

**County of Santa Clara
Department of Planning and Development**



102563

DATE: October 6, 2020
TO: Board of Supervisors
FROM: Jacqueline R. Onciano, Director, Dept. of Planning and Development
Consuelo Hernandez, Acting Director, Office of Supportive Housing
SUBJECT: Inclusionary Housing Ordinance - Countywide

RECOMMENDED ACTION

Under advisement from April 21, 2020 (Item No. 23): Consider recommendations relating to a proposed countywide Inclusionary Housing Ordinance for unincorporated Santa Clara County.

Possible action:

- i. Adopt Ordinance No. NS-1200.375 amending Section 4.20.130 of Title C, Appendix I, Zoning, of the County of Santa Clara Ordinance Code to amend Inclusionary Housing requirements for residential development of three units or more within the unincorporated lands of Santa Clara County.
- ii. Approve the Use of Prior California Environmental Quality Act (CEQA) (2014 Housing Element Negative Declaration); and separately and independently find Ordinance No. NS-1200.375 to be exempt from CEQA pursuant to the CEQA Guidelines Section 15061(b)(3).

FISCAL IMPLICATIONS

There is no impact to the County General Fund as a result of these actions. Any in lieu fees collected by way of this Ordinance will be used by the Office of Supportive Housing to fund affordable housing projects countywide that develop and preserve affordable housing units. Staff costs associated with the review of private development applications for compliance with the proposed Inclusionary Housing Ordinance would be absorbed in the current Planning application fees, as adopted by the Board. The Administration is reviewing the cost required to review inclusionary housing proposals submitted at the time of development and would return to the Board, if necessary, with a proposed fee to recover any additional staff time needed to complete this review.

CONTRACT HISTORY

On November 3, 2015, in association with the Silicon Valley/Alameda County Nexus Study Project, the Board approved an agreement with the Silicon Valley Community Foundation to complete an affordable housing nexus study for new development within unincorporated Santa Clara County. Keyser Marston Associates (KMA), a real estate consulting firm, completed the study for the Silicon Valley Community Foundation and County of Santa Clara in December 2016.

In 2017, the Department utilized a single source procurement to secure services from KMA to prepare an addendum to the 2016 KMA Nexus Study. The addendum addressed lands within the Stanford University Community Plan Area (SCPA), and KMA services were also secured to assist the County in the outreach and public process for consideration of potential new affordable housing requirements for residential and non-residential development countywide.

This contract has been subsequently amended and extended to include additional services related to the Affordable Housing Nexus Study, including an update to the market conditions and cost analysis in the development of affordable housing policy options and ordinances addressing unincorporated areas outside of the SCPA.

REASONS FOR RECOMMENDATION

The proposal before the Board is part of a larger effort to establish inclusionary housing requirements and affordable housing impact fees in the County's unincorporated areas, based on a regionwide housing nexus study completed in 2016 and supplemented in 2018 and 2020. The proposed Ordinance would: (a) Establish a 16% inclusionary housing requirement for development resulting in three or more residential units (qualifying residential developments may include single family, two family or multi-family homes); (b) Provide compliance options as an alternative to on-site inclusionary unit construction; and (c) Follow adoption of Stanford Community Plan Area (SCPA) Ordinance and Board direction to apply an incremental approach to a countywide ordinance.

A summary of the existing provisions applicable to the SCPA and proposed Ordinance applicable countywide, including the SCPA, is provided in Table 1.

Table 1: Inclusionary Program Features

	New Countywide Provisions (outside SCPA)	Provisions within the SCPA (Unchanged from prior ordinance)
Threshold for Inclusionary Requirements	Three or more units	
Percentage of units to be affordable	16%	
Inclusionary Requirement: 16% or more of units*	<ul style="list-style-type: none"> Moderate income affordable units in for-sale projects Low, very low or extremely low-income affordable units in rental projects 	<ul style="list-style-type: none"> Moderate income affordable units in for-sale projects Mix of Very Low¹, Low, and Moderate-income affordable units in rental projects
Alternative Compliance Options	<ul style="list-style-type: none"> Round-up and construct on-site affordable units Construct affordable units off-site Rehabilitate and convert off-site market rate to affordable units (at 2:1 ratio) 	
	<ul style="list-style-type: none"> In-lieu fee option of \$259,000 per required inclusionary unit available for projects under seven units and to meet fractional affordable unit requirements 	<ul style="list-style-type: none"> Ordinance allows for banking of fractional units until they can be built. No in-lieu fee option.
Exemptions	<ul style="list-style-type: none"> Projects with two or fewer units Residential community care facilities Accessory Dwelling Units (ADUs) Student Housing Projects (Note: Agricultural employee housing would be exempt countywide)	

* For a duration of 55 years

The attached supplements to the previously prepared Affordable Housing Nexus Studies were prepared (“2020 KMA Studies” – Attachment B) to inform the current effort by analyzing and determining the current cost of affordable housing construction. The findings of the reports are summarized within the Background section of this legislative file.

