City of Livermore

Inclusionary Housing Study

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STUDY OF INCLUSIONARY HOUSING PROGRAM AND IN-LIEU FEES

INTRODUCTION

The Livermore General Plan contains inclusionary housing policies requiring that 10% of all new residential developments in the City be affordable to lower-income groups. In conjunction with that policy, the City adopted a resolution in 1989 (Resolution No. 54-89) that allows developers to pay a fee in lieu of constructing affordable dwelling to comply with the General Plan policy.

The purpose of this report is to update Livermore's inclusionary housing program to ensure that the City's affordable housing goals are being pursued effectively. This report concerns requirements for residential development only. Requirements for commercial and industrial development were addressed in an earlier report, and a housing impact fee applying to commercial and industrial development was established by Ordinance 1549, adopted February 8, 1999.

BACKGROUND

A shortage of housing affordable to lower income households is a region-wide problem in the Bay Area. While a number of factors contribute to that situation, the fundamental problem is that the demand for housing exceeds the supply that can be provided on land that is available for residential development. That imbalance works to increase housing costs through the bidding up of prices for available land, and by favoring the construction of more expensive houses on land that is available for development. The problem is compounded by the fact that higher costs for new houses tend to drive up costs for existing houses as well.

Data from the U.S. Census Bureau and the California Association of Realtors ® show that the median price for houses sold in Livermore increased by approximately 150% between 1980 and 1990--from $87,000 to $217,000. Although prices slumped somewhat following 1990, they have rebounded sharply in recent years. For the three years from mid-1996 to mid-1999, the median sales price for houses in Livermore increased 35% from $192,000 to over $260,000.

Thus, between 1980 and 1999, median home prices in Livermore tripled. Rental rates also tripled, with the rent for a two bedroom apartment climbing from about $370 in 1980 to over $1,100 in 1999. For the same period, average incomes for the area barely doubled, with incomes of lower-income groups increasing more slowly than the average. From that evidence, it is obvious that the increasing disparity between housing prices and incomes caused housing affordability in Livermore to decline dramatically during that period, and the effect was most pronounced for lower-income groups.

The lack of affordable housing in Livermore, and in the Bay Area generally, affects everyone in the region—not just lower-income residents and employees. In addition to a variety of social problems related to inadequate housing, imbalances in the housing market encourage long commutes from areas where housing is less expensive, which contributes to worsening traffic congestion and air pollution.

AFFORDABILITY DEFINED

Both the U. S. Department of Housing and Urban Development (HUD) and the California Department of Housing and Community Development (HCD) define housing afforda-bility in terms of income categories based on percentages of the median income for a geographic area. Table 1 lists those income categories and the percentages of median income that define them. Within income categories, housing affordability is measured by the percentage of income spent for housing. In general, HUD considers housing affordable if costs, including utilities, do not exceed 30% of a household's gross income.

Table 1
Income Categories

Income Category	% of Median
Very Low	<50%
Low	50-80%
Moderate	80-120%
Above-Moderate	120%

Table 2 [1]
City of Livermore Very Low-Income and Low-Income Limits and Housing Affordability Criteria - 1999

Income Category	Household Size	Maximum Annual Income [2]	Number of Bedrooms	Maximum Monthly Rent [3]	Maximum Purchase Price [4]
Very Low Income (<50% of Median)	1	$23,000	Studio	$575	$60,390
	2	$26,300	1	$658	$69,054
	3	$29,550	2	$739	$77,587
	4	$32,850	3	$821	$86,232
	5+	$35,500	4	$888	$93,210
Low Income (50-80% of Median)	1	$33,450	Studio	$836	$87,827
	2	$38,250	1	$956	$100,431
	3	$43,000	2	$1,075	$112,902
	4	$47,800	3	$1,195	$125,505
	5+	$51,600	4	$1,290	$135,483

1 The limits in this table were adopted by the Livermore City Council for 1999.
2 Income levels are based on the 1999 Oakland PMSA median income of $65,700 for a family of four. The low-income figures are based on 72.8% of the local median vs. 80% because of a HUD-imposed ceiling.
3 Maximum monthly rent includes utilities and represents 30% of monthly income.
4 Maximum purchase price is based on 7.5% interest rate, 30 year mortgage and payments (PITI) that do not exceed 25% of monthly income. Utility costs are not included.

