

CITY OF VENTURA

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# CITY ATTORNEY LEGAL REPORT

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November 8, 2013

Honorable City Council  
City of San Buenaventura, California

***Attention: Inclusionary Housing Program Blue Ribbon Committee***

Re: Status of the City's Interim Inclusionary Housing Program

Dear Members of the Council:

We have been asked to provide a legal briefing on the status of the City's Interim Inclusionary Housing Program in light of two recent California Supreme Court decisions.

Background

Before we discuss the legal issues, it is worth pointing out a bit of background on the City's Interim Inclusionary Housing Program ("IIHP"). An inclusionary housing program is a zoning regulation that requires the developers of new housing to *include* affordable housing units within a market-rate project. The affordable units are not transferred or sold to the city; they are sold or rented directly to qualified purchasers subject to agreements and real estate covenants which require the property to be maintained as an affordable unit for some period of time, typically thirty to fifty-five years. The city usually controls and adjusts the purchase and resale price of affordable units on an annual basis. Many cities include the option of paying an in-lieu fee, or constructing or acquiring units off-site, as a substitute for building affordable units within a project.

Ventura's IIHP applies only to for-sale housing projects with more than 14 units. It does not apply to rental projects. Projects containing 60 or more units must provide 15% of the units as inclusionary units; smaller projects provide a lesser percentage. The affordable units must be dispersed within the project, have rights to access common area amenities, and be constructed to exterior quality standards that are comparable to the market-rate units. Interior finishes may be less expensive than in market-rate units, and bedrooms may be smaller. The affordability restriction lasts forty-five years, and applies to

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all resale transactions subsequent to the original affordable purchase. Affordable unit owners are generally prohibited from leasing or renting out the units. In addition, the IIHP allows a pro-rata refund of various City fees that would otherwise be charged to the developer.

The IIHP was approved by Council on August 7, 2006 in Resolution No. 2006-058, a copy of which is included with this report as Attachment "A." That resolution was deemed "interim" for a variety of reasons, including the fact that it did not include an in-lieu fee proposal, incentives, or potential alternatives to on-site development. (Page 7 of June 8, 2006 Administrative Report included as Attachment "B.") Staff proposed to return with a "comprehensive" inclusionary housing program by the end of 2006. However, in the fall of 2006 the IIHP program manager left the City, followed in 2007 by a series of other Community Development staff departures. Therefore, the comprehensive inclusionary housing program work was not completed.

The IIHP was intended to implement the then-newly adopted General Plan's Housing Element policy directives regarding adoption of an inclusionary housing program.<sup>1</sup>

It was adopted at the same time that the City's former Residential Growth Management Program (a formal housing permit allocation system) was being replaced by the Housing Approval Program (a system to assure that housing meets sound urban design principles in order to assure "place-making" via form-based codes). (Attachment "B," Page 2.) Staff originally proposed applying the IIHP to projects with as few as 7 units, but ultimately proposed a 15 unit threshold. (August 7, 2006 Administrative Report included as Attachment "C.")

In support of the IIHP, staff presented an Inclusionary Housing Study to demonstrate the need for an inclusionary housing requirement. (Included as Attachment "D.") The study included a variety of facts. It found a major affordability gap; a family earning the City's 2006 median household income of \$60,607 could afford a home priced at \$297,500, but the median price of a home in Ventura in March 2006 was \$581,667. It also concluded that a 15% inclusionary requirement could be expected to produce approximately 1,247 affordable units, based upon the General Plan predicted residential development of 8,313 units during the 20 year planning period.

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<sup>1</sup> The Housing Element had not yet been certified by the state Department of Housing and Community Development.

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Legal Analysis

This discussion includes some technical terminology and analysis, but the crux of the matter is this:

Is the IIHP an "exaction" for which the City must demonstrate that a reasonable, quantifiable relationship exists between the *impacts* of new market-rate housing and the *need* for affordable housing<sup>2</sup>, or is the IIHP a zoning rule enacted under the City's police power which need only have a reasonable policy relation to the public welfare?

Ventura, like virtually all other cities with for-sale inclusionary housing programs, assumed based upon then-applicable case law that the 2006 IIHP was a zoning rule. Thus, the City made only a limited quantitative effort to prove that new market-rate housing creates an increased demand for affordable housing. That 2006 decision has been called into question by two California Supreme Court decisions from 2013. While neither of these decisions has yet to hold directly that a Ventura-style IIHP is unlawful without a showing of a quantifiable nexus, many commentators believe the "writing is on the wall."

The San Jose Case

On June 6, 2013, the California Court of Appeal issued a decision in *California Building Industry Association v. City of San Jose* (2013) 216 Cal.App.4<sup>th</sup> 1373 (Rev. Granted, September 11, 2013). In a nutshell, the Court of Appeal upheld San Jose's inclusionary housing ordinance which, like Ventura's, was not based upon a quantitative nexus between the impacts of market-rate housing and the need for affordable housing. The Court concluded that the ordinance should be reviewed as a zoning ordinance, i.e., a simple exercise of the police power. Accordingly, in order to be found valid, the inclusionary housing program need only bear a substantial and reasonable relationship to the public welfare, which in this case was the public purpose of ensuring an adequate supply of affordable housing in the community. Ventura's IIHP would be easily upheld based upon that standard.

But what the Court of Appeal gives, the California Supreme Court can take away. On September 11, 2013, the Supreme Court agreed to hear the Building Industry Association's challenge to the Court of Appeal ruling. This decision by the Supreme Court to review the case has led many commentators to believe that the Supreme Court intends

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<sup>2</sup> This quantifiable relationship is often referred to as a "nexus."

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to reverse the Court of Appeal and hold that the stricter, quantitative nexus standard applies to inclusionary housing ordinances. We won't know the answer until 2014 or later.

The Palo Alto Case

On October 17, 2013, the California Supreme Court decided *Sterling Park, L.P. v. City of Palo Alto* (2013) 163 Cal.Rptr.3d 2. The issue in the Palo Alto case was whether the statute of limitations for "other exactions" applied to an inclusionary housing program. The Supreme Court overruled an earlier Court of Appeal case, which like the San Jose case, had held that inclusionary housing programs were not exactions, at least for the purpose of the statute of limitations. Thus, the Supreme Court appears to have paved the way for a ruling that inclusionary housing programs are "exactions," and not zoning ordinances, for the purposes of the standard of review as well as the statute of limitations.

Conclusion

The City's IIHP is under a cloud of uncertainty created by the California Supreme Court's 2013 actions in the San Jose and Palo Alto cases. The safest course of action when considering changes to the program, including items like in-lieu fees and off-site construction or acquisition of affordable units, would be to assume that the City will have to show a quantitative nexus between the impacts of market-rate housing and the need for affordable housing. This means that the City should no longer assume that the 15% inclusionary requirement can be justified unless a study is prepared which shows that 15% is the correct ratio to mitigate the increased demand for affordable housing caused by the development of market-rate housing.

Respectfully Submitted,



Ariel Pierre Calonne  
City Attorney

APC:as

Attachments

cc: Mark D. Watkins, City Manager  
Jeff Lambert, Community Development Director

ATTACHMENT "A"

**RESOLUTION NO. 2006-058**

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN BUENAVENTURA DEFINING THE POLICIES FOR AN INTERIM INCLUSIONARY HOUSING PROGRAM AND ADDING CHAPTER 24R.240 TO DIVISION 24R OF THE ZONING ORDINANCE

**BE IT RESOLVED** by the Council of the City of San Buenaventura as follows:

**SECTION 1.** Chapter 24.240 is hereby added to Division 24R, Zoning Ordinance-Related and Other Land-Use Related Resolutions of the San Buenaventura Municipal Code to read as follows:

**Chapter 24R.240 Interim Inclusionary Housing Program**

**Article 1. GENERAL PROVISIONS.**

**Sec. 24R240.110. Findings.**

The City Council finds that an inclusionary housing program is a necessary and desirable program for the following reasons:

1. The City Council finds that the City of San Buenaventura and the Southern California region face a serious housing problem and the lack of access to affordable housing has a direct impact upon the health, safety, and welfare of the residents of the City; and

2. The California Legislature has consistently recognized the continuing need for affordable housing in California, stating in Government Code Section 65580, that "the availability of housing is of vital statewide importance, and the early attainment of decent housing ... is a priority of the highest order" and, further, that, "local ... governments have a responsibility to use the powers vested in them to facilitate the improvement and development of housing to make adequate provision for the housing needs of all economic segments of the community."; and

3. Affordable housing is regulated by a variety of state and local laws, ordinances, and policies, and the Regional Housing Needs Assessment (RHNA) has established that the City's Housing Production allocation requires the development of 1,116 new affordable housing units as follows: 354 units (18%) are needed for moderate-income, 272 units (14%) are needed for low-income and 488 units (25%) are needed for very low income during the current 1998 – 2008 allocation cycle; and

4. The City will not be able to meet its mandated regional housing goals if it does not establish programs adequate to promote development of housing that is affordable to very-low, low and moderate-income households; and

5. A lack of new units affordable to very low, low and moderate income households within the City will have a substantially negative impact because: (1) housing will have to be built far from employment centers, which will increase commuting and negatively impact traffic, air and noise pollution, and (2) the City and employers within the City will find it difficult to recruit and retain employees; and

6. The City Council has considered the findings of the Inclusionary Housing Study dated June 7, 2006, received by the City Council on June 12, 2006, and has determined that new development contributes to the need for the affordable housing; and

7. Approximately 63% of the households in Ventura presently make at or below moderate income; and

8. The State of California requires each city to develop a general plan establishing policies for future development. As specified in the Government Code, the general plan must: (i) encourage the development of a variety of housing types for all income levels; (ii) assist in the development of adequate housing to meet the needs of low- and moderate-income households; and (iii) conserve and improve the condition of the existing affordable housing stock, which may include addressing ways to mitigate the loss of dwelling units demolished by public or private action; and

9. Program 16 of the City's adopted Housing Element requires that the City evaluate the adoption and implementation of an inclusionary housing ordinance requiring a given percentage of units within new market-rate developments be price-restricted to very-low, low and moderate income categories; and

10. The adoption of an inclusionary housing requirement in conjunction with the Housing Approval Program, will provide a mechanism for all residential development containing 15 or more units to provide their fair share of affordable housing consistent with the City's adopted Housing Element; and an inclusionary program will aid the City in achieving the goal of making affordable housing diverse, dispersed and inclusionary; and

11. The City Council further finds that the City of San Buenaventura faces a lack of access to decent, affordable housing, which has a direct impact upon the health, safety and welfare of its residents, and

12. An affordable inclusionary housing requirement for all new developments containing 15 or more residential units, in the City of Ventura, exclusive of the Merged Downtown Redevelopment Project Area, will serve to implement at the local level the requirements of inclusionary affordable housing in the coastal zone, and contribute to meeting the City's overall future need of affordable housing and to help meet its RHNA allocations.

**Sec. 24R240.115. Purpose and Intent.**

1. Ensure the development and availability of decent, affordable housing to a broad range of households with varying income levels throughout the City.
2. Promote the City's goal to add affordable housing units to the City's housing stock.
3. Ensure the long-term affordability of units and availability for income eligible households in years to come.
4. Ensure that the private sector, in addition to public sector, participates in the provision of affordable housing for workers within the City of Ventura.
5. Adopting the affordable Inclusionary requirement for each applicable development will ensure that affordable housing will be dispersed throughout the City and throughout each project and not be segregated from market rate housing.

**Article 2. DEFINITIONS.**

**Sec. 24R240.210. Definitions.**

1. *Affordable Housing Agreement.* A legally binding agreement between an applicant and the City, a Declaration of Restrictions or other equivalent documents, in a form and substance satisfactory to the Director and City Attorney and suitable for recording, and setting forth those provisions necessary to ensure that the requirements of this Chapter are, and will continue to be, satisfied and otherwise meeting the requirements of this Chapter.
2. *Affordable Rent.* Affordable Rent herein shall have the same meaning as specified in Health and Safety Code Section 50053.
3. *Area Median Income.* The median Household income as provided in Health and Safety Code Section 50093 (c).
4. *Community Development Director.* The City of Ventura Community Development Director or designee.
5. *Eligible Household.* means any of the following as applicable:  
  
*Eligible Moderate Income Household.* a household whose income does not exceed one hundred ten percent (110%) of the Area Median Income, adjusted for family size.

*Eligible Low Income Household.* a household whose income does not exceed the low income limit established for Ventura County by the Department of Housing and Urban Development, adjusted for family size.

*Eligible Very Low Income Household.* a household whose income does not exceed the very low income limit established for Ventura County by the Department of Housing and Urban Development, adjusted for family size.