At the May 8, 2018 meeting, the Board received a report from the Administration regarding the Silicon Valley/Alameda County Affordable Housing Nexus Study (“Nexus Study”), which evaluated potential standards for inclusionary housing requirements and affordable

¹ May be Very Low or Extremely Low

housing impact mitigation fees addressing development within the SCPA and all other unincorporated areas (“greater unincorporated area”) within the County’s jurisdiction. In receiving the Nexus Study, the Board selected an incremental approach for implementation, commencing with an Affordable Housing Impact Mitigation Fee Ordinance for non-residential development and Inclusionary Housing Ordinance for residential development within the SCPA, referred to as Phase I. Phase I was completed on September 25, 2018, when the Board adopted an Inclusionary Housing Ordinance and Affordable Housing Impact Mitigation Fee Ordinance for development within the SCPA.

On April 21, 2020, the Board received a report from the Administration and provided direction on the scope of the proposed Inclusionary Housing Ordinance amendments for residential development in the greater unincorporated area (considered Phase II of the project). Specifically, the Board directed the Administration to develop Inclusionary Housing requirements for residential development with three or more units, while eliminating options to apply affordable housing impact fees to residential development of one to two units. In receiving the report and providing direction, the Board also directed the Administration (via a President Chavez referral) to report back to the Board addressing concerns expressed by Supervisor Cortese relating to an ordinance amendment providing compensation, such as a density bonus or other associated exchange, to offset elements or criteria regarding inclusionary housing requirements.

Density Bonus and Other Incentives

Any project subject to the proposed inclusionary requirement can avail itself of existing density bonus provisions in Section 4.20.030 of the County’s Zoning Ordinance, consistent with the State density bonus requirements (California Government Code Section 65915, *et. seq.*), if eligible. Projects eligible for a State density bonus can request a density bonus and can also request waivers or reductions in development standards that would physically prevent the project from being built, as well as incentives and concessions related to reduced development standards for parking, height, and setback requirements. Projects that meet the State law requirements are entitled to receive the density bonus, upon request, and other benefits. Because the inclusionary requirement is set at 16%, it is likely that many projects providing inclusionary units on site pursuant to the requirements of this Ordinance could be eligible for density bonuses and related incentives.² Based on this consideration and an assessment of typical housing projects in the greater unincorporated area, the Administration does not recommend the County propose density bonus provisions different than the State’s.

Planning Commission and SMPAC Recommendations

At its August 27, 2020 public hearing, the Planning Commission forwarded a favorable recommendation to the Board regarding the proposed amendments on a 5-2 vote. Commissioners voting against the recommendation identified the additional need for housing

² For example, development projects for five or more residential units can qualify for a density bonus under several scenarios, including but not limited to where they reserve the following percentage of units at the specified level of affordability: (i) 10% of the total units for lower income households, (ii) 5% of the total units for very low income households, (iii) 10% of the total dwelling units in a common interest development, for persons and families of moderate income. (Cal. Gov’t Code, § 65915.)

and indicated the Ordinance may disincentivize housing development. Commissioners voting against the recommendation also recommended the County instead apply a fee for larger than average homes.

The San Martin Planning Advisory Committee (SMPAC) forwarded a favorable recommendation to the Planning Commission, with a 7-2 vote on the proposed amendments, at its August 26, 2020 meeting. The Committee members voting against the recommendation expressed concerns related to the nominal effect of the Ordinance on the number of affordable units that would be developed and the additional cost to developers.

Existing Regulatory Framework

On September 25, 2018, the Board adopted an Inclusionary Housing Ordinance applicable to the SCPA. Provisions of the inclusionary housing requirements in Zoning Ordinance Section 4.20.130 require that for new, converted, or rehabilitated residential development with three or more units within the SCPA, 16% of the units must be affordable to both moderate and below-moderate income households.

Proposed Zoning Ordinance Amendments

The proposed amendments, presented by the Department of Planning and Development (“Department”) and the Office of Supportive Housing (OSH), would expand the existing inclusionary housing requirements for residential development within the SCPA to the greater unincorporated area in the County. The Ordinance is referred to herein as the “Countywide Inclusionary Housing Ordinance.”