The 1999 limits on income and affordable housing costs for the very low-income and low-income categories in Livermore are shown in Table 2 on the previous page. Those limits are adopted annually by the Livermore City Council. The 1999 limits are based on HCD standards and a 1999 median income of $65,700 for a family of four in the Oakland Primary Metropolitan Statistical Area (PMSA), of which Livermore is a part.

AFFORDABLE HOUSING NEEDS

California cities are mandated by statute make provisions for the development of a variety of housing types for all income levels. The statutes also require that shares of housing needs at each income level be allocated regionally by councils of governments (COGs) in consultation with the Department of Housing and Community Development. As the council of governments for the Bay Area, the Association of Bay Area Governments (ABAG) establishes fair share housing allocations for Livermore, and other cities and counties in the region. However, due to a lack of funding from the state, neither ABAG nor any of the other COGs in California has prepared updated housing allocations for several years. The most recent ABAG housing needs determinations were done for the period 1988-1995. Livermore's allocations by category for that period are shown in Table 3. That table also shows the number of new units approved in each category for the same period under the City's Housing Implementation Program (HIP). New units include both detached and attached types.

Table 3
ABAG Housing Allocations for Livermore (1988-1995)

	Very Low	Low	Moderate	Above-Mod.	Total
Units Needed [1] (% of Total)	559 (22%)	381 (15%)	533 (21%)	1,066 (42%)	**2,538** (100%)
Units Approved [2] (% of Total)	27 (<1%)	299 (6%)	611 (11%)	4,412 (82%)	**5,349** (100%)
Approved Units as % of Needed Units	4.8%	78.5%	114.6%	413.9%	**210.8%**

1 Housing needs as determined by ABAG, December, 1989.
2 Approved HIP allocations 1988-1995, provided by the City of Livermore Planning Department.

The figures in Table 3 show that, overall, Livermore is providing considerably more than its total allocation of new housing units. It is evident, however, that production of dwelling units affordable to lower-income[1] groups falls far short of the ABAG allocation. During the period represented in the table, new units affordable to very low-income households met less than 5% of the need defined by ABAG, while the number of units in the above-moderate income category is almost four times the target level. Even though Livermore has in place several programs intended to assist the development of affordable

[1] Where the term "lower-income" is used in this report, it is intended to include both the very low-income and low-income categories.

housing, only about 35% of needed housing units in the very low and low income categories were provided during the period represented in the table.

Table 3 also shows that the housing needs for very low-income and low-income households, as determined by ABAG, represent 37% of Livermore's total allocation. That figure suggests that the 10% affordability requirement specified in the City's General Plan, even if it were perfectly effective, would satisfy only a portion of the need for affordable housing in Livermore.

OTHER HOUSING PROGRAMS

In addition to the inclusionary housing program that is the subject of this report, the City is involved in a variety of other programs designed to assist in the provision of affordable housing. Among them:

- Incentives for affordable housing development are offered through the Housing Implementation Program (HIP)
- In February 1999, the City Council established a housing impact fee that is imposed on commercial and industrial development in proportion to the number of lower-income jobs they bring to the City.
- The City has developed affordable housing and senior housing projects
- The City operates a housing scholarship program and a neighborhood preservation program.
- As mandated under state law Livermore's zoning ordinance (Section 20.36) provides for density bonuses of 25% above zoned densities, if at least 20% of the units in a development project are affordable to low-income households, or if 10% of the units are affordable to very low-income households.

In spite of these efforts, the number of affordable housing units being made available in Livermore falls far short of the need.