6. *Eligible Organization*

- (a) a government entity; or
- (b) a non-profit corporation or non-profit organization, or charitable organization as defined by applicable state or federal law.

7. *Household.* One person living alone or two or more persons sharing residency whose income is considered for housing payments.

8. *Inclusionary Unit.* A dwelling unit that is designated to meet the 15% inclusionary housing requirement, and that must be made available offered at an Affordable Housing Cost to Moderate, Low and Very Low-Income Households.

9. *Market-rate Unit.* A dwelling unit in a residential development that is not an Inclusionary Unit.

**Article 3. INCLUSIONARY HOUSING PROGRAM.**

**Sec. 24R240.310. Inclusionary Requirement and Method of Calculation.**

Development projects consisting of 15 or more residential units, located or proposed to be located in any portion of the City's Planning Area other than the Merged Redevelopment Project Area, shall provide and designate a certain percentage of the total units as Inclusionary Housing Units (Inclusionary Units) restricted to occupancy by Moderate, Low, or Very Low-Income Households, as set forth below. For purposes of calculating the number of Inclusionary Units required, any additional units authorized as a density bonus under the City Density Bonus Ordinance or State law will not be counted in determining the required number of Inclusionary Units.

(a) Projects containing 59 units or less.

Projects containing 59 units or less shall provide and designate the requisite number of Inclusionary Units as set forth in the following table:

Total number of units	Number of Inclusionary Units Required
15 – 20	1
21 – 26	2
27 – 33	3
34 – 39	4
40 – 46	5
47 – 53	6
54 – 59	7

For projects containing 59 units or less, the inclusionary requirement shall be met by assigning Inclusionary Units on a rotational basis in the following order, one moderate, then one low, then one very low, until the required number of Inclusionary Units has been satisfied, provided that, this formula is not intended to preclude a project from meeting its inclusionary requirement by providing all required Inclusionary Units at lower income categories than required by this subsection.

(b) Project containing 60 units or more

Projects containing 60 units or more, shall provide and designate 15% of the total number of units as Inclusionary Units restricted to occupancy by Moderate, Low, or Very Low-Income Households inclusionary units. In determining the number of whole Inclusionary Units required, any decimal fraction shall be rounded down to the nearest whole number.

The inclusionary requirement shall be met by assigning Inclusionary Units on a rotational basis in the following order, one moderate, then one low, then one very low, until the required number of Inclusionary Units has been provided. Alternatively, a project of 60 units or more can meet the requirements of this program by providing 10% Inclusionary Units in the very-low income category, 15% Inclusionary Units in the low-income category, or 20% Inclusionary Units in the moderate income category, provided that, this formula is not intended to preclude a project from meeting its inclusionary requirement by providing all required Inclusionary Units at lower income categories than required by this subsection.

**Sec. 24R240.315. Affordability Requirement.**

Inclusionary Units produced under this Program must be legally restricted to: occupancy by Households of the income levels for which the units are designated at the time of entering into the Affordable Housing Agreement as required herein.

**Sec. 24R240.320. Design.**

Unless otherwise specified by the decision-making authority, Inclusionary Units must be dispersed throughout a residential development and be comparable in infrastructure (including sewer, water and other utilities), construction quality and exterior design to the Market-rate Units. Inclusionary Units must be equivalent in terms of number of bedrooms to the corresponding housing type of market rate units, but may be smaller in aggregate size, and have different interior finishes and features than Market-rate Units, so long as the interior features are durable, of good quality and consistent with contemporary standards for new housing.

**Sec. 24R240.325. Timing of Inclusionary Development.**

All Inclusionary Units must be constructed and occupied concurrently with or prior to the construction and occupancy of Market-rate Units. In phased developments, Inclusionary Units may be constructed, offered for sale and occupied in proportion to the number of units in each phase of the Residential Development.

**Sec. 24R240.330. Access to Common Amenities.**

Residents and tenants of Inclusionary Units shall be provided the same rights and access to common amenities in the development project as residents and tenants occupying Market-rate Units.

**Article 4. EXEMPTIONS.**

**Sec. 24R240.410. Exemptions.**

The requirements of this Chapter do not apply to:

1. Residential developments of 14 housing units or less.
2. The reconstruction of any structures that have been destroyed by fire, flood, earthquake or other act of nature provided that the reconstruction of the site does not increase the number of residential units by 15 or more.
3. Residential building additions, repairs or remodels; provided that such work does not increase the number of existing units by 15 or more.
4. Projects, or portions of projects, consisting of rental apartment units.

**Article 5. INCENTIVES AND ASSISTANCE.**

**Sec. 24R240.510. Refund of Fees for Inclusionary Units.**

A pro-rata refund of the following fees for each of the Inclusionary Units in the residential development will be granted to the Developer upon recordation of the Affordable Housing Agreement as required by Section 24R250.635, Recording of

Affordable Housing Agreement:

Housing Approval Process Fee  
Planned Development Permit Fees  
Variance Fee  
Coastal Development Permit Fee  
Tentative Subdivision Map Fee  
Design Review Fee  
Environmental Review  
Development Agreement  
Annexation  
Change of Zone

**Sec. 24R240.515. Other Incentives**

Depending on the number of Inclusionary Units provided, an applicant may be eligible for one or more other regulatory incentives set forth in Section 24.445.120 of this code as it may be amended from time to time.

**Article 6. COMPLIANCE PROCEDURES**

**Sec. 24R240.610. General.**

No residential development subject to this Program shall be deemed approved without approval of an Inclusionary Housing Plan and approval of an Affordable Housing Agreement as provided herein.

**Sec. 24R240.615. Housing Approval Program.**

The Applicant for a residential project subject to this Chapter shall submit a Preliminary Inclusionary Housing Plan for review in conjunction with an application for a Housing Approval (HAP) prequalification determination. The preliminary Inclusionary Housing Plan shall be a separate plan sheet and must include:

1. The location, proposed housing type (e.g. carriage, side yard, etc.) number of bedrooms and size of the proposed Market-rate and Inclusionary Units.
2. A site plan depicting the location of the Inclusionary Units. For multi-story projects, each story with associated Inclusionary unit(s) must be depicted separately.
3. A mathematical calculation of compliance with the requirements of the inclusionary housing program, and the income levels to which each Inclusionary Unit will be made affordable, and indicate which units are intended to be owner-occupied, and which units are intended to be rental.

**Sec. 24R240.620. Discretionary and Design Review Approvals.**

The Applicant for a residential project subject to this Chapter shall submit a Final Inclusionary Housing Plan In conjunction with its application for any discretionary planning approvals and/or design review approval (hereinafter collectively referred to as "Discretionary Approvals"). The Inclusionary Housing Plan shall be a separate plan sheet and must include:

1. All information required in Section 24R.240.615
2. A floor plan and elevations of all proposed Inclusionary Units.
3. For phased Development, a phasing plan that provides for the timely development of the number of Inclusionary Units proportionate to each proposed phase of development.
4. A request for any fee waiver pursuant to Section 24R240.510.
5. Any other information reasonably requested by the Community Development Director to assist with evaluation of the Plan under the requirements of this Resolution.
6. Acknowledgement that an instrument as specified by the City restricting the Inclusionary Unit(s) as affordable shall be recorded against each Inclusionary Unit and that a recordable Affordable Housing Agreement shall be entered into by the Applicant and any other necessary party.

**Sec. 24R240.625. Approval of Inclusionary Housing Plan.**

a. HAP Determination – As a part of the prescreen determination; the preliminary Inclusionary Housing Program will be evaluated for compliance with this program.

b. Discretionary Approvals – In conjunction with the processing of any discretionary approvals. The Community Development Director must approve, conditionally approve, or reject the Inclusionary Housing Plan within 60 days of the date that the Inclusionary Housing Plan is deemed complete by the Community Development Director. If the Inclusionary Housing Plan is incomplete, the Inclusionary Housing Plan will be returned to the Applicant along with a list of the deficiencies or the information required. A rejected Inclusionary Housing Plan may be resubmitted when and if the defects cited by the Director as reasons for rejection are corrected. An application for Discretionary Approvals from a residential development subject to this Resolution will not be deemed complete until a complete Inclusionary Housing Plan is submitted to the City. At any time during the review process, the Community Development Director may require from the Applicant to submit additional information reasonably necessary to clarify and supplement the Inclusionary Housing Plan or determine the consistency of the proposed Inclusionary Housing Plan with the requirements of this Resolution.

**Sec. 24R240.630. Form of Restrictions.**

The forms of the Affordable Housing Agreement and any related Declarations, Resale restrictions, deeds of trust, and other documents authorized by this section shall be in a general form as prescribed by the City, and shall be approved by the Community Development Director and approved as to form by the City Attorney prior to being executed with respect to any residential development subject to this Program.

**Sec. 24R240.635. Recording of Affordable Housing Agreements.**

Affordable Housing Agreements approved by the City must be recorded against Inclusionary Units prior to the issuance of any building permit for the project. Resale restrictions, deeds of trust, and/or other documents comprising or related to the Affordable Housing Agreements specified by the Community Development Director must also be recorded against owner-occupied Inclusionary Units.

**Sec. 24R240.640. Building Permits.**

The City shall not issue a building permit for a residential development subject to this Program without an Affordable Housing Agreement executed by the owner, the Applicant (if not the owner) and the City Manager, and approved as to form by the City attorney, and recorded against the property.

**Article 7. RESTRICTIONS ON MODERATE AND LOW INCOME OWNER-OCCUPIED UNITS.**

**Sec. 24R240.710. Offer for Sale Required.**

Unless determined otherwise by the Community Development Director, all moderate income units required by this program shall be offered for sale as owner occupied housing, unless it can be demonstrated by the applicant that development of owner-occupied housing would create an undue burden on the development, or render it infeasible. At the applicant's discretion it may also offer low-income units for sale as owner occupied housing to qualified low-income households instead of offering them as rentals.

**Sec. 24R240.715. Initial Sales Price and Resale.**

The initial sales price and resale price of the Inclusionary Unit will be a price established by the City on an annual basis.

**Sec. 24R240.720. Transfer.**

A resale restriction will be entered into on each change of ownership of for sale units, to maintain the Household Income Restriction on the Inclusionary Unit prior to the expiration of the affordability period provided in Section 24R250.325.

**Sec. 24R240.725. Changes in Title.**

Upon the death of one of the owners, title in the Inclusionary Unit may transfer to the surviving joint tenant without respect to the income-eligibility of the Household. Upon the death of a sole owner or all owners and inheritance of the Inclusionary Unit by a non-income-eligible child or stepchild of one or more owners, there will be a one year compassion period between the time when the estate is settled and the time when the Inclusionary Unit must be sold to an income-eligible Household. Inheritance of an Inclusionary Unit by any other person whose Household is not income-eligible shall require resale of the unit to an income-eligible Household as soon as is feasible but not more than 180 days from when the estate is settled.

**Sec. 24R240.730. Owner Occupancy Required.**

All moderate income and low income Inclusionary Units sold to eligible households are subject to the following regulations.

(a) Principal Residence. Owner shall use and occupy the Inclusionary Unit as Owner's principal place of residence.

(b) No Rental. Owner is expressly prohibited from leasing or renting the Inclusionary Unit unless the City has given its prior written consent to such lease or rental on the basis of a demonstrated hardship by the Owner.

(c) Annual Report. The City from time to time may require certification of continuing occupancy of the Inclusionary Unit by Owner, which shall be verified by Owner to the reasonable satisfaction of City by means of a written report by Owner to City setting forth the income and family size of the occupants of the Inclusionary Unit. Such report shall be submitted to City annually on or about June 30<sup>th</sup> of each year. Owner shall not be deemed to be in default of the Affordable Agreement and this Program for any failure to deliver such annual report until thirty (30) days after receipt by Owner of written notice from City requesting such report. City shall have the option of establishing the type of form to be used for the report.