Inclusionary housing requirements for new residential development are a well-established tool used by jurisdictions throughout California to help ensure that new housing development serves households at a range of income levels by requiring a share of such development to be affordable. For residential projects of three or more residential units outside of the SCPA, the Administration recommends a 16% inclusionary housing requirement, similar to the current requirement for the SCPA, but with slightly different alternative compliance options and required income levels. The proposed amendments will not result in any substantive changes to the existing requirements within the SCPA, although the amendment would update inconsistent or redundant terminology and definitions.

In particular, the proposed amendments would result in inclusionary housing requirements that apply countywide as summarized above in Table 1. Additional information on the proposed amendments, specifically related to the *Alternative Compliance Options*, the *In-Lieu Fee and Inclusionary Housing Fund*, and *Exemptions and ADUs* are provided in the Background section.

Findings for Considering Zoning Ordinance Amendments

Pursuant to Zoning Ordinance Section 5.75.040, “the proposed amendments must be consistent with state law, the general purposes of the zoning ordinance and the general plan, and the land use designations in the general plan.”

The proposed revisions are consistent with the County General Plan, the Housing Element, and the general purposes of the Zoning Ordinance in providing needed housing to families of

all income levels. The proposed amendments would implement Inclusionary Housing requirements throughout the greater unincorporated area to support affordable housing development. Construction of affordable units as well as market rate units within the unincorporated areas of Santa Clara County is consistent with the County's Housing Element goals of protecting the public welfare by fostering an adequate supply of housing for persons at all economic levels.

California Environmental Quality Act (CEQA)

The Department has determined that this Countywide Inclusionary Housing Ordinance has been adequately evaluated within the Negative Declaration prepared by the County and adopted by the Board on June 10, 2014 for the County of Santa Clara 2015-2022 Housing Element Update (Attachment C) pursuant to Section 15162 of the CEQA Guidelines. The proposed project furthers the policy objectives of the Housing Element by requiring developers to include the development of affordable units, thereby providing a balanced housing supply. In particular, the Zoning Ordinance amendments do not authorize or mandate the creation of additional housing, but rather require that 16% of new housing projects (over three units) be affordable to below moderate income households consistent with the objectives of the Housing Element to provide a diversity of affordability options and a balanced housing supply.

No net new additional units would be developed pursuant to the proposed amendments; instead, the proposed ordinance amendments would further the goals and objectives of the County's Housing Element to implement inclusionary requirements to provide for affordable housing. The Countywide Inclusionary Housing Ordinance amendments are therefore within the scope of the 2014 Housing Element Negative Declaration (please refer to Attachment C) prepared pursuant to Section 15162 of the CEQA Guidelines. The Department has determined that the proposed amendments are consistent with the previously adopted Negative Declaration and no circumstances exist that would warrant additional environmental review. Accordingly, the proposed amendments do not need subsequent or supplemental environmental review under CEQA.

On a separate and independent basis, the Department has also determined that the proposed amendments are exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3) because the amendments impose a regulatory requirement that 16% of new housing be affordable. The proposed amendments will not allow for or encourage development, or otherwise allow for or promote physical change in the environment. Therefore, the proposed amendments would not have a significant effect on the environment.

CHILD IMPACT

Receiving this report will have no child impacts, but if the Board adopts the amended inclusionary housing requirements to apply countywide, additional affordable units would be available to support the County's affordable housing goals, including providing adequate housing for families with children.

SENIOR IMPACT

Receiving this report will have no senior impacts, but if the Board adopts the amended inclusionary housing requirements to apply countywide, additional funds and affordable units would be available to support the Board's affordable housing goals, including providing affordable housing for seniors.

SUSTAINABILITY IMPLICATIONS

Receiving this report will have positive sustainability impacts. If the Board amends the inclusionary housing requirements to apply countywide, additional funds would be available to create affordable housing in the region, which could help reduce commuting and its associated environmental impacts, and would result in enhanced social equity by reducing gentrification and displacement.

BACKGROUND

Purpose of Inclusionary Housing Requirements

Inclusionary housing requirements mandate the construction of affordable homes within new market-rate developments for individuals and families who cannot afford market-rate housing. Where other affordable housing strategies generally rely on government or nonprofit agencies to build new homes, inclusionary housing programs rely on builders/developers to directly construct the affordable units (or satisfy the requirement through an alternative means for compliance, such as off-site construction or paying an "in-lieu" fee).

Inclusionary housing requirements may only be imposed on residential development. Most inclusionary housing requirements only apply to multifamily housing projects or subdivisions with multiple lots, due to the challenges associated with applying inclusionary standards to smaller development such as building a single-family home, where it is generally not possible to dedicate a unit as affordable.