IMPACT OF MARKET RATE HOUSING DEVELOPMENT

The strong preference among Livermore's residential developers to construct high-cost, low-density housing severely limits opportunities to construct more dwellings that meet the need for affordable[2] housing, as reflected in the regional housing need allocations. Table 3 clearly illustrates that the market-induced distribution of new housing in Livermore is heavily weighted toward the above-moderate income category--that is, houses priced in excess of $207,000 for a 3-bedroom unit. In fact, the majority of new houses constructed in Livermore over the last several years are priced well above

[2] Where the term "affordable" is used without elaboration in this report, it refers to housing that complies with the cost limitations defined in Table 3 for either very low-income or low-income households or both.

$250,000. Residential development in Livermore is also skewed toward detached dwellings at densities of four units per-acre or less.

In recent years, a strong preference by residential developers for the construction of expensive houses on large lots has limited development of lower cost housing in Livermore by absorbing much of the land available for residential development, by pushing up the cost of land and construction, and by making it difficult to find sites for multi-family residential projects. Rapid growth has also absorbed available infrastructure capacity, leading to the imposition of impact fees to pay for new improvements. The effect of these trends is not limited to new development, because increasing costs for new housing and a shortage of land for lower-priced units are reflected in resale prices for existing dwellings. Thus rising prices for new dwellings make the existing housing stock less affordable as well, further reducing the supply of housing for lower-income families.

AUTHORITY FOR HOUSING PROGRAMS.

The California legislature has declared that "the early attainment of decent housing and a suitable living environment for every California family is a priority of the highest order" (Gov't. Code 65580). Each California city and county is mandated by statute to adopt a housing element as part of a general plan, and to make provisions in the housing element "to facilitate and encourage the development of a variety of housing types for all income levels...." (Govt. Code 65583 (b)(1)). The statutes also require that shares of housing needs at each income level be allocated regionally by councils of governments in consultation with the Department of Housing and Community Development (Gov't. Code 65584), and that those needs be reflected in the housing elements adopted by cities and counties (Gov't. Code 65583(a)(1)). Inclusionary housing (sometimes called "inclusionary zoning") programs constitute one possible means to satisfy that obligation. A paper by attorneys Richard A. Judd and Susan A. Buechel, which was presented to the 1995 League of California Cities conference, contained this opinion regarding the legality of such programs:

> A requirement that a developer include affordable units appears to be simply a less traditional, but legitimate, exercise of the municipal police power.... California cities have broad authority in the zoning field, under article XI, §7 of the state constitution.... The California housing element law, by making localities responsible for housing low and moderate income persons, forcefully supports the argument that inclusionary zoning serves a police power goal.

It is clear, then, under California law, that Livermore has both the authority and the responsibility to promote development of affordable housing, and that its inclusionary housing program is a legitimate means of accomplishing that purpose. The City's current inclusionary housing program is described in the following section. Recommendations for updating that program follow.

The updated inclusionary housing program recommended in this report can play a significant role in fulfilling the City's responsibility to provide for affordable housing. However, this program alone cannot, nor is it intended to, satisfy the entire need for affordable housing in the City.

CURRENT INCLUSIONARY HOUSING PROGRAM

The Livermore General Plan requires that 10% of the housing units in all new residential developments be affordable to lower-income households. At present, the City's inclusionary housing program allows homebuilders to pay a fee in-lieu of constructing housing units to satisfy the 10% affordable housing requirement contained in the General Plan. However, the in-lieu fee is set at $1,833, well below the amount needed to subsidize one affordable unit for every ten units of market-priced housing. Given the low level of the fee, it is not surprising that most homebuilders choose to pay the fee rather than construct affordable housing units as part of their projects. One result is that the program does not achieve its goals in terms of the number of affordable units that should be provided. Another is that the current program has not been very effective in promoting dispersion of affordable housing, which is one purpose of the inclusionary housing policy.

This report proposes changes in the inclusionary housing program to make it more effective in carrying out General Plan policies on affordable housing. The purposes of those changes include:

- Encouraging the construction of more affordable housing units within market rate projects
- Ensuring that the requirements of the inclusionary housing program are proportional to the impact of developing new market rate housing in Livermore.
- Providing reasonable alternatives to be applied in appropriate circumstances.

Overall, the measures proposed in this report are intended to strike a balance between strict enforcement of the General Plan policy, and the use of in-lieu fees or other alternatives that would allow for some flexibility in furthering the goals of the program.