**Article 8. OCCUPANCY OF VERY LOW AND LOW INCOME RENTAL UNITS**

**Sec. 24R240.810. Occupancy of Very Low Income Rentals.**

Unless determined otherwise by the Community Development Director, all Very Low Income Restricted Units required by this program shall be rentals. The developer may rent the unit to an Eligible Very Low Income Household or may sell a Very Low Income Restricted Unit to an Eligible Organization, who in turn may rent it to an eligible very low income household. In the event that the Very Low Income Restricted Unit is sold to an Eligible Organization, Developer may only charge a sales price consistent with what an Eligible Very Low Income Household could be charged for the Very Low Income Restricted Unit. Any Eligible Organization, receiving title to the Very Low Income Restricted Unit may sell it to another Eligible Organization or to an Eligible Very Low Income Household in accordance with the City's Affordable Housing Program

**Sec. 24R240.815. Use and Occupancy of Low Income Rentals.**

The developer may designate and offer low-income units as rentals to an eligible Low Income Household. Such designation of a unit for rental purposes shall be indicated on the Inclusionary Housing Plan as set forth elsewhere in this chapter. The developer may rent to an Eligible Low Income Household or may sell a Low Income Restricted Unit to an Eligible Organization, who in turn may rent it to an eligible Low-Income Household. In the event that the Low Income Restricted Unit is sold to an Eligible Organization, Developer may only charge a sales price consistent with what an Eligible Low Income Household could be charged for the Low Income Restricted Unit. Any Eligible Organization, receiving title to the Low Income Restricted Unit may sell it to another Eligible Organization or to an Eligible Low Income Household in accordance with the City's Affordable Housing Program.

**Sec. 24R240.820. Establishment of Rental Rates.**

The maximum allowable rent of Inclusionary Units will be rents established by the City on an annual basis.

**Sec. 24R240.825. Redesignation of Low Income Units.**

In the event a Developer or Eligible Organization wishes to change the initial designation of a unit from rental to owner occupancy for the purposes of offering the unit for sale, the City must be sent notice in the manner and form as prescribed by the City's Affordable Housing Program, and the City must have acknowledged said notice prior to the unit being offered for sale.

**Sec. 24R240.830. Annual Report.**

The owner shall submit an annual report summarizing the occupancy of each rental Inclusionary Unit for the year. The City may require additional information if deemed necessary. The owner must obtain and review documents that demonstrate the prospective renter's total income, such as income tax returns or W-2s for the previous calendar year, and submit such information on a form approved by the City.

**Article 9. ADJUSTMENTS, WAIVERS**

**Sec. 24R240.910. General.**

The requirements of this Resolution may be adjusted or waived if the Applicant demonstrates to the Community Development Director that applying the requirement of this Resolution would take property in violation of the United States or California Constitutions.

**Sec. 24R240.915. Timing.**

For an adjustment or waiver to be considered, the Applicant must apply for the same at the time of a Housing Approval Process application.

**Sec. 24R240.920. Adjustment or Waivers.**

If the Community Development Director determines that applying the requirement of this Program, considered together with any variances, or regulatory concessions or incentives that may be applied to the proposed residential project, would take property in violation of the United States or California Constitutions, the requirements of this Program shall be modified, adjusted or waived to reduce the obligations but only to the extent necessary to avoid an unconstitutional result. If the Director determines no violation of the United States or California Constitutions would occur through application of this Resolution, the requirements of this Resolution remain applicable.

**Sec. 24R240.925. Decision and Further Appeal.**

The Community Development Director, will determine the application and issue a written decision. The Community Development Director's decision may be appealed to the City Council in the manner and within the time set forth in SBMC Section 24.565.050, 24.565.060 and 24.565.070. Where the phrase "*planning commission or design review committee action*" is used in these Sections, it shall be replaced by the phrase "*Community Development Director action*" when considering an appeal as provided for herein. In making the taking determination, the decision maker shall assume each of the following:

1. Application of the inclusionary housing requirement to the Residential Development;
2. Application of any applicable inclusionary or density bonus concessions or incentives;
3. Utilization of the most cost-efficient product type for the inclusionary units; and
4. The potential for the external funding, including but not limited to, governmental grants, loans, or subsidies of any nature where reasonably likely to occur.

**Article 10. ADMINISTRATION AND ENFORCEMENT.**

**Section 24R.240.1010. Program Administration.**

The City Manager and the Community Development Director are each hereby given authority to initiate any administrative procedures as may be necessary to implement and carry out the purpose and intent of this Interim Inclusionary Housing Program. When any such administrative procedures have the potential to affect operations or procedures in more than one City Department or Division, such

procedures should be promulgated as "Administrative Policies and Procedures" via the process prescribed therefore by the City Manager. Further, the Director may, in the implementation of this Program, develop application forms and submittal requirements reasonably related to the implementation of this Program.

Application forms or materials previously approved for use in the Redevelopment Project Area Inclusionary Program may be used or modified as experience dictates by the Community Development Director. Additional forms may be introduced and utilized by the Director as the Director deems may be necessary or desirable. All form changes or administrative procedures initiated by the Director or the City Manager, and all administrative determinations or exercises of delegated authority by the Director, shall be carried out in a manner consistent with, and reasonably related to, the purposes and intent of this Program, the Housing Element and all other elements of the City's General Plan, and the furtherance of state and local housing policies and goals, while respecting at all times the rights of property owners and applicants.

**Sec. 24R240.1015. Legal Action.**

The City may institute any appropriate legal actions or proceedings necessary to ensure compliance with this Resolution, including:

1. Actions to revoke, deny or suspend any permit, including a Building Permit, certificate of occupancy, or discretionary approval.
2. Actions to recover from any violator of this Resolution civil fines, restitution to prevent unjust enrichment from a violation of this Resolution, and/or enforcement costs, including attorneys fees.
3. Eviction or foreclosure.
4. Any other appropriate action for injunctive relief or damages.

Failure of any City official, employee, or agent to fulfill the requirements of this Resolution shall not excuse any person, owner, Household, or other party from the requirements of this Resolution.

**SECTION 2: Severability.** If any section, subsection, paragraph, sentence, clause, phrase or word of this Resolution is declared by a court of competent jurisdiction, adjudicated to a final determination, to be void, this City Council finds that said voided part is severable, and that this City Council would have adopted the remainder of this Resolution without the severed and voided part, and that the remainder of this Resolution shall remain in full force and effect.

**SECTION 3:** This Resolution shall take effect on the 31<sup>st</sup> day following its adoption.

**PASSED AND ADOPTED** this 7th day of August, 2006.

*Mabi Covarrubias Rishby*  
CITY CLERK

APPROVED AS TO FORM:  
Robert G. Boehm, City Attorney

By: *James E. Neuerburg*  
Jim Neuerburg, Assistant City Attorney

STATE OF CALIFORNIA )  
COUNTY OF VENTURA ) ss  
CITY OF SAN BUENAVENTURA )

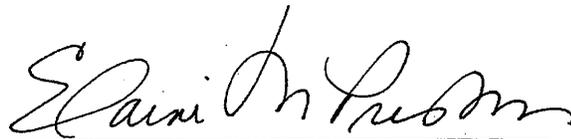
I, ELAINE M. PRESTON, Deputy City Clerk of the City of San Buenaventura, California, certify that the foregoing Resolution was passed and adopted by the City Council of the City of San Buenaventura at a regular meeting on August 7, 2006, by the following vote:

AYES: Councilmembers Brennan, Summers, Fulton, Andrews,  
Monahan, Weir, and Morehouse.

NOES: None.

ABSENT: None.

IN WITNESS WHEREOF, I have set my hand and affixed the seal of the City of San Buenaventura on August 8, 2006.



Deputy City Clerk



**ATTACHMENT "B"**

CITY OF VENTURA  
**ADMINISTRATIVE REPORT**

Date: June 8, 2006

Agenda Item No.: 11

Council Action Date: June 12, 2006

**To: RICK COLE, CITY MANAGER**

**From: NELSON HERNANDEZ, COMMUNITY DEVELOPMENT DIRECTOR**

**Subject: REVISION TO THE RESIDENTIAL GROWTH MANAGEMENT PROGRAM  
(MUNICIPAL CODE CHAPTER 24R.115)**

**RECOMMENDATION**

In accordance with the direction of General Plan Action 3.24 to revise the Residential Growth Management Program (RGMP), staff recommends that the City Council take the following actions:

- a) Review Draft Resolution approving Addendum No. 1 to the 2005 General Plan Final Environmental Impact Report (FEIR), certifying that the City Council has reviewed and considered the FEIR as modified by Addendum No. 1, and adopting a Statement of Overriding Considerations for unavoidable adverse environmental effects of residential development identified in the FEIR (Attachment A).
- b) Review Draft Resolution replacing the Residential Growth Management Program currently codified in San Buenaventura Municipal Code Chapter 24R.115 with a new residential project prequalification process entitled the Housing Approval Program (HAP) (Attachment B) pending acceptance of citywide regulating code guidelines.
- c) Review Draft Resolution an interim Inclusionary Housing Program as San Buenaventura Municipal Code Chapter 24R.240 to serve as an inclusionary component of the proposed Housing Approval Program and to otherwise further the General Plan and State housing policy goals of providing affordable housing and housing for all economic segments of the community (Attachment C).
- d) Direct Community Development staff to prepare regulating code guidelines to be used in evaluating development entitlement applications until Community Plans and regulating codes are adopted. Further direct staff to present regulating code guidelines to the Planning Commission for review and recommendation to the City Council.

- e) Direct Community Development staff to return at the next available City Council meeting with Final Resolutions for adoption (Recommendations a-c listed above).

### **SUMMARY**

In adopting the 2005 General Plan, the City Council endorsed specific direction to revise the Residential Growth Management Program (RGMP). The new approach (GP Action 3.24) was to be based on "community or specific plans and development codes based on availability of infrastructure and transit that regulate community form and character by directing new residential growth to appropriate locations." Mechanisms were to be implemented to "ensure that new residential development produces high quality designs and a range of housing types across all income levels" and "provide greater flexibility for timing new residential development" (see Attachment I, Reference Policies).

At the City Council and the Planning Commission joint workshop on February 22, 2006, Council directed adaptation of the current RGMP program into a citywide, non-competitive process with on-going application filing. Council and the Commission supported a revised program that included strict interim guidelines, with an emphasis on: (1) form-based coding evaluation methods and principles of traditional neighborhood design; (2) addressing Housing affordability; and (3) tiered level review based upon project scale.

In addition, Council and the Commission wanted a focus on the back-end of measuring production through issued building permits. The revised approach would track development pace through: (1) annual building permit accounting Citywide and through adopted Community or Specific Plans; (2) five-year review during state-mandated Housing Element updates; and (3) new program policy trigger mechanism requiring further Council review of General Plan buildout (see Attachment H for Workshop Action Minutes).

However, the essential reason for program revision is promoting, and more importantly, achieving high-quality urban design for *place-making* and building a sustainable community. Therefore, the revised program components staff recommends in the HAP prequalification process would qualify projects fostering the General Plan goal for "*Our Well Planned and Designed Community*".

On May 2, 2006, the Planning Commission considered draft HAP components and public comments on the revised components for design standards, affordable housing, and the anticipated levels of review and processing steps. The proposed inclusionary housing component of the HAP was the primary focus of the hearing (see Attachment G for Planning Commission Minutes). The Planning Commission's comments are articulated in Section C of this report. Planning Commission had few comments regarding the draft residential design principles and evaluation criteria, but did support the intent of HAP and understood staff's commitment to move the program forward to Council.

Revising RGMP into the HAP program encapsulates Council's direction for an improved yet explicit process for residential projects to proceed in advance of citywide form-based coding envisioned in the General Plan. Without an adopted regulating plan and code, development permit process remains challenging, lengthy with unknown results. To reduce uncertainty for everyone involved in the entitlement process—applicants, staff, decision-makers and the public—the HAP program provides an interim solution. As proposed it clearly emphasizes the role of urban design requirements for residential development, but the explicit nature of the prequalification process also presents the department's effort to acknowledge, and more importantly implement process improvement recommendations from the PC/DRC/HPC Task Force and endorsed by City Council.

Recently, City Council reviewing the draft Community Development Department FY 2006/07 work program, expressed concern over the extended timeframe necessary to recode General Plan designated priority areas with an updated regulating plan and code. While a few Community and Specific Plans, each with a corresponding regulating plan and code, have begun in some areas of the City, major regions of the city will not have an adopted code until well beyond 2007. Recognizing the interest to, first provide more uniformity in process and standards citywide, and second, acknowledging the necessity to process good urban development projects while Community Plans are in process (avoiding development moratorium), staff recommends development of citywide regulating code guidelines. The guidelines, based upon the same urban design principles found in the HAP program evaluation criteria, would be detailed further, more closely articulating the Downtown Compatibility Guidelines (DCG), endorsed by Council on November 15, 2004. Using the DCG and the Smart Code transect as models, citywide regulating code guideline would be developed and applied within portions of the General Plan's "districts, corridors and neighborhood centers" identified by Council as priority coding areas. Projects requiring a variance from the existing development standards (i.e., setbacks, lot coverage and parking requirements) would be subject to and evaluated under these guidelines. This approach has successfully entitled 309 residential units in Downtown.

