



Contra
Costa
County

To: Board of Supervisors
From: INTERNAL OPERATIONS COMMITTEE
Date: October 23, 2018

Subject: Inclusionary Housing Ordinance In-lieu Fee Update

RECOMMENDATION(S):

CONSIDER accepting a report from the Conservation and Development Director on the Inclusionary Housing Ordinance in-lieu fees.

FISCAL IMPACT:

No impact to the General Fund. Inclusionary Housing Ordinance fees are used to support the development of affordable housing in the unincorporated area.

BACKGROUND:

On October 8, 2018, the Board of Supervisor's Internal Operations Committee (the "IOC") discussed the Inclusionary Housing Ordinance (the "Ordinance") in-lieu fees. The IOC generally supported the reinstatement of the in-lieu fee for rental housing in a manner sensitive to projects in the pipeline, directed staff