must be economically feasible for prompt development. In particular, consideration should be given as to whether sufficient resources are available to realistically assure production of the units within an expeditious time frame. And, of course, *a time certain* for production of the units should be a mandatory feature of any alternative that falls short of on-site development. "Economy of scale" also should be considered by the jurisdiction in determining whether to permit land dedication. Some non-profit developers indicate that sites that will accommodate less than 30 units are economically difficult to develop because funding sources strive to get "the biggest bang for their buck". Thus, larger developments are frequently far more competitive than smaller ones. Where sufficient funding is not readily available to

produce the units on an otherwise adequate site, however, a combination package that includes "in-lieu" fees and land dedication may be a satisfactory alternative.

Best Practice: Benicia.

Benicia's land dedication option is subject to the City's approval and imposes strict conditions. The site must be sufficient in size, suitably zoned, adequately graded, fully improved with infrastructure, and all development fees for the required units must be paid. In-lieu fees also may be required to assure sufficient funds to construct the units.

Off-site Development. Another alternative is to allow developers to construct the units on another site the developer either purchases or already owns within the jurisdiction. Some communities increase the inclusionary requirement for off-site development in order to encourage *on-site* development. Most jurisdictions also require the off-site units to be developed *before* issuing permits for the market rate development. A majority of Bay Area inclusionary ordinances allow some form of off-site development.

As with the land dedication option, the alternative site must accommodate the same number and type of inclusionary units as the inclusionary requirement imposed, and be suitable for such development. The main risk that a jurisdiction faces if it freely allows developers to opt for off-site developments is the propensity to create or perpetuate 'ghettoization' by producing all of the 'inclusionary units' in neighborhoods where land costs may be less expensive. Municipalities should carefully consider whether site selections of the developer will result in such clustering of many off-site 'inclusionary units'. Such results would likely directly conflict with the community's policies to disperse affordable housing. Accordingly, site selection issues should be carefully considered.

Similarly, off-site units should be targeted to meet the same goals that on-site development would achieve. When off-site developments are allowed, developers are frequently amenable to producing housing that will only accommodate senior households, recognizing that public approval of the off-site development may face less obstacles if the housing is targeted for seniors. Where the municipality's findings, goals, and evidentiary support for the underlying inclusionary requirement demonstrate, however, that the critical need is to produce housing affordable to families with children or people with disabilities, the 'politically expedient' developer proposal should be rejected as incompatible and inconsistent with the underlying requirement.

Best Practice:

Pleasanton's off-site option provides an example of some restrictions a municipality can include to avoid pitfalls in permitting off-site production of the units.

Transfer of Credits. Some municipalities allow developers to receive credits against their inclusionary obligations through other methods. For example, a developer may seek 'credits' for producing more inclusionary units on one of its other development projects to 'offset' its obligation on a different development. This option is similar to off-site development with similar risks. A developer also may request 'credits' for financial contributions to another development (*e.g.*, assisting a non-profit development to complete an affordable development). The proposal should be carefully evaluated to make sure that the non-profit development will produce units that are comparable to the developer's on-site obligation (e.g., the development should serve the same income levels as the inclusionary requirement mandates). Another credit option sometimes includes the rehabilitation of existing units and/or the conversion of market-rate units to affordable housing through financial subsidies. The same considerations that apply to land dedication and off-site development are relevant here. The key questions are whether the alternative offered will comply with the underlying inclusionary requirement, whether the alternative can be performed within a time certain, and whether it substantially furthers the goals of the ordinance.

If this option is included, the ordinance also should guard against 'double-counting' of inclusionary obligations between different developments (e.g., both developers cannot count the same unit toward their inclusionary obligations). While preservation and rehabilitation of existing units may be attractive in some limited circumstances, municipalities should be mindful of their goals to *increase* the supply of new, comparable affordable units throughout the community in considering such options. Likewise, although rehabilitation of existing units may occasionally provide an opportunity to improve and preserve existing lower income housing, a developer should never be permitted to permanently displace lower income households or to 'convert' lower income units for higher income households (*e.g.*, very low to moderate). Such a result would defeat the very goal of the ordinance – to produce *not eliminate* – lower income homes from the housing stock.