As envisioned, the work program to complete tentatively titled "Citywide Compatibility Guidelines" (CCG) would be an intense, but short-term effort. Relying upon recently contracted architectural services and newly hired staff with architectural expertise, guidelines would be drafted during the summer months, with review and recommendation by the Planning Commission before returning to Council for adoption, as indicated in Recommendation D. With several non-initiated Specific Plans in Eastern Ventura and design charrette anticipated within the Saticoy-Wells Community Plan, the CCG could incorporate those efforts first, followed by remaining priority areas, including the remaining, non-initiated Specific Plans. For non-priority areas where the CCG would not be complete, the HAP prequalification process would remain the mechanism to evaluate proposed residential projects.

## **ALTERNATIVES**

Council could direct staff to re-evaluate (expand, delete or add more) components of the HAP and Inclusionary Housing programs, either returning directly to Council for consideration, or alternatively, direct that Planning Commission review the revised program components prior to Council reconsideration.

## **FISCAL IMPACTS**

RGMP program modification is directed under the 2005 General Plan. Staff analysis and the HAP program are consistent with the FY 05-06 budget for general plan implementation. Adoption of the revised program will have no direct fiscal impact to the current FY 05-06 budget. The Inclusionary Housing Program is also directed under the 2005 General Plan and Department effort to complete the program is consistent with both the current FY 05-06 and proposed FY 06-07 budgets.

The current RGMP program has application filing fees of \$2,586 for Downtown Projects or \$6,028 for Large Projects, previously adopted by Council in the January 2006 Permit Fee Schedule. Replacing RGMP with the HAP program, Staff recommends a HAP application filing fee of \$2,586.00, based upon the similarity of the HAP evaluation criteria and project analysis compared to previous Downtown Project review.

## **DISCUSSION**

One recurring theme from both workshop comments and subsequent public feedback to staff drafting the revised program is the confusion posed by the old RGMP terminology. Referring to the revised program as growth control measure is no longer appropriate. The revised program dictates good design and tracking unit production, but predicted development and growth now lies within the 2005 General Plan. Further, terms such as "exemptions" and "allocation" of units continue confusion and relationship back to RGMP. Therefore staff is relying on terms such as "prequalification" to articulate the program revisions, including a new program name. The revisions proposed are intended to demonstrate the City's commitment to housing, urban design and streamlined processes. Hence, the suggested program name is Housing Approval Program (HAP).

### **A. Applicability**

To qualify for planning permit entitlement processing, all projects consisting of three or more residential units would be subject to the HAP, program. Application content and evaluation measures would vary depending on the lot, block(s) or neighborhood and/or land acreage, as described below. However, the following class of projects would be "deemed pre-qualified" (program exemptions) and allowed to submit directly to the Community Development Department for planning permit entitlement processing:

- Residential projects of one or two units
- Residential projects consisting of 100% rental units
- Residential projects with previous RGMP allocation (no additional units proposed)
- Residential projects within adopted Specific Plans (Downtown and Satcoy Village)

While not subject to HAP these residential projects will be reviewed by staff for urban design performance measures such as building placement, frontage for street activation, dwelling access and parking placement as defined in the following criteria.

#### **B. Review Criteria for Project Proposals**

Council directed adoption of clear evaluation criteria for use as interim guidelines on all applicable residential projects. Projects would be reviewed and determined to pre-qualify or not in order to apply for planning permit entitlement. The four primary factors are:

1. Urban design standards calibrated to project size;
2. Documentation and compatible design with existing and/or future intended neighborhood context;
3. Coherent project relationship to the current/proposed planning documents; and
4. Inclusionary housing requirement (projects containing 7 or more units).

Under HAP, the evaluation and determination whether a project pre-qualifies is based upon a proposal's strong urban design elements and integration with the neighborhood context. While applicants would not be required to submit, *final*, elaborately detailed project plans, conceptual plans are necessary to define how the project satisfies the design principles summarized in the table below. To illustrate strong urban design directed by Council, the HAP program contains specific evaluation criteria. Depending upon project scale, each project would be reviewed on: (1) providing each of the required elements, and (2) how elements are defined (or could be improved) by neighborhood context. Staff evaluation would be in the form of "pass/fail" of each design element, where a project must receive a "pass" in all categories to receive HAP prequalification. As part of the pass/fail determination, decision-makers (DRC, PC or Council) action would include opportunity for comment/advisory on the project elements directing applicants prior to development entitlement application submittal.

Since HAP is intended to pre-qualify projects to ensure good urban design before beginning the actual permit entitlement process, plans and initial analysis are meant to be conceptual. Full project analysis, including engineering, utilities, public safety, environmental and consistency with established policies is the second step beyond HAP. That process would be conducted through the respective decision-making bodies as part of the current entitlement process.

<b>Summary Residential Design Principles</b>	
<b>Required Elements</b>	<b>Required Urban Context &amp; Analysis</b>
<b>Small Projects (3 – 6 units; and project site less than 4 acres in size)</b>	
A project defining the following attributes: <ul style="list-style-type: none"> <li>• Building placement</li> <li>• Parking placement</li> <li>• Open Space Placement (location and function; private to accessible)</li> <li>• Dwelling access</li> </ul>	Neighborhood Context & Use Intensity: <ul style="list-style-type: none"> <li>• Requires analysis of project to both sides of block face</li> </ul>
<b>Medium Projects (7 – 20 units; and project site less than 4 acres in size)</b>	
All the above, plus within project define: <ul style="list-style-type: none"> <li>• Individual building sites</li> <li>• Variation of building frontages</li> <li>• Blended type buildings</li> <li>• Extension of streets &amp; paths</li> </ul>	Neighborhood Context & Use Intensity: <ul style="list-style-type: none"> <li>• Requires analysis of project to whole block &amp; portion of surrounding blocks</li> </ul>
<b>Large Projects (+ 21 units or project site greater than 4 acres in size)</b>	
All the above, plus within project define: <ul style="list-style-type: none"> <li>• Range of lot sizes &amp; widths for mix of housing types</li> <li>• Range of open space amenities</li> <li>• Range of street typology where appropriate</li> </ul>	Neighborhood Context & Use Intensity: <ul style="list-style-type: none"> <li>• Requires existing conditions survey &amp; neighborhood analysis</li> </ul>
<b>Specific Plans (project site must be greater than 20 acres or more in size)</b>	
Combines all of the elements listed above to develop a new infill neighborhood	Neighborhood Context & Use Intensity: <ul style="list-style-type: none"> <li>• Relationship to GP Community Plan or Districts, Neighborhood, &amp; Corridors</li> <li>• Requires existing conditions survey &amp; neighborhood analysis</li> <li>• Results in development of new Regulating Plan and Code</li> </ul>

The design principles are based on urban design criteria defined by form-based codes, similar to Downtown Compatibility Guidelines Council has authorized for use on downtown projects and further illustrated in the Draft Downtown Specific Plan Regulating Plan and Code, April 2006. The entire list of evaluation criteria is identified in the HAP Program Resolution contained in Attachment B of this report.

## **C. Inclusionary Housing**

### **Background**

The City's Housing Element and newly adopted General Plan contain policy directives regarding adoption of an inclusionary housing program. The City Council directed staff to consider incorporation of such a program into RGMP revision process, further suggesting that the City's Regional Housing Needs Assessment (RHNA) be used as a basis for the inclusionary percentages.

An inclusionary housing requirement instituted on a citywide basis is seen as one tool to aid production of units affordable at the very low, low and moderate-income level. The need for housing production at affordable income levels is particularly acute since household income has not kept pace with the rapid appreciation in median home values within the City of Ventura. Inclusionary housing is a tool used by over 131 cities in California to aid in the production of affordable housing. Typically inclusionary requirements range from 10% to 25%.

At the February 2006 workshop on revising the RGMP, the Council directed staff to consider including an affordability component tied to the City's RHNA unit allocations. Staff looked at various options for including an inclusionary component to the review process. Initially, this included creating a comprehensive inclusionary program for adoption in conjunction with the HAP. However, in attempting to devise a program, it became clear certain integral components such as an in-lieu fee, incentives and potential alternatives to on-site development, could not be sufficiently developed on a short-term basis because, among other things, there would not be sufficient time for adequate public participation given the timing of the HAP process.

In response, staff proposes what is basically a tiered inclusionary program. The first phase establishes a basic 15% on-site inclusionary requirement applicable to all projects containing seven (7) or more residential units. This provides a mechanism for requiring an inclusionary component as part of the HAP at the outset. In the interim staff has already begun to develop a comprehensive inclusionary housing ordinance. Such an ordinance would likely contain an in-lieu fee amount, establish when payment of the fee would be permissible, provide for incentives and fee offsets, consideration of alternative measures to on-site production, possible variable percentage rates, designation of a trust fund for receipt of fees and allowable expenditures. Such an approach also gives time for an appropriate civic engagement process. Staff is proposing to return to City Council with a comprehensive program by years end.

To demonstrate the need for an inclusionary housing requirement, staff prepared an Inclusionary Housing Study, attached to this report as Attachment D. Key points of the study are as follows:

1. There is a policy basis for establishing an inclusionary housing requirement in the General Plan and Housing Element.
2. Price appreciation in the real estate market is far outstripping income growth. The California Association of Realtors Housing Affordability Index (the percentage of households that can afford the median priced home) stood at 13% as of December 2005.
3. The average wage in Ventura for 2005 was \$42,530.
4. 63% of Ventura households earn \$74,999 or less, which is at or below the definition of moderate income.
5. The City's median household income for 2006 is estimated to be \$60,607.
6. A family earning the current City median household income of \$60,607 can afford a home priced at \$297,500. As of March 2006 the median price of the home in the City of Ventura was \$581,667.
7. A 15% inclusionary requirement could be expected to produce approximately 1,247 affordable units, based on the General Plan predicted residential development of 8,313 units during the 20 year planning period.

#### **Planning Commission Comments**

The inclusionary program was presented to the Planning Commission at its May 2, 2006 meeting. The Planning Commission was generally supportive of the program, but offered comments on the program. Those comments are summarized below in bold, followed by staff's response.

***An inclusionary housing program is appropriate.***

No response required.

***The percentage requirements should be variable, and the program should provide incentive for units provided in higher percentages at the very-low and low-income levels.***

The interim program does not address these requirements. However, as part of devising a comprehensive program staff will look at both of these issues in detail, and make specific recommendation when the program is presented to the Council by years end.

***Put the focus on rental housing.***

As previously discussed, restricted rents are lower than market rents at the very-low income level. However, at the moderate and low-income levels there is little differentiation in rental rates between fair market and restricted rents. Thus, in an effort to address this issue, the program is structured such that the very-low income units are treated as rental units, and either retained by the development entity or sold to an eligible organization. An

eligible organization could be a governmental entity such as the Housing Authority, or a non-profit housing provider.

***Share program with the development community.***

Subsequent to the Planning Commission hearing staff had discussion with representatives of the BIA and the development community. Staff had agreed to make a June 7<sup>th</sup> presentation to the BIA but the meeting was cancelled at their request. However, staff envisions more civic engagement will occur as part of the subsequent comprehensive program development.

***Find out what works. Provide examples of inclusionary projects for the City Council.***

There is a 30-year history of inclusionary zoning in California. A recent survey indicates that 131 cities now have inclusionary zoning requirements. In addition, the City has had an inclusionary program in place for over two years within the merged downtown redevelopment project area, with a 15 % requirement of all units provided to very-low and low to moderate income households. The first project Mayfair Lofts, containing 3 affordable units is almost ready for occupancy. In addition, 315 units have been approved in downtown including 92 affordable units. Another 162 units in downtown, including an additional 24 affordable units, are in the planning process. Therefore, staff determined there is adequate precedent for concluding that a 15% inclusionary program can feasibly be provided on a citywide basis without harming housing production.

***Ensure that the property is appropriately restricted to ensure on-going affordability.***

A declaration (e.g. Affordability Agreement) would be required to be recorded against each property's title. In the case of units offered for sale, a resale restriction agreement would record against the title. Projects would be monitored on an on-going basis for compliance.

**Interim Inclusionary Housing Program – Basic Components**

Applicability

The inclusionary program applies to for-sale projects only. All projects containing 7 or more units would be required to provide 15% of the units affordable to very low, low and moderate income categories. In evaluating the applicability of a project, staff evaluated how housing production would be best served by applying an inclusionary requirement to construction of for-sale and rental projects. Staff concluded that applying an inclusionary requirement to rental projects would not ultimately facilitate housing production. While restricted rents are lower than market rents at the very-low income and extremely low-income level, there is little differential in market rents versus restricted rents at the low and moderate-income category. In addition, vacancy rates remain below five percent. Five percent is generally considered the threshold demonstrating adequate supply in the market

place. Staff believes that initiation of an inclusionary requirement on rental projects might dissuade development of this needed housing type. However, staff will monitor market conditions for change, and will periodically reevaluate the feasibility of applying an inclusionary requirement on rental housing.