Unlike affordable housing mitigation fees, which must be "reasonably related" to the actual impact of new development, inclusionary ordinances are applied as a regulatory tool like zoning ordinances, as a valid limitation on the use of property rather than a fee or an exaction. An inclusionary housing zoning ordinance must be reasonably related to the public welfare but does not need to be tied to the actual impact of the new development on affordable housing. Therefore, inclusionary housing percentages and alternative compliance options can be set based on policy considerations.

KMA Studies—Key Findings

The 2020 KMA Studies (Attachment B) were undertaken in order to evaluate the nature of development in unincorporated County areas outside the SCPA, provide an analysis of the cost of compliance with proposed requirements, survey inclusionary requirements in place in the cities within the county and nearby counties, and estimate the current cost of affordable housing construction to update prior findings regarding maximum supportable affordable housing fees. Many of the neighboring jurisdictions surveyed had Inclusionary Housing requirements ranging from 10-25%. The 2020 KMA Studies update selected findings of the Affordable Housing Nexus Studies prepared in 2016 and 2018 to provide updated information to inform development of the proposed Countywide Inclusionary Housing Ordinance. The key findings of the 2020 KMA Studies are as follows:

- Approximately 40 new residential units and 18 accessory dwelling units are built each year, on average, within unincorporated areas outside of the SCPA. New residential units average approximately 3,900 square feet in size. Accessory units average approximately 854 square feet.
- The County typically approves less than one subdivision per year with three or more units. The average subdivision (three or more units) is four lots in size, outside of the SCPA. No final subdivision maps with seven or more units were recorded in the last decade. A tentative map for a 19-lot subdivision was recently approved by the Planning Commission. Most new residential units are within smaller one and two unit developments.
- Median home prices for newer units are in the \$2 million range in the southern portion of the County and unincorporated areas near San José, and in the \$3 to \$4 million range in unincorporated areas near Los Gatos, Saratoga, and Los Altos.
- The estimated subsidy requirement to produce one new unit of affordable housing for Low Income households is \$259,000, net of financing available through federal Low-Income Housing Tax Credits.

Proposed Amendment Specifics

Alternative Compliance Options

Alternative compliance options are required pursuant to Government Code Section 65850(g) and are recommended to provide developers flexibility should they be unable to accommodate on-site affordable units. The Countywide Inclusionary Housing Ordinance would introduce an alternative compliance option to pay an in-lieu fee for fractional units, in addition to off-site construction or rehabilitation for whole units. As noted in Table 1 above, the in-lieu fee option is only available to the greater unincorporated area outside of the SCPA, and only for the fractional portion of the inclusionary units required. Within the SCPA, Stanford University is permitted to bank fractional inclusionary units until they can be included within a subsequent residential development. Within the SCPA, development is conducted by one entity—Stanford University, and fractional unit obligations can be easily deferred to a subsequent residential development project. In the greater unincorporated areas, accumulation of fractional units is not practical because development activity is smaller in

scale and does not occur by a single entity. For projects not resulting in fractional units, the affordable units would be required to be provided on site, off site, or through conversion of existing market rate units to affordable units (refer to Table 2). For small developers, payment of an in-lieu fee for fractional units is far less onerous than rounding up and requiring the development of more units.

Table 2: Example of Countywide Fractional Units

	Units Proposed	Inclusionary Requirement (16%)	Compliance Option
Outside of SCPA	10	1.6	<ul style="list-style-type: none"> • Build two units on site or: • Build one unit and pay \$155,400† <p>†(0.6 x \$259,000)</p>

In-Lieu Fee and Inclusionary Housing Fund

Concurrent with the draft Countywide Inclusionary Housing Ordinance amendments, an accompanying Resolution is proposed for adoption that would establish the in-lieu fee amount as an alternative compliance option for fractional inclusionary unit obligations. The proposed Countywide Inclusionary Housing Ordinance establishes a new inclusionary housing fund where in-lieu fee funds would be deposited, dedicated to creation and preservation of affordable units. Based on the unique development characteristics within the County, the Department will be recommending an in-lieu fee amount to be established at \$259,000 per required inclusionary housing unit and indexed annually based on construction costs. Given that this index may lag over time behind the true cost of construction of affordable units, staff would evaluate the need for an update to the in-lieu fee to reflect current costs approximately every three to five years.