VI. INCENTIVES AND CONCESSIONS

- *Provide for waiver, reduction, or deferrals of fees for the affordable units to the fullest extent possible*
- *Significantly increase density bonus options to reduce development costs or financing gap*
- *Provide expedited application and permit processing*
- *Offer financial incentives*
- *Modify or reduce zoning and building standards*

An inclusionary zoning requirement that is workable for both the community and developers should provide for a comprehensive system of regulatory incentives and concessions. In addition to encouraging

developers to propose projects, the provision of a system of incentive/concessions buttresses the legal basis for inclusionary obligations by demonstrating that the requirements are balanced by benefits not otherwise available to a developer.

Regulatory incentives and concessions should exceed those mandated by California's Density Bonus Law– Government Code §65915. Under §65915, where a developer agrees to make a minimum percentage of units affordable for at least 30 years, it is entitled to a 25% increase in density and at least one additional incentive, absent a written finding that the bonus or incentive is not required to render the units affordable.[9] Some analyses have shown that the provision of significant incentives, including density bonuses, can, in some markets, substantially reduce or even eliminate any loss of profit to the developer.[10] While that is less likely in strong housing markets, reduction or elimination of regulatory conditions can significantly decrease the financing gap between market rate units and units affordable to lower income households.

Incentives and concessions also can be structured to encourage the development of units that are more affordable or greater in number than required. The available relaxation of regulatory strictures can be graduated, with the number and degree of incentives or concessions increasing if the minimum requirements are exceeded.

Fee Waiver, Reduction or Deferral. Depending on the community, development application and permit fees can add substantially to the cost of housing development. Consequently, waiver, reduction or deferral of fees for the inclusionary units can provide a significant cost reduction. While outright waiver of fees controlled by the local government will obviously provide the greatest benefit, localities may not be able to waive some fees completely because they are exactions needed to pay for the particular service, function or infrastructure for which they are levied. However, even deferral of fees until units receive certificates of occupancy can afford substantial financial benefits. The deferral reduces the amount of up front costs and financing needed by the developer to complete construction. San Diego reports that deferrals generally off-set the cost of inclusionary requirement by 10%.

[9]The density bonus is triggered if 20% of the total units are affordable to low income households; 10% to very low income households (50% of median or less); or 50% are reserved for seniors. An incentive can include reduction in development, parking or design standards, modification of zoning requirements, waiver of fees or provision of direct financial assistance.

[10] Dietderich, Andrew G., *An Egalitarian Market: The Economics of Inclusionary Zoning Reclaimed*, 24 Fordham Urb. L.J. 23 at 28 (1996) considering Ellickson, Robert C., *The Irony of "Inclusionary" Zoning*, 54 S. Cal. L. Rev. 1167 at 1180 (1981) .

Increased Densities. Whether inclusionary units are developed on-site or off-site, the provision of significant density bonuses over those required by state law can considerably reduce development costs. The degree of cost reduction will, of course, vary depending on the land costs in the area.

As previously discussed, the state density bonus law generally calls for a 25% increase in the maximum number of units otherwise permitted when a developer agrees to make 20% of the units affordable to low income households or 10% of the units affordable to very low income households for 30 years. Therefore, an inclusionary requirement that requires 10% of the units to be affordable to very low income persons should allow at least a 25% density bonus. However, provision of a greater bonus should be considered, especially if an increased bonus will materially reduce the per unit cost of development. The principle is the same for inclusionary percentages that do not trigger the state density bonus law. An inclusionary requirement that dictates fewer than 10% of the units be affordable to very low income households or fewer than 20% be affordable to low income households nevertheless should provide for significant density bonuses.

Jurisdictions should ensure that implementation of density bonuses are workable. Allowing for increases in density without corresponding decreases in height, set-back, floor area ratio and lot coverage requirements can render a substantial density bonus unusable. (In some communities, developers have found that they can only achieve the number of units permitted by a density bonus within the building "envelope" permitted by other development limitations if the units are inordinately small.)[11]

Reduction or Modification of Zoning and Development Standards. Besides permitting increased densities, an inclusionary ordinance can offer developers many other concessions and incentives that can contribute greatly to reduction in development costs. These don't cost local government anything, and can be quite significant to a developer. In addition to the density bonus, the state density bonus law mandates the provision of an incentive or concession if the requisite percentage of affordable units is provided. The law defines an incentive or concession as including:

- A reduction in site development standards, including reductions in setbacks, square footage requirements and parking standards;
- A modification in zoning code requirements;
- A modification in architectural design requirements (which exceed minimum state building standards);

[11] AB 1866 (Stats. 2002, c. 1062, § 3) amended the density bonus statute (Government Code §65915) to prohibit local jurisdictions from applying development standards that will have the effect of precluding the construction of a project at the densities permitted by the statute. *See* §65915(e).