As previously stated, all projects containing 7 or more units would be required to provide 15% of the units affordable very-low, low and moderate income categories. Staff used the current RHNA unit allocation cycle in order to establish the appropriate percentage allocation at each affordability category. Based upon the City's current allocation, the percentage of total RHNA allocation by income level is: Very Low (25%), Low (14%), Moderate (18%) and Above Moderate (43%).

The above moderate category equates to market rate housing. To correctly establish the appropriate percentages at each level of affordability the above-moderate category must be excluded. The following table demonstrates the RHNA percentage at each affordable category and the corresponding proportion of the 15% inclusionary housing requirement.

**Percentage Requirements for Affordable Categories**

Income Group	RHNA Allocation	Percent of Total of Affordable Allocation	15% Inclusionary Requirement
Very Low	488	44%	.44 X 15 = 6.6 = 6%*
Low	272	24%	.24 X 15 = 3.6 = 4%
Moderate	354	32%	.32 X 15 = 4.8 = 5%
Total	1,114	100%	Total = 15%
* Percentage for Very-Low Income Category was rounded down			

Staff had originally proposed the percentage for units be apportioned as 7% very low (very low income had been rounded up), 3% low (low income had been rounded down), and 5% moderate income corresponding exactly to the RHNA categories. However, after further consideration, staff recommends these percentages, on an interim basis, be apportioned equally over the income categories 5% very-low, 5% low, and 5% moderate. This allows the inclusionary tool, at least initially, to apply equally across all income categories, provide equal production in each income category, and make unit type allocations easier to administer.

Inclusionary units provided through the program at the moderate and low-income levels will be required to be offered for sale. Units developed at the very low-income level would be

required to be rented to very-low income-eligible households. The development entity could either retain ownership of the unit, or could sell the unit to an eligible organization, which is defined as a government entity; or a non-profit corporation or non-profit organization, or charitable organization as defined by applicable state or federal law.

#### Threshold Project Size and Calculation

Staff is recommending all developments containing seven (7) or more residential units comply with the inclusionary housing requirements. A development of seven units is the number required to achieve one whole affordable unit.

In determining the number of whole Inclusionary Units required:

- any decimal fraction 0.5 or greater shall be rounded up to the nearest whole number.
- any decimal fraction less than 0.5 shall be rounded down to the nearest whole number.

For projects requiring 3 or less affordable units, the units shall be allocated in the following order, moderate, then low, then very low. For projects requiring 3 or more affordable units the Community Development Director or their designee will determine the order of allocation.

#### Exemptions

The requirements of the inclusionary component of the program would not apply to the following projects:

1. Residential developments of six (6) housing units or less.
2. Rental units.
3. The reconstruction of any structures that have been destroyed by fire, flood, earthquake or other act of nature provided that the reconstruction of the site does not increase the number of residential units by seven (7) or more.
4. Residential building additions, repairs or remodels; provided that such work does not increase the number of existing units to seven (7) or more units.

As identified earlier, the affordability component is a phased approach, with the in-lieu fee option and applicability to smaller projects to be addressed later during the development of the comprehensive Inclusionary Housing Program.

#### Comparability

The intent of this program is to disperse inclusionary units throughout a development. The

units should also be comparable in infrastructure (including sewer, water and other utilities), construction quality and exterior design to the market-rate units. Inclusionary Units must be equivalent in terms of number of bedrooms to the corresponding housing type of market rate units, but may be smaller in aggregate size, and have different interior finishes and features than market-rate units, so long as the interior features are durable, of good quality and consistent with contemporary standards for new housing. Providing this type of flexibility should avoid stigmatizing the units by avoiding isolated location and one single type, but also ameliorate some of the costs associated with housing production, by allowing some flexibility in unit type and design.

#### **Inclusionary Housing Program – Subsequent Steps**

If the City Council approves the initial phase of the inclusionary program, staff would continue developing the comprehensive inclusionary housing program. Work is already underway on an in-lieu fee analysis. Pending completion of the analysis, and prior to proceeding with drafting an ordinance, staff would convene at least one public workshop with stakeholders in the development community to share the results of the fee analysis and solicit input on other aspects of the program, prior to drafting the program.

#### **D. Processing and Review Authority**

City Council directed the revised RGMP program include review processes by the various decision-makers (Council, Planning Commission, and Design Review Committee) based upon project scale. Urban design and neighborhood context are both critical components determining project prequalification. Planning Division staff analysis will rely heavily upon design experience to-date from past and current citywide projects and particularly, the usefulness of the form-based code contained within the draft 2006 Downtown Specific Plan. However, to complement planning staff experience, urban design expertise in-house or through additional architectural contract services, is desirable to ensure projects from initial conception comply with community expectation for good urban design standards (listed previously under Section B) implementing the General Plan.

As the City has recently retained contract architectural services, staff is including project review by both staff and contract architect as part of the prequalification process. Design evaluation assistance is provided to staff and not to applicants. Recommendations from contract services are to be those of staff only. Some prospective developer's have incorrectly interpreted this service to imply a "Town Architect" with decision-making power and/or services provided directly to the private sector. However, opportunities for collaboration would be pursued where appropriate.

Proposed residential projects would first be reviewed internally by Planning Division staff for completeness determination and evaluation recommendation; followed by decision-maker prequalification determination. Based upon project scale, small to medium size

projects would either be reviewed by only DRC or both DRC and PC, with larger projects receiving higher review including DRC, PC and City Council. To expedite review process, the HAP program includes mechanism to hold both the DRC and PC review jointly at public hearing, thereby eliminating administrative work and time to process through separate review cycles. Tiered project review is summarized in the Attachment E.

### **Specific Plan Review Process**

As identified during the joint workshop, specific plans on properties exceeding 20 acres will be reviewed and adopted through land use policies and implementing regulating code concurrent with the development proposal. This is necessary because the scale of specific plans create larger neighborhoods, with significant relevance to the character of "our well-planned and designed" community. Since a fully detailed code is required (urban standards, building types, design guidelines, administration, etc.), code development must be based upon surrounding neighborhood conditions and analysis; and consistency with General Plan – *Districts, Neighborhoods and Corridors* policies. The specific plans must also complement (through elements such as circulation connections, compatible use intensity and architectural character) the broader policy and development coding where community plans are currently underway or anticipated as part of the Planning Division work program. This is a challenging undertaking.

Staff recommends specific plans, not yet officially initiated by Council, be processed under the direct guidance of the Community Development (CD) Department. Through applicant/developer funding, CD would manage preparation of the specific plan(s)— policy, code development, environmental review and adoption process—working closely with the applicant and community to draft the regulating document and concurrent permit entitlements. As proposed in the revised program, specific plans, while deemed pre-qualified (exempt) would still require initiation by Council to accept the specific plan for processing and contract approval to fund the work effort.

### **E. Unit Accounting and Tracking**

City Council and the Planning Commission concurred to focus on the back-end of measuring through issued building permits. The recommended three-tiered approach would track development pace through: (1) annual building permit accounting Citywide and through unit predictions as adopted in Community or Specific Plans; (2) five-year review during state-mandated Housing Element updates; and (3) new program policy trigger mechanism requiring further Council review of General Plan buildout.

Item Nos. 1 and 2 above would occur in the time duration indicated and brought to Council for review. Regarding a new trigger mechanism, staff complied with this direction by adding the following policy/action direction in the Draft Downtown Specific Plan (DTSP) released on April 6, 2006. Staff will incorporate similar language in forthcoming Community and Specific Plans.

DTSP Policy 4D and Action 4.11

**Consistent with the General Plan's predicted development intensity and pattern, monitor and, as necessary, redirect residential and commercial growth.**

Monitor the production and pace of new development through the issuance of building permits. The following shall be reported annually to the City Council:

1. Production and pace of new residential units;
2. Production and pace of new commercial and industrial growth, identifying total square feet of retail, office and industrial space; and
3. Total number of planning permits approved and applications pending.

When Downtown production of residences and commerce has reached 70% of predicted development as defined in the City's 2005 General Plan (either 1,155 issued residential building permits or 385,700 commercial square feet in issued building permits), City Council shall review the intensity of development and locations throughout the Downtown Specific Plan area to determine if strategies are needed to modify the pace, redirect location or change the mix of Downtown residential and commercial development.

Staff synthesized information in General Plan Predicted Development Table 3-2 to identify residential development by *Planning Area* in order to track the development pace by new community plans (see Map in Attachment F). The following table represents how residential units and tracking pace will be measured.

Community Planning Area	Residential Development (units)
Downtown Specific Plan	1,650
Victoria Avenue Corridor Plan	122
Auto Center Specific Plan	50
Saticoy-Wells Community Plan <sup>1</sup>	1,748
Westside Community Plan <sup>2</sup>	1,324
Midtown Community Plan <sup>2</sup>	953
Remaining General Plan areas	2,471
<b>TOTAL<sup>3</sup></b>	<b>8,318</b>

<sup>1</sup> This planning area and assumption for buildout is inclusive of proposed specific plans and the Saticoy Village Specific Plan. Subset accounting of building permits within each specific plan will also be reported

<sup>2</sup> Presumed Community Plan boundary—predicted residential units from *Districts, Corridors and Neighborhood Centers* must be combined into the new community plan boundaries.

<sup>3</sup> General Plan Predicted Development Table 3-2, general Plan implementation buildout assumption through year 2025

**Environmental Review**

The environmental impacts future residential development pursuant to the proposed HAP and Inclusionary Housing programs were evaluated in the 2005 General Plan FEIR. The EIR was certified by the City Council on August 8, 2005. An Addendum No. 1 to the FEIR has been prepared to explain the relationship of the HAP to the previously analyzed environmental impacts in accordance with the California Environmental Quality Act (CEQA), and is provided as Resolution for Council adoption in Attachment 1.

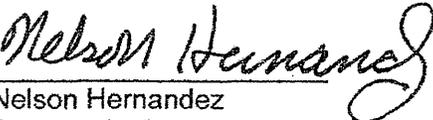
**Conclusion**

The HAP is an important step in implementing the General Plan. The HAP program can be boiled down to two features. It provides a way to designed create great places in a manner that is more efficient (the prequalification process) than what we current have in place. And, HAP allows us to create great places for residents across the income spectrum (the inclusionary housing component).

Under the RGMP, the City accepted housing development applications every two years; under HAP filing can occur at any time. This allows housing developers to submit when they are ready, thus providing better customer service and responsiveness to market conditions. The new HAP program emphasizes achieving high-quality urban design and place making rather than quantity of housing units, which was the RGMP focus. In accordance with PC/DRC/HPC task force recommendations, HAP seeks to reduce uncertainty by providing urban design standards and a prequalification approval process. At the conclusion of the prequalification approval, applicants will know where they stand and can go to final submittal with greater certainty. The inclusionary housing component implements the General Plan relative to providing housing for our residents across the income spectrum. An inclusionary housing component helps sustain long-term economic vitality by creating a range of housing choices for employees of local businesses.

Prepared by: Dave Ward, Principal Planner (Project Manager)  
Bill Hatcher, Senior Planner

For

  
Nelson Hernandez  
Community Development Director

Reviewed as to fiscal impacts

  
Jay Panzica  
Chief Financial Officer

FORWARDED TO THE CITY COUNCIL

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Office of the City Manager

**Attachments**

- A. Resolution Approving 2005 General Plan FEIR – Addendum No. 1
- B. Resolution Replacing RGMP Ordinance, Chapter 24R.115 with the HAP program, Chapter 24R.115.
- C. Resolution for Interim Inclusionary Housing Program, Chapter 24R.240
- D. Inclusionary Housing Study
- E. Summary Table of HAP Program Requirements, Review and Processing
- F. General Plan Residential Buildout by Planning Area (Map and Table)
- G. May 2, 2006 Planning Commission Minutes
- H. February 22, 2005 Council/Planning Commission Joint Workshop – Summary Options Table and Workshop Action Minutes
- I. Reference Policies: General Plan and Housing Element
- J. HAP Draft Application Submittal Requirements

ATTACHMENT "C"

CITY OF VENTURA

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# ADMINISTRATIVE REPORT

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Date: July 31, 2006  
Agenda Item No.: 13  
Council Action Date: August 7, 2006

**To: RICK COLE, CITY MANAGER**

**From: NELSON HERNANDEZ, COMMUNITY DEVELOPMENT DIRECTOR**

**Subject: REVISION TO THE RESIDENTIAL GROWTH MANAGEMENT PROGRAM  
(MUNICIPAL CODE CHAPTER 24R.115)**

**RECOMMENDATION**

In accordance with the direction of General Plan Action 3.24 to revise the Residential Growth Management Program (RGMP), staff recommends the City Council take the following actions:

- a) Adopt Resolution approving Addendum No. 1 to the 2005 General Plan Final Environmental Impact Report (FEIR), certifying the City Council has reviewed and considered the FEIR as modified by Addendum No. 1, and adopting a Statement of Overriding Considerations for unavoidable adverse environmental effects of residential development identified in the FEIR (Attachment A);
- b) Adopt Resolution replacing the Residential Growth Management Program currently codified in San Buenaventura Municipal Code Chapter 24R.115 with a new residential project prequalification process entitled the Housing Approval Program (HAP) (Attachment B) pending acceptance of citywide regulating code guidelines;
- c) Adopt Resolution approving an interim Inclusionary Housing Program as San Buenaventura Municipal Code Chapter 24R.240 exclusive of the Merged Downtown Redevelopment Project Area to assist the City in meeting its Regional Housing Needs Assessment and in furthering the policies of the General Plan by providing affordable housing and housing for all economic segments of the community (Attachment C);
- d) Direct Community Development staff to process specific plans, including prescreen process directed under HAP, in the priority order identified in Attachment G; and,

- e) Direct Community Development staff to present the regulating code guidelines to the Planning Commission for review and recommendation to the City Council, anticipated in fall 2006.