RECOMMENDED PROGRAM

Although a number of other California cities require that 15% or more of new housing units meet affordability criteria for very low-income and/or low-income households, this report is not proposing changes to Livermore's basic General Plan policy requiring that 10% of new residential units be affordable to lower-income households. However, it does recommend more specific standards for complying with that requirement and proposes restrictions on the payment of in-lieu fees as an alternative to the actual construction of housing units.

References to inclusionary housing policies in the Livermore General Plan (See Exhibit A) are not specific with respect to the officially-defined "very low-income" and "low-income" categories used for state and federal housing programs. The terms "low-income" and "lower-income" are both used with respect to inclusionary housing policies and programs. In order to establish specific standards for the inclusionary housing program, the City must define the income levels at which housing units are to be affordable.

Because the relevant General Plan policies do not articulate a clear intent to require developers to provide housing affordable to very low-income households, and because we believe that some of the City's other housing programs (See page 4) are better suited to addressing housing needs at the very low-income level, the program recommended in this report is specifically targeted at housing for low-income households. Consequently, affordability criteria for the program are based on the maximum monthly rents and maximum purchase prices for "low-income" households, as set forth in Table 2, page 2.

A. Basic Requirement. To satisfy the intent of the inclusionary housing policy in the General Plan, each residential development project in Livermore should meet the following requirements:

1. Ten percent (10%) of the dwelling units in any residential development project that is not exempt under this program must qualify as affordable for low-income households under this program. To qualify, a dwelling unit:

    a. Must be reserved for sale or rental to low-income households at a cost that does not exceed the maximum monthly rents or maximum purchase prices for low-income households, as adopted annually by resolution of the Livermore City Council (See Table 2, page 2).

    b. Rental units must meet the City's maximum monthly rent criteria for low-income households for a period of not less than 55 years, and must be managed by an entity acceptable to the City. The City should reserve the right to negotiate a reduction in the reservation period if some units are reserved for very low-income households.

    c. For-sale units must be encumbered in a manner acceptable to the City so that, if the buyer re-sells the reserved unit within 55 years, for a price in excess of the inflation-adjusted purchase price, the excess profit will be returned to the City for use in housing programs. The City should reserve the right to negotiate a reduction in the reservation period if some units are reserved for very low-income households.

2. Reserved units must be generally comparable in construction quality to the market-priced units in the project, but need not exceed the following minimum enclosed living areas:

Number of Bedrooms	Units Reserved For Sale	Units Reserved For Rent
Studio Unit	600 Square Feet	600 Square Feet
One-Bedroom Unit	750 Square Feet	750 Square Feet
Two-Bedroom Unit	1,000 Square Feet	900 Square Feet
Three-Bedroom Unit	1,250 Square Feet	1,000 Square Feet
Four-Bedroom Unit	1,500 Square Feet	1,250 Square Feet

3. Reserved units must be dispersed throughout the project and their exterior appearance must not be distinguishable from other units in the project.

4. The average number of bedrooms for all reserved units in a project must equal the average number of bedrooms for all other units in the project, up to a limit of 3.0 bedrooms per unit. The number of bathrooms per unit must equal the number of bathrooms in market-priced units having the same number of bedrooms.

5. Reserved units must have air conditioning, enclosed garages and laundry facilities to the extent that market rate units in the project have those amenities.

6. Reserved units must be identified on a tentative subdivision map or other development plan approved by the City.

7. Reserved units must be approved and constructed concurrently with market-priced units.

B. Exemptions. The following types of residential development would be exempt from the basic requirement:

1. Remodeling or expansion that does not increase the number of dwelling units
2. Replacement, within 36 months, of a residential unit destroyed by fire or natural disaster.
3. A secondary unit constructed as an accessory to a primary dwelling unit on the same lot or parcel.
4. A project that receives a density bonus under the City's zoning ordinance for including very low-income or low-income housing.