- The in lieu-fees for fractional unit obligations would be required prior to final map recordation (in the case of subdivisions with the potential to result in single-family residences) or prior to building permit issuance (for multi-family residential development). The development of homes associated with a subdivision often occurs at a future time and by different owners, presenting a challenge for fee collection at building permit issuance. The fee for these projects is therefore collected at final map recordation.
- In-lieu fees would be paid into a separate account to be designated as the County of Santa Clara Inclusionary Housing Fund. Based on development projections, it is estimated that approximately \$80,000 of in-lieu fees will be collected annually on average. Fees within this fund will be used (in combination with other funding sources) to provide affordable housing within Santa Clara County.
- The proposed in-lieu fee of \$259,000 per inclusionary unit reflects the County’s estimated cost to replace the affordable unit not provided on site. The proposed amount

is based on subsidy requirements for Low Income units net of financing available through Low Income Housing Tax Credits, as identified in the 2020 KMA Studies.

- For purposes of fractional unit requirements, the in-lieu fee amount would be multiplied by the fractional unit requirement to determine the fractional fee. For example, a fractional unit requirement of 0.32 would be multiplied by the \$259,000 per affordable unit fee, resulting in an in-lieu fee requirement of \$82,880.

Of note with respect to projects located in the greater unincorporated county, the Countywide Inclusionary Housing Ordinance will begin to apply to projects deemed complete on or after January 1, 2021, which is the operative date of the Ordinance.

Role of ADUs and Junior ADUs

- Due to the contribution ADUs and JADUs make to housing affordability, the Administration recommends exempting ADUs from these requirements and not counting them as a “dwelling unit” subject to the inclusionary requirements. The Administration likewise does not recommend allowing the construction of an ADU to satisfy the inclusionary housing requirements. As an affordable unit under any Inclusionary Housing program, ADUs present operational and compliance issues as they are difficult to monitor and track. Thus, the Administration does not recommend the use of ADUs to meet the inclusionary obligations for residential development.

Other Exemptions

- Similar to the existing SCPA Inclusionary Housing Ordinance, which exempts student housing from the 16% requirements, the Administration recommends exempting larger residential community care facilities, which are institutional in nature, and agricultural employee housing, as these types of development are necessary to meet the affordable housing needs for specific demographics, such as seniors, veterans, and agricultural employees.

Stakeholder and Public Outreach

During the public outreach process for this effort, the County was under a shelter-in-place order related to COVID-19, and in-person meetings and gatherings were not being held. Accordingly, staff conducted virtual community meetings on May 26, 2020 and May 28, 2020, which were publicized via social media and through interested parties lists inclusive of homeowners’ associations, community groups, Stanford University, housing advocacy groups, and developers/applicants. The meeting invitation and general details were also posted on the Department’s website. The first meeting was attended by a few members of the public and the second did not have any attendees.

The Planning Commission considered this item on August 27, 2020, which was duly noticed per applicable local and State requirements. One public comment of support was received from Stanford University.

The Board hearing related to the proposed ordinance amendments has been noticed in accordance with applicable local and state requirements. The notice has also been posted on the Department's website, and a courtesy notice has been provided to interested parties that were previously notified of the outreach meetings. As of the date of preparation of this report, no additional public comments have been received.

CONSEQUENCES OF NEGATIVE ACTION

If the Board does not take action on the proposed amendments to Inclusionary Housing Ordinance within unincorporated Santa Clara County the existing Inclusionary Housing requirements would only be applicable within the SCPA.

STEPS FOLLOWING APPROVAL

The Clerk of the Board will notify Valerie Negrete and Joanna Wilk in the Department of Planning and Development, and Consuelo Hernandez in the Office of Supportive Housing; and provide electronic documents with final signatures and adoption dates for inclusion in the Planning Division files. Upon Board adoption, these amendments would take effect January 1, 2021.

LINKS:

- Linked From: 102564 : Public Hearing to consider adoption of text amendments to Section 4.20.130 of Appendix I, Zoning, of the County of Santa Clara Ordinance Code regarding a proposed countywide Inclusionary Housing Ordinance for unincorporated Santa Clara County; and adoption of a resolution establishing the inclusionary housing in lieu fee amount for certain housing development within the unincorporated lands of Santa Clara County. California Environmental Quality Act (CEQA): Use of Prior CEQA and/or exempt pursuant to Section 15061(b)(3) of the CEQA Guidelines. (File No. PLN20-012) (Countywide)
- Linked From: 102970 : Consider recommendations relating to an inclusionary housing in lieu fee.

ATTACHMENTS:

- Attachment A - Countywide Inclusionary Housing Ordinance (PDF)
- Attachment B - KMA Updated Studies_July 2020 (PDF)
- Attachment C - Housing Element 2014 Initial Study (PDF)