### **SUMMARY**

On July 10, 2006, City Council reconsidered the draft program elements of the Housing Approval Program (**HAP**), intended to replace the Residential Growth Management Program (RGMP) after initial program review (June 12<sup>th</sup>) and directing additional review and recommendations from the Planning Commission (June 20<sup>th</sup>). Four key issues were addressed, including:

- o **HAP Evaluation Criteria,**
- o **HAP Applicability,**
- o **HAP application processing (including specific plans), and**
- o **HAP Affordable Housing Component**

Staff answered many questions raised by Council, Planning Commission and the public. Several Planning Commission recommendations and public comments were supported. Council directed staff to revise the program resolutions and return on August 7, 2006 for anticipated program adoption. If adopted the first HAP applications could be submitted 30 days later on September 7, 2006.

As first indicated during the June 12<sup>th</sup> Council hearing, and restated again as Recommendation D, staff is currently preparing Code Compatibility Guidelines and will receive Planning Commission review and recommendation before returning to Council for direction.

### **ALTERNATIVES**

Direct staff to incorporate further revision (expand, delete or add more) components of the HAP and Inclusionary Housing programs, returning to Council on the next available agenda.

### **FISCAL IMPACTS**

RGMP program modification is directed under the 2005 General Plan. Staff analysis and the HAP program are consistent with the FY 06-07 budget for General Plan implementation. Adoption of the revised program will have no direct fiscal impact to the current fiscal year budget. The Inclusionary Housing Program is also directed under the 2005 General Plan and department effort to complete the program is consistent with the current FY 06-07 budget.

The current RGMP program has application filing fees of \$2,586 for Downtown Projects or \$6,028 for Large Projects, previously adopted by Council in the January 2006 Permit Fee Schedule. Replacing RGMP with the HAP program, Staff recommends a HAP application filing fee of \$2,586, based upon the similarity of the HAP evaluation criteria and project analysis compared to previous Downtown Project review.

### **DISCUSSION**

Per Council's direction at the July 10, 2006 hearing. Staff has revised both the HAP and Inclusionary Housing programs, and respective **resolutions**, to include the following ten revisions. This discussion details the changes evolved from the hearings that **occurred** at the City Council meetings of June 12, 2006 and July 10, 2006, and the June 20, 2006 Planning Commission meeting. All elements of the program not detailed in the discussion below have remained generally as originally proposed. For Council reference, the previous Administrative Reports are available in the Council's reading file.

#### **HAP Program**

##### **1 Added exemption for prior RGMP partially-allocated DeAnza Courts project**

During both Council and PC hearings, HAP prequalification for "partially-allocated" projects was raised as possible exemption to HAP. Council supported exempting *DeAnza Courts*, with 57 RGMP allocated units, since the project began review by the DRC and Planning Commission during fall 2005/winter 2006. As exempt, the project application would be modified to the full 80 units and continue entitlement process, including review for urban design principles, circulation and streetscape, and building form. However, Council did direct that *DeAnza Courts* should not be exempt from the affordable housing requirement. Therefore the proposed Inclusionary Housing Program would be applicable to the 23 units (not previously allocated) of a revised project application.

##### **2 Modify project size review (small, medium and large) criteria from strict unit count limitation to system based on lot/block or land acreage**

Council members, Commissioners and several public speakers questioned the HAP classification of small (3-6 units), medium (7-20 units) and large (21+ units) projects might be too restrictive. Council supported a system based upon the area of land proposed for development or revitalization: lot, block(s) or neighborhoods.

<b>Project Size</b>	<b>Criteria</b>
Small	Small Projects depict development at the urban scale of a single lot and single building type.
Medium	Medium Projects depict development at the urban scale of more than one lot with individual building types on each lot but which account for less than a city block.

Project Size	Criteria
Large	Large Projects depict development at the urban scale of a one or more city blocks and one or more building type but less than 20 gross acres in area.
Specific Plan	Specific Plan Projects are proposals depicting development at the urban scale of a one or more city blocks and one or more building type but more than 20 gross acres in area.

Using the above project area determination wouldn't change the evaluation criteria, but does provide for a range of units, dependent on building types selected and acreage.

### 3. Established program review and reporting requirement

Both Planning Commission and Council supported monitoring and reporting back implementation of HAP. Staff revised the resolution to include status report after program has been running for one year.

*HAP Status Report and Evaluation.* The Community Development Director shall monitor HAP application processing and provide a status report to both Planning Commission and City Council within one year of program adoption. Said report may include feedback from a Community Development Director appointed citizens advisory committee with recommended HAP program modifications.

### 4 Revised HAP application submittal requirements

Staff revised the draft HAP application submittal requirements and modified several requirements to maintain HAP prequalification focus on conceptual review (see Attachment H). Specifically, staff removed the floor plan requirement and no elevation details are necessary for HAP prequalification.

### 5 Specific Plan Processing Priorities

As proposed in HAP, specific plans on properties exceeding 20 acres will be reviewed and adopted through land use policies and implementing regulating code concurrent with the development proposal. This is necessary because the scale of specific plans create larger neighborhoods, with significant relevance to the character of "our well-planned and designed" community. Since a fully detailed code is required (urban standards, building types, design guidelines, administration, etc.), code development must be based upon surrounding neighborhood conditions and analysis; and consistency with General Plan – Districts, Neighborhoods and Corridors policies.

A specific plan proponent team develops concept project and draft materials for review. Because form-based coding is context based, plan development (initial draft to final) should evolve with city staff involvement, similar to the current approach for community plans. Therefore, specific plans, not yet officially initiated by Council, are processed under

the direct guidance of the Community Development (CD) Department. Through applicant/developer funding, CD would manage preparation of the specific plan(s)—policy, code development, environmental review and adoption process—working closely with the applicant and community to draft the regulating document and concurrent permit entitlements.

Specific Plan processing effort is significant which is the reason for staff's recommendation for Council initiation (revised in HAP resolution referred as "prescreen"). Community Development would present each concept specific plan, including the developer's design team and proposed scope of work, with timeframe, to complete the effort. Current Planning Division resources would be **augmented** with developer-funded contract planning functions to provide focused staff effort on processing specific plans. At the July 10<sup>th</sup> Council meeting, staff indicated the ability to process all proposed eight specific plans at once would not result in expeditious processing, negatively impacting the developer, staff planner and decision-makers. Therefore staff established priority order to process specific plans (see Attachment G) based upon Council's previous direction for priority infill development. Four specific plans (inclusive of Parklands) will be processed initially, with another specific plan beginning when one is completed. Assuming the Parklands Specific Plan continues processing as anticipated with local adoption in late December, the fifth specific plan would likely begin January 2007.

Based upon Council's priority infill development first (Downtown, Saticoy/Wells, Westside and Midtown), the John Laing Homes proposal, the Bluffs at Midtown, would be next in-line. The Grove proposal (Thille Street @ Hwy 126) and Peirpont Village (Harbor @ Seaward) which are both located outside priority areas, would be processed by length of time in process (i.e., the Grove proposal received partial RGMP allocation in January 2005). Each of the developer proponents, understandably, has an interest for their project to be next in line if their proposal cannot begin with Group 1 priority. Staff has received letters from two developers, also provided in Attachment G.

Staff's recommended direction—process some, while others wait—has been carefully evaluated as the best strategy for Current Planning Division staff to reasonably expand workload, ensure adequate policy/design analysis, and still maintain Council's performance measure regarding timely permit processing timelines.

#### Interim Inclusionary Housing Program

##### 1. **Base Threshold (Section 24R240.310)**

Staff had previously proposed that the threshold for applicability be projects containing 7 residential units or more, it is proposed that the threshold be increased to 15 residential units or more.

## 2. Calculation of the Inclusionary Requirement (Section 24R240.310)

### Percentage Requirement

The calculation of inclusionary units has been bifurcated into two categories based on project size. For projects containing 59 residential units or less, the inclusionary requirement is an assigned number of inclusionary units based on project size as indicated in the table below.

Total number Of units	Number of Inclusionary Units Required	Requirement as a Percentage
15 – 20	1	6.7%
21 – 26	2	9.5%
27 – 33	3	11.1%
34 – 39	4	11.8%
40 – 46	5	12.5%
47 – 53	6	12.8%
54 – 59	7	13%

Projects containing 60 units or more, are required to provide 15% of the total number of units as Inclusionary Housing Units (Inclusionary Units) restricted to occupancy by Moderate, Low, or Very Low-Income Households.

### Rounding Requirement (Section 24R240.310)

In determining the number of whole Inclusionary Units required, the rounding method has been modified to require that any decimal fraction would be rounded down to the nearest whole number.

## 3. Method of allocation of inclusionary units at required income categories (Section 24R240.310)

As originally proposed, the inclusionary requirement would have been met by providing fixed percentages of 5 % for each required income category. In an effort to provide more flexibility the allocation methodology has been bifurcated by project size. A development containing 59 units or less would be required to satisfy the inclusionary requirement at fixed base percentages in a set rotation of 1 moderate, then 1 low, then 1 very-low, until the inclusionary requirement is met. However, this formula would not preclude a development from satisfying its inclusionary requirement by providing units at lower income levels than required. Using a 30-unit project as an example, there would be a requirement for, 3 inclusionary units, 1 moderate, 1 low and 1 very-low, would be considered to meet that

requirement by providing any combination of inclusionary units at lower income categories than required, e.g., 3 low could be satisfied by providing 2 low and 1 very-low, etc.

A project containing 60 or more units would have the option to either meet the 15% requirement at the fixed percentages as described above, or at set percentages depending on income levels as follows, 10% of the required Inclusionary units as very low income, 15% low income, or 20% moderate income. A project in this category would also be able to meet the inclusionary requirement by providing inclusionary units at lower income categories than required.

**4. Expand the ability to satisfy the Inclusionary requirement with rental units to include both very low and low-income (Section 24R240.820).**

As initially proposed, the inclusionary program would require that units produced at very-low income be rental units and those produced at the moderate and low-income levels would be owner-occupied units. However, in an effort to provide more flexibility in meeting the City's housing needs, moderate income units would be required to be owner-occupied, and very-low income units would be required to be rentals, but under the current proposal the developer would have the option to offer low-income units as either owner-occupied or rentals.

**5. Administrative Changes**

In addition to the changes detailed above, certain administrative details or clarifications have either been made or added to the resolution as follows:

Addition of **Section 24R240.520** – Other Incentives, referencing the ability to apply for certain regulatory incentives provided for in the City's zoning ordinance if the density bonus requirement is met.

Addition of **Section 24R240.730** - Owner-occupancy requirements.

Addition of **Section 24R240.820** - Use and Occupancy of Low Income Rental units.

Addition of **Section 24R240.830** – Procedure for redesignation of Low Income Units from rental to for-sale.

Addition of **Section 24R240.1010** – Program Administration

Modified **Section 24R240.620** - Inclusionary Housing plan submittal requirements deferring the requirement for floor plans and elevations as part of the Inclusionary Housing Plan from HAP submittal to discretionary or design review submittal.

**6. Subsequent Steps**

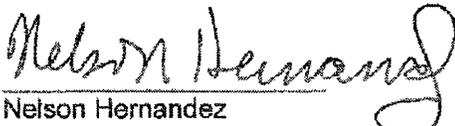
As discussed in prior hearings, subsequent to adoption of the interim Inclusionary Housing Program is adopted would be to begin a process to institute an in-lieu fee. The fee could be applicable to a number of situations including addressing the smaller projects below the 15-unit threshold, and fractional inclusionary units. In addition, the subsequent program would look at broadening incentives. Staff is committed to bringing this phase of the program back to the Council before the end of the year.