C. Alternative Means of Compliance. Recognizing that the purposes of the inclusionary housing program may, in some instances, be advanced by allowing the intent of the inclusionary housing policy to be satisfied by means other than the actual construction of housing units within a particular residential development project, the following alternatives are recommended as part of the updated program:

1. Secondary Units. In projects of more than 50 units, a maximum of 20% of the requirement for reserved units may be satisfied by including secondary units as accessories to market rate units in the project. Each secondary unit would be credited as 20% of a reserved dwelling unit, without regard to unit size or other minimum standards described under "Basic Requirement," above. For example, in a project of 100 units, requiring ten reserved units, the requirement for two (20%) of the reserved units could be satisfied by constructing ten secondary units in the project.

2. Off-Site Construction. Where it is consistent with the goals of the inclusionary housing program, and with approval of the City Council, a developer of units for sale may satisfy the inclusionary housing requirement by constructing, or making provisions to construct, reserved housing units on a site other than the site of the project giving rise to the requirement. Off-site units would be subject to standards of comparability, as defined in paragraphs A.2, A.4, A.5, A.6, and A.7 of the Basic Requirement, above.

3. In-Lieu Fee. Where it is consistent with the goals of the inclusionary housing program, and with approval of the City Council, a developer may satisfy the inclusionary housing requirement by paying an in-lieu fee for each market-priced unit in the project. That fee shall equal 10% of the difference between:

   a. The adopted maximum affordable purchase price for a low-income household of a reserved housing unit with the same number of bedrooms (not-to-exceed 3 bedrooms) as the market-rate unit giving rise to the inclusionary housing requirement, and;

   b. The construction cost for the market-priced unit. For purposes of calculating an in-lieu fee for a market-price dwelling unit, development cost shall be defined as the construction valuation on the building permit for the market-priced unit, plus 45% for land, site development, and project administration costs, plus the cost of all permits, fees, and impact fees charged by the City.

An example of an in-lieu fee calculation is shown in Table 4, below.

Whenever the number of low-income units needed to satisfy the require-ments of this program includes a partial unit, the payment of an in-lieu fee shall be allowed to satisfy that partial unit requirement. For example, in a project of 25 units, 2.5 low-income units would be required. The 0.5 unit requirement may be satisfied by paying a fee equal to 0.5 times the fee that would be charged for the most nearly average-sized housing unit in the project.

The fee per market-priced unit shall be capped at 10% of the estimated development cost for a 3-bedroom detached housing unit that would satisfy the standards of the inclusionary housing program. That cost shall be determined as specified in 3b, above. The cap shall be set annually by resolution of the City Council.

4. Dedication of Land. With approval of the City Council, a developer may satisfy the inclusionary housing requirement by dedicating to the City a parcel of land suitable for development of housing units equal to or exceeding the number of reserved units required for the project giving rise to the requirement. To be considered suitable, land must have the appropriate land use plan designation and zoning, and have direct access to improved streets and utilities.

IN-LIEU FEE CAP

Table 4 shows the calculation of a recommended cap on the in-lieu fee, based on the current maximum pur-chase price for a 3-bedroom house for a low-income household, and the estimated cost of a 1,250 square foot, three bedroom single family dwelling with two bathrooms and a two-car garage in Livermore. The recom-mended cap is calculated in accordance with the guidelines in paragraph C.3., above.

The calculation in Table 4 can also be used as an example of the method to be used in calculating the in-lieu fee for any market-priced dwelling, as defined in paragraph C.3., above.

Table 4
Sample Calculation of In-Lieu Fee Cap
Based on 1999 Costs

	Sq.Ft	Unit Cost	Total
House	1250	$ 85.00	$ 106,250
Garage	440	$ 27.00	$ 11,880
Porch	40	$ 15.00	$ 600
Building Permit Valuation			**$ 118,730**
Land, Site Dev, Admin @ 45%			$ 53,429
Plan Check/Building Permits			$ 1,922
City/County Impact Fees			$ 23,594
School Impact Fee (Minimum)			$ 12,196
Total Cost			**$ 209,871**
Max Purchase Price (3BR, LI)			**$ 125,505**
Difference			**$ 84,366**
In Lieu Fee @ 10%			**$ 8,437**