- Approval of mixed use zoning when the affordable units are proposed for a mixed commercial, office or industrial development.

A local inclusionary requirement should at least include these. Reduction of minimum lot requirements can reduce costs of site preparation, utilities and roads. Reducing or modifying parking standards can yield similar cost reductions by trimming the amount of land needed to support a housing unit.[12] Street width and right-of-way reductions also lessen the amount of land required. Adoption of reforms in design and other architectural standards can render both significant cost reductions and more attractive yet compact housing developments. San Diego's experience indicates that the cost of providing an inclusionary unit can be reduced by up to 50% through design and building requirement reform.

Exemption from zoning categories and growth restrictions can be especially helpful. Allowing affordable units to be developed as mixed use retail projects effectively increases the sites available for housing, potentially adds to the viability of the retail venture, and facilitates the integration of retail and residential activity. Some communities with growth limitations exempt affordable units from their growth caps or allow for an exemption if the developer will exceed the minimum number of required inclusionary units.

Expedited Application and Permit Processing. Significant reduction in the time between submission of a project proposal, application approvals and issuance of necessary permits will substantially reduce the cost to the developer. Every month that goes by is another month of interest payments on development financing and payments on site options. (San Diego estimates that a six month reduction in processing time yielded about a 10% reduction in the cost of inclusionary units.) Because the addition of the processing and review of proposals to satisfy an inclusionary obligation can potentially increase the time localities spend on development application approvals, inclusionary ordinances should be carefully crafted to fast-track applications and any appeals of decisions on in lieu fees, exemptions or other compliance issues. Correspondingly, the package of incentives and concessions should mandate expedited processing and permit issuance.

Financial Incentives. One of the most direct and concrete ways of providing incentives to develop affordable units is to provide financial assistance. The amount of assistance necessary to off-set the cost of providing affordable units, especially in high cost areas, can be substantial. Developers with experience in constructing affordable housing, then, generally must assemble several layers of below market rate (BMR) financing from federal, state and private sources. The local government can do at least two

[12] Types of parking standard reductions and modifications include reducing spaces per unit, reducing the number of covered spaces, reducing guest parking, modifying parking space size, and allowing tandem parking.

things to facilitate and increase the amount of financial assistance that is available to the developer of inclusionary units.

First, localities can provide in their inclusionary ordinances that they will take whatever local action is required to qualify for any state or federal financing source. The eligibility requirements for some funds available from the state or federal governments require that a community have determined that the housing to be funded will assist the community in addressing its needs for affordable housing (*e.g.* state tax credit rules). Others require that the local government provide a local match to receive the funds (federal HOME funds, for example). Inclusionary ordinances can also give inclusionary units local priority for use of these funds.

The other thing local government can do is provide local sources of funding to compliment non-local sources. Inclusionary programs can direct that inclusionary units have priority for these locally generated funds. Inclusionary requirements can also be formulated in tandem with ordinances establishing local funding. For example, the City of Napa developed its inclusionary zoning and housing impact fee ordinances together. The housing impact fee ordinance requires developers of commercial properties to pay a fee into the local housing trust fund based on the need for affordable housing created by the commercial development. Some sources of local funding in use in many communities include:

- Housing Trust Funds (funded by housing impact fees, general funds or other local sources)
- Redevelopment "Set-Aside" Funds (at least 20% ; in some cases 25-30%) of tax increment funds generated by local redevelopment agencies must be used for affordable housing– redevelopment agencies can increase the percentage and provide that the funds must be targeted to very low income units)
- Mortgage Revenue Bond Financing

Local governments also can encourage developers to participate in the Section 8 Housing Choice Voucher and Section 8 Homeownership programs to the fullest extent possible in order to assist the developer in assuring the units are affordable to lower income families.

Best Practice: Napa.

Napa's ordinance, though not a model for vastly different California communities, provides a host of developer incentives, including expedited application processing, fee deferrals, marketing assistance, additional density bonus, waiver or modification of standards, and financial assistance.