**Environment Review**

The environmental impacts future residential development pursuant to the proposed HAP and Inclusionary Housing programs were evaluated in the 2005 General Plan FEIR. The EIR was certified by the City Council on August 8, 2005. An Addendum No. 1 to the FEIR has been prepared to explain the relationship of the HAP and the Interim Inclusionary Housing Program to the previously analyzed environmental impacts in accordance with the California Environmental Quality Act (CEQA), and is provided as Resolution for Council adoption in Attachment 1.

Prepared by: Dave Ward, Principal Planner (Project Manager)  
Bill Hatcher, Senior Planner

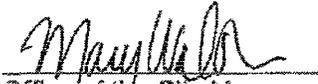
For

  
Nelson Hernandez  
Community Development Director

Reviewed as to fiscal impacts

  
Jay Panzica  
Chief Financial Officer

FORWARDED TO THE CITY COUNCIL

  
Office of the City Manager

Administrative Report  
August 1, 2006  
Page 9

**Attachments**

- A. Resolution Approving 2005 General Plan FEIR – Addendum No. 1
- B. Resolution Replacing RGMP Ordinance, Chapter 24R.115 with the HAP program, Chapter 24R.115
- C. Resolution for Interim Inclusionary Housing Program, Chapter 24R.240
- D. Inclusionary Housing Study
- E. **Summary Table of HAP Program Requirements, Review and Processing**
- F. **July 10, 2006 City Council Memorandum Addressing Revised RGMP Questions**
- G. **Specific Plan Priority Processing and Developer Proponent Letters**
- H. **HAP Draft Application Submittal Requirements**

**City Council Reading File:**

- A. 2005 General Plan Program EIR
- B. Previous Revised RGMP Council Reports (6/10/06 & 7/12/06)

**ATTACHMENT "D"**

# INCLUSIONARY HOUSING STUDY

**To:** City Council  
**From:** Bill Hatcher, Senior Planner  
**Subject:** Inclusionary Component of the HAP  
**Date:** June 7, 2006

## Overview and Summary

The City's Housing Element and newly adopted general plan contain policy directives regarding consideration of the adoption of an Inclusionary Housing Program. The City Council directed staff to consider incorporation of such a program into revisions to the RGMP process, further suggesting that the City's Regional Housing Needs Assessment (RHNA) be used as a basis for the inclusionary percentages.

The purpose of this study is to establish a basis for the incorporation of a citywide inclusionary housing requirement as part of the new Housing Approval Program. An inclusionary housing requirement instituted on a citywide basis is seen as an effective way to aid in the production of units affordable at the very low, low and moderate-income level. The need for production of housing at affordable income levels is particularly acute since household income has not kept pace with the rapid appreciation in median home values within the City of Ventura. Inclusionary housing is a tool used by 131 cities in California. For comparative purposes, a comprehensive study in 2003 documenting the inclusionary requirements of 107 cities with inclusionary housing requirements is attached. Typical inclusionary requirements range from 10% to 25%, with approximately 50% of the cities having a requirement for 15% or more.

Staff is proposing that the development of the inclusionary component be addressed in two phases. The first phase of the program proposes a 15 percent inclusionary requirement evenly distributed across very low, low and moderate income levels. This requirement would be applicable to all developments containing 7 or more residential units. The initial program also mandates that units be produced onsite, and also provides for exemptions and waiver process. The second phase of the program would be more comprehensive and include an in-lieu fee component, consideration of alternatives to on-site development, incentives, consideration of variable percentages to satisfy affordability requirements, establishment of a trust fund for fees, and allowable expenditures of in-lieu fees.

The purpose of this study is to set forth the basis for establishing a 15% inclusionary requirement on new development.

The following is summary of key points of the study:

1. There is a policy basis for establishing an inclusionary housing requirement in the General Plan and Housing Element.
2. The average wage in Ventura for 2005 was \$42,530.
3. The General Plan predicts that 8,313 units will be constructed in the City by 2025, resulting in a population increase of approximately 21,627 people over the life of the General Plan.
4. Given the current population to employment ratio, an additional 11,758 workers could be expected to join the workforce.
5. Of those 11,758 workers, approximately 2,821 (24%) of those workers would be projected to be employed in the agricultural and retail sectors earning at or below 50% of area median income, an additional 3,057 (26%) of those workers would be projected to be employed in the service sector and would earn at or below 80% of area median income.
6. Presently, 63% of Ventura households earn \$74,999 or less, which is at or below the definition of moderate income as defined the Department of Housing and Urban Development.
7. The 2006 City median household income is estimated to be \$60,607.
8. Price appreciation in the real estate market is far outstripping income growth. The California Association of Realtors Housing Affordability Index (the percentage of households that can afford the median priced home) stood at 13% as of December 2005.
9. Using the conventional measure of housing costs capped at 30% of adjusted gross income, a family earning the estimated 2006 City median household income of \$60,607 could afford a home priced at \$219,500. As of March 2006, the median price of the home in the City of Ventura was \$581,667.
10. A 15% inclusionary requirement could be expected to produce approximately 1,247 affordable units, based on the predicted buildout of 8,313 units over the term of the general plan

### **Policy Basis**

#### **General Plan**

*Policy 3C: Maximize use of land in the city before considering expansion.*

- Action 3.24: Revise the Residential Growth Management Program (RGMP) with an integrated set of growth management tools including:

- A. Appropriate mechanisms to ensure that new residential development produces high-quality designs and a range of housing types across all income levels; and,

### **Housing Element**

*Policy 2.11 Evaluate adoption of an inclusionary housing ordinance as a means of integrating affordable units with new residential development: 1) Require affordable units to be provided on or off-site, with allowance for payment of an in-lieu fee at the discretion of the City; 2) Evaluate the financial impact of inclusionary requirements on development, and assess incentive-based alternative strategies for provision of affordable housing.*

*Policy 2.13 Encourage the production of housing that meets the needs of all economic segments, including lower, moderate, and above moderate-income households, to achieve balanced community.*

#### *Program 16. Inclusionary Housing Ordinance*

*"Inclusionary zoning is a tool that can be used to integrate affordable units within market-rate residential developments. To address affordable housing needs, numerous communities in California have adopted inclusionary housing ordinances that require an established percentage of units within a market-rate development to be price-restricted as affordable units for very low, low, and moderate-income households.*

*The City will evaluate the adoption and implementation of an inclusionary housing ordinance to require a given percentage of units within new market-rate developments be price-restricted units for very low, low, and/or moderate-income households (typically between 10-25%). Should the City adopt a local inclusionary ordinance, only where on-site provision of affordable units is deemed economically infeasible will the provision of units off-site or payment of an in-lieu fee be permitted. The amount of the in-lieu fee would be based on the amount of subsidy that would be necessary to develop the required inclusionary housing units at levels affordable to lower and moderate-income households (referred to as the "affordability gap"). Fees collected will be placed in a housing trust fund to support affordable housing activities.*

*Five-year Objective: The City will complete the inclusionary housing nexus study and the ordinance if applicable in 2004. The nexus study will encompass an analysis of incentive-based alternative strategies, and will evaluate the financial impacts of the inclusionary requirement on development. Should the City move forward with adoption of an ordinance, the affordability requirements and in-lieu fee amount would be structured to not unduly burden development. "*

## **Jobs & Income**

There is a strong correlation between job-growth and the need for housing.<sup>1</sup> As new jobs create new workers, these workers need a place to live. In addition to new workers creating a need for additional housing, as construction occurs to facilitate new demand, it has the secondary effect of creating a demand for additional service. Typically these "service" related jobs are not in the higher paying job categories, and workers in these categories find it difficult to find affordable housing in the community, or spend a substantial portion of their income on housing, or live in substandard housing or overcrowded conditions.<sup>2</sup>

As early as 2001 UCSB's *Ventura County Economic Outlook* identified the growing gap between housing prices and income levels as making it increasingly difficult for the County's workforce to find affordable housing. That situation has only been exacerbated by the steep increase in the median price of housing from 2001 to present. From 2001 to the end of 2005, the median price of housing in the City has increased from \$270,172 to \$573,629. For the same period average wages across all sectors in the City of Ventura increased from \$34,770 to \$42,530, at the same time the County median household income based on a three person family has increased from \$64,681 in 2001 to \$71,350 in 2006.

The City's economic 2006 economic forecast stated, "Rapidly rising home prices and slower growing wages imply declining affordability. The slow-down in home price growth will lead to a flattening of affordability. It will not lead to significantly increased affordability. Therefore, low housing affordability will continue to have economic and demographic impacts."<sup>3</sup>

## **Wages and Employment Categories**

According to the 2006 City of Ventura Economic Forecast, prepared by the UCSB Economic Forecast Project, "Ventura County's economy continues to be strong... Ventura City's economy has been growing at a more sedate pace than most other Ventura County Communities... We think that Ventura City's economy will remain modestly strong throughout the forecast period." The report goes on to state, "Retail Trade, Services, and Government sector continue to dominate Ventura's jobs. Retail Trade, Services, and Finance Insurance and Real Estate will be the growth sectors in the next few years."

The following Table illustrates wage levels by industry in the City and the number of employees in each category:

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<sup>1</sup> Harvard Center for Joint Housing Studies, State of The Nations Housing 2001

<sup>2</sup> City of Ventura Housing Element Technical Report

<sup>3</sup> 2006 City of Ventura Economic Forecast, UCSB Economic Forecast Project

**2006 Estimated Wage Levels by Industry<sup>4</sup>**

<b>Industry</b>	<b>Total Employed</b>	<b>Average Wage</b>	<b>% Change Year/Year</b>	<b>Job Creation %</b>
<b>Agricultural</b>	1,229	\$26,105	8.4	-3.8
<b>Mining and Quarrying</b>	359	\$167,189	1.7	2.4
<b>Construction</b>	4,645	\$46,639	6.1	2.8
<b>Durables Manufacturing</b>	2,606	\$51,660	7.7	-0.7
<b>Non-Durables Manufacturing</b>	2,009	\$48,643	4.2	-0.3
<b>Trans., Comm., and Utilities</b>	1,831	\$55,459	5.8	1.2
<b>Finance, Insurance and Real Estate</b>	2,754	\$59,406	5.0	0.8
<b>Retail Trade</b>	12,457	\$23,641	4.3	1.4
<b>Wholesale Trade</b>	2,030	\$41,674	3.1	1.4
<b>Services</b>	15,162	\$36,380	5.3	1.6
<b>Public Sector</b>	12,505	\$57,397	5.3	-0.3
<b>Private Sector</b>	45,529	\$38,448	5.2	1.2
<b>Total All Sectors</b>	58,036	\$42,530	5.1	0.9

The City's Housing Element identifies persons employed in lower-paying occupations, such as retail workers, service employees, and farmworkers, are particularly in need of housing assistance. According to the State Employment Development Department, most of the workers in these categories earn less than 50% of the County median income. In addition, to wage earners in the aforementioned categories, homeownership is becoming increasingly difficult to achieve for middle class professionals, including teachers, police officers, firefighters, nurses, and other public employees. Because of high housing prices in Ventura, many of these professionals are forced to live further away where homes are less costly and must commute longer distances to their place of work.

Income levels can also be expressed by household income range. The table on the following page shows 2006 estimated household income distribution for the City of Ventura.

<sup>4</sup> 2006 City of Ventura Economic Forecast, UCSB Economic Forecast Project

2006 Estimated Household Income <sup>5</sup>			
Income Range	# of Households	% of Total	% < Moderate <sup>6</sup>
Income Less than \$15,000	3,575	9%	63%
Income \$ 15,000 - \$ 24,999	3,559	9%	
Income \$ 25,000 - \$ 34,999	3,623	9%	
Income \$ 35,000 - \$ 49,999	5,652	14%	
Income \$ 50,000 - \$ 74,999	8,744	22%	
Income \$ 75,000 - \$ 99,999	5,700	14%	
Income \$100,000 - \$149,999	6157	15%	
Income \$150,000 - \$249,999	2,507	6%	
Income \$250,000 - \$499,999	556	1%	
Income \$500,000 and more	165	Less than 1%	
City Median - \$60,607			
<b>Total</b>	<b>40,238</b>	<b>100%</b>	

The 2006 estimated median household income for the City of Ventura is \$60,616<sup>7</sup>. For comparative purposes, the following table represents where this income level would fall relative to median income definitions of affordable income categories, adjusted for a 3-person family.

Income Level	Family Income
Very-Low (50% of County Median)	\$36,250
Low (80% of County Median)	\$58,050
<b>City of Ventura Median Income</b>	<b>\$60,616</b>
County Median Income	\$71,350
Moderate (110% of County Median)	\$78,700

#### Income as a Measure of Housing Affordability

Based on an average effective mortgage interest rate of 6.5 percent<sup>8</sup> and assuming a 20 percent down payment, and housing cost capped at approximately 30%<sup>9</sup> of gross income a family earning the City median family household income of \$72,149, could afford a home of approximately \$297,500.

The following table illustrates existing home sales data for the City of Ventura by product type for the period of September 2005-February 2006. The lowest sales price category is the 2 bedroom attached, with an average sales price of \$391,550.

<sup>5</sup> 2006 City of Ventura Economic Forecast, UCSB Economic Forecast Project

<sup>6</sup> Adjusted for 3-person family

<sup>7</sup> 2006 City of Ventura Economic Forecast, UCSB Economic Forecast Project

<sup>8</sup> Fannie Mae 60-day rate, 30-year fixed mortgage

<sup>9</sup> A household that pays no more than 30 percent of its annual income on housing is the generally accepted definition of affordability. Families who pay more than 30 percent of their income for housing are considered cost burdened and may have difficulty affording necessities.

**Citywide Home Resales<sup>10</sup> versus Allowable Affordable Sales Prices**

Type	Number of Bedrooms	Average Market Sales Price	Maximum Allowable Sales Price at Very Low	Maximum Allowable Sales Price at Low	Maximum Allowable Sales Price at Moderate
Attached	2 Bedroom	\$391,550	\$133,659	\$213,975	\$290,261
Detached	2 Bedroom	599,331	\$133,659	\$213,975	\$290,261
Attached	3 Bedroom	466,400	\$148,593	\$237,870	\$322,844
Detached	3 Bedroom	664,684	\$148,593	\$237,870	\$322,844
Detached	4 Bedroom	711,027	\$172,383	\$275,750	\$399,811
Detached	5+	798,884	N/A	N/A	N/A

Another gauge of affordability is the California Association of Realtors (CAR) Affordability index. The index measures the percentage of households that are able to afford the median priced home. As of first quarter 2006 the affordability index for the City of Ventura was 14

For December 2005, the CAR represented that the minimum household income needed to purchase the State median-priced home at \$548,430 (slightly lower than the City Median sales price of \$573,629 for December) was \$134,200, based on an average effective mortgage interest rate of 6.33 percent and assuming a 20 percent down payment.

The following table illustrates the trend in median home prices for the preceding 10-year period for both the City and County of Ventura, and corresponding affordability index.

City <sup>11</sup>		City Affordability Index	County <sup>12</sup>	
Year	Median Price		Year	Median Price
1995	\$157,755	43%	1995	\$199,900
1996	\$163,813	43%	1996	\$205,720
1997	\$170,104	44%	1997	\$219,300
1998	\$182,619	42%	1998	\$233,770
1999	\$199,688	42%	1999	\$254,950
2000	\$233,750	36%	2000	\$295,080
2001	\$270,172	31%	2001	\$322,560
2002	\$327,104	32%	2002	\$372,400
2003	\$392,671	26%	2003	\$462,520
2004	\$497,125	16%	2004	\$599,280
2005	\$573,629	13%	2005	\$668,870

<sup>10</sup> Source Dataquik

<sup>11</sup> Source First American Real Estate Solutions

<sup>12</sup> Source California Association of Realtors

Based on wage and price trends households in Ventura are becoming less able to afford the cost of housing in Ventura, and based on employment and wage projections this trend is likely to continue.

### **Regional Housing Need**

Another measure of demand for affordable housing is the Regional Housing Need Assessment allocation. State law requires all regional councils of governments, including the Southern California Association of Governments (SCAG) to determine the existing and projected housing need for its region (Government Code Section 65580 et. seq.) and determine the portion allocated to each jurisdiction within the SCAG region. This is called the Regional Housing Needs Assessment (RHNA) process.

### **Future Housing Need Component**

Future housing refers to the share of the region's housing need that has been allocated to a community through the RHNA process. The State Department of Housing and Community Development (HCD) supplies a regional housing goal number to SCAG, which is then broken into four income categories. SCAG is then mandated to distribute the numbers to jurisdictions in the region by income categories. These target numbers are the *minimum* number of housing units a community is required to provide adequate sites through zoning and is one of the primary threshold criteria necessary to achieve State HCD approval of Housing Element.

The following factors are used in determining a jurisdictions future housing need:<sup>13</sup>

- Market demand for housing
- Employment opportunities
- Availability of suitable sites and public facilities
- Commuting patterns
- Type and tenure of housing
- Loss of units in assisted housing developments
- Over-concentration of lower-income households
- Geological and topographical constraints

The existing income distribution of a community is used to determine its fair share adjustment. Household income data is then used to assign units to the four State-specified income groups defined by household income as a percentage of the Area (County) Median Income. The specific income categories are very low income (defined as below 50% of the County median), low (51 to 80%), moderate (81 to 120%), and above moderate (over 120%).

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<sup>13</sup> A detailed discussion of the RHNA methodology can be found in Chapter 2 of the Housing Element Technical Report.

The Table below illustrates Ventura's share of regional future housing needs or its Regional Housing Needs Allocation (RHNA) is a total of 1,950 units for the 1998 to 2008 period<sup>14</sup>.

**Ventura's Share of Regional Housing Needs<sup>15</sup>**

Income Group	RHNA Allocation	Percent of Total RHNA Allocation
Very Low	488	25%
Low	272	14%
Moderate	354	18%
Above Moderate	836	43%
Total	1,950	100%

The chart below shows production of housing units within each category for the current RHNA allocation cycle:

Ventura Housing Production For Current RHNA Period												
Income Level	Jan 1998	Aug-Dec 2001	Jan-Dec 2002	Jan-Dec 2003	Jan-Dec 2004	Jan-Dec 2005	98-05 Totals Actual Production		RHNA #	Units in Process Count	98-Present Totals	
	July 2001						No.	RHNA%			No.	RHNA%
Very Low	17	0	0	0	0	38	55	11.3%	488	108	163	34
Low	14	0	0	0	0	0	14	5.1%	272	53	67	25
Moderate	21	0	0	0	0	17	38	10.7%	354	50	88	25
Above Moderate	618	173	485	154	258	237	1925	230.3%	836	221	2146	257
Total	670	173	485	154	258	292	2032	104%	1950	432	2464	126

**Future Employment Trends versus General Plan Buildout**

The City's General Plan has a predicted build out of 8,318 residential units through 2025. Using present income distribution data, 63% (5327 units) of those households would be at or below moderate income

Another way to look at it is using population growth. Using a household multiplier of 2.6 this equates to an additional population increase of approximately 21,627 people over the life of the General Plan. The current ratio of employed residents is 54.37% (57,529 jobs/105,812 people). Therefore, it can be estimated that of those 21,627 people, 11,758 would be added to the workforce.

<sup>14</sup> HCD had extended the current allocation cycle until 2008.

<sup>15</sup> Southern California Association of Governments (SCAG), 2000

If a 15% inclusionary housing requirement were adopted, using the General Plan predicted buildout of 8,313 units by the year 2025, it could be expected that approximately 1,247 units would be produced that are affordable at the very low, low and moderate-income levels.

**Other City's Inclusionary Requirements**

As of 2003 there were 107 cities in California that had adopted inclusionary housing requirements (see attachment A to this memo for a roster of cities and program summary). Approximately 50% of these programs have a requirement for at least 15%, while almost 25% require at least 20%, 44% of the City's require 10%<sup>16</sup>

For comparative purposes, the following table summarizes the inclusionary housing requirements of other City's in the County and two Santa Barbara County cities.

City	Inclusionary Program	Threshold # of Units	Percentage Requirement
Ojai	NO		
Fillmore	NO		
Simi Valley	NO		
Thousand Oaks	NO		
Camarillo	No formal program. Requirements are applied as part of the approval process.	5 or more	20%
Moorpark	YES	5 or more	10 % outside of RDA.
Port Hueneme	YES	10 or more	25%
Oxnard	YES	10 or more	10% outside RDA
Santa Paula	YES	10 or more	10%very low or 12% low
Santa Barbara	YES	10 or more	15%
Lompoc	YES	10 or more	15%

Of the nine other City's in the County, four do not have programs, four do, and one has a discretionary inclusionary requirement. The three cities with a 10% threshold are targeting very-low and low income, as the percentage increases the targeted income levels increase as well. In the case of Santa Barbara, its inclusionary ordinance also targets an above-moderate income category.

<sup>16</sup> Inclusionary Housing in California: 30 years of Innovation, California Coalition for Rural Housing

## Summary

1. The 2006 median household income in the City is estimated to be \$60,607.
2. Based on 2006 household income estimates, approximately 63% of households would be defined as moderate income or below.
3. Job growth in the region is anticipated to be primarily in construction, retail trade, and service categories.
4. The growing gap between housing prices and income levels is making it increasingly difficult for the City's workforce to find affordable housing; this is illustrated by the California Association of Realtors Housing Affordability Index, which stood at 13% as of December 2005.
5. It is anticipated that approximately 21,627 new residents will be added to the City through 2025. With approximately 8,300 units being constructed during that timeframe.
6. Given the current population to employment ratio of 54.37% (57,529 jobs/105,812 people), of those 21,627 people, 11,758 could be expected to join the workforce.
7. Of those 11,758 workers, approximately 2,821 (24%) of those workers would be projected to be employed in the agricultural and retail sectors earning at or below 50% of area median income, an additional 3,057 (26%) of those workers would be projected to be employed in the service sector and would earn at or below 80% of area median income.
8. Assuming that employment and household income data hold constant, approximately 63% (5237 of the 8313) households as predicted by the City's General Plan through 2025 would have an income level at or below moderate income. However, based on past experience, and as demonstrated in the Housing Element Technical Appendix, there are certain periods during the real estate cycle that render certain units affordable, at least to moderate income households.
9. The City's future share of the City's 1998-2007 Regional Housing Needs Assessment allocation assigns the City a need for 57% of all units to be constructed in the affordable income categories, 25% very low, 14% low, and 18% moderate.
10. A comprehensive survey of 107 cities that had inclusionary housing requirements as of March 2003 revealed that approximately half of those cities had an inclusionary requirement of 15% or more.
11. The implementation of a 15% inclusionary housing requirement in the Merged Downtown Project Area in April 2004 has not rendered development infeasible.

12. Requiring all new residential projects with 7 or more residential units, to contain at least 15% of those units affordable to very low, low and moderate income households, is a meaningful interim step towards helping the City meet its affordable housing needs as required by the City's General Plan and the State, while not rendering development infeasible.

Jurisdiction	County	Year Adopted	Minimum Project Size	% Units Required	Target Population	Alternatives to Construction	Units Produced	Length of Affordability
Sebastopol	Sonoma	1994	3	20	LI	ILF	9	15
Solana Beach	San Diego	1997	4	10	LI	OSA ILF	N/A	30
Sonoma	Sonoma	1995	5	10	VLI MI	None	11	30-45
South San Francisco	San Mateo	2001	4	20	LI MI	ILF	N/A	N/A
Sunnyvale	Santa Clara	1980	10	10	LI MI	ILF	749	20
Sutter County	Sutter	1995	10	5	LI MI	OSA ILF LDA DCT	N/A	N/A
Tiburon	Marin	1988	0	10	LI MI	OSA ILF	19	N/A
Union City	Alameda	2001	2	15	VLI LI MI	OSA ILF	N/A	N/A
Vista	San Diego	N/A	0	6	LI	ILF LDA	N/A	N/A
Watsonville	Santa Cruz	1991	N/A	20	VLI LI MI	OSA ILF	11	40
West Hollywood	Los Angeles	1986	2	20	LI MI	OSA ILF	13	P
Winters	Yolo	1994	5	15	VLI LI MI	ILF LDA	76	55
Woodland	Yolo	N/A	10	10-20	VLI LI	OSA ILF LDA	N/A	40
Yolo County	Yolo	1996	10	10	VLI LI	ILF	N/A	30
Yountville	Napa	1992	5	15	VLI LI MI	OSA ILF LDA	19	N/A

**Key:**  
 OSA Off-site Allowance  
 ILF In-Lieu Fees  
 LDA Land Dedication Allowance  
 DCT Developer Credit Transfer  
 VLI Very Low-Income  
 LI Low-Income  
 MI Moderate-Income  
 N/A Not Available  
 P Permanent

\* Voluntary Policy

\*\* City encourages through a modified version of state density bonus law.