VII. THE MEASURE OF SUCCESS

Monitoring & Enforcement. Compliance with the inclusionary requirements of the ordinance does not end with the production of the units. A strong ordinance will *assure* that the newly produced units will remain affordable to, and occupied by, the families for whom they were targeted – for the duration of the affordability term. A procedure for monitoring and enforcement of the restrictions is necessary, and should be addressed in the ordinance. Several cities require annual reporting, rental recertifications (frequently delegated to local agencies such as a local housing authority), and recorded deed restrictions prior to issuance of certificates of occupancy which, for example, prevent close of escrow on subsequent sales without approval by the municipality. Units that are not subject to a reasonable monitoring and enforcement program could well be lost from the affordable housing market, despite the resources and effort expended to produce them.

Tracking Results. Municipalities are required to include an analysis of lower income units that are at-risk of conversion to market rate in their Housing Element and to develop plans to preserve the at-risk units as affordable. *See* Govt. Code §65583(a)(8). The analysis must identify units that have been assisted with federal, state and local funds, including units that are produced pursuant to a local inclusionary zoning program or that are used to qualify for a density bonus. Thus, any units that are produced as a result of inclusionary zoning must be carefully tracked and monitored for housing element purposes.

It also is critical that the beneficiaries of the affordable inclusionary units be able to find the affordable units within their community. A centralized, regularly updated list of all affordable units within the community that identifies the development by name and address, number and size of affordable units, basis for affordability restrictions, (e.g., inclusionary units, redevelopment agency assisted, federally-subsidized, etc.), term of affordability restrictions, accessibility features and the like would greatly assist families in need of such housing. It also would enable local government agencies and social service providers to better assist their clients in securing decent, safe and sanitary housing. A centralized list also will enable the community to maintain an updated catalogue of its progress in meeting its share of the regional housing need.

Finally, it will be difficult to determine measurable outcomes of the inclusionary program if the affordable units produced under the ordinance are not sufficiently tracked or recorded. Records that identify the number of units produced as a result of the ordinance, affordability levels of the units, the nature, type and size of units developed, and the features of the ordinance that aided in those results will assist the community and its neighbors in evaluating the successes and weaknesses of their inclusionary programs.

The first step towards measuring those results, of course, is to create a workable, successful inclusionary program. And so we end where we began . . . adopt an inclusionary zoning ordinance!

TABLE OF CONTENTS

I. INTRODUCTION 1

II. THE BASICS RE IMPLEMENTATION: AMEND HOUSING ELEMENT & ADOPT AN ORDINANCE 1

- **Legal Protection 2**
- **Greater Compliance/Increased Performance 2**
- **Increased Certainty for Developers 2**
- **Conformance with Housing Element Law 3**
- **Housing Element Pointers 3**
- **Ordinance Basics 3**

III. KEY FEATURES AND RECOMMENDATIONS 4

- Extent of the "Inclusionary or Production Requirement" 4
  - Require More Units 5
  - Target Very Low and Extremely Low Income Households 5
  - Apply the Ordinance Equally to All New Residential Development 6
  - Require Prior or Concurrent Production of Inclusionary Units 8
- Term of Affordability 9
- On-Site Units – Location, Size and Amenities 10
  - Dispersing Affordable Units On-Site Throughout the Development 10
  - Inclusionary Units Should Harmonize with Market-Rate Units 11

, Inclusionary Units Should Retain the Same Basic Amenities as the Market-Rate Units 12

, Limiting Use of Accessory Units to Meet Inclusionary Obligations 13

IV. WAIVER OR REDUCTION OF THE INCLUSIONARY REQUIREMENT 14

V. DEVELOPER ALTERNATIVES 15

‘ **General Considerations 15**

‘ **In-Lieu Fee Options 16**

‘ **Land Dedication 17**

‘ **Off-Site Development 17**

‘ **Transfer of Credits 18**

VI. INCENTIVES AND CONCESSIONS 19

‘ **Fee Waiver, Reduction or Deferral 20**

‘ **Increased Densities 20**

‘ **Reduction or Modification of Zoning and Development Standards 21**

‘ **Expedited Application and Permit Processing 22**

‘ **Financial Incentives 22**

VII. THE MEASURE OF SUCCESS 23

‘ **Monitoring and Enforcement 23**

‘ **Tracking Results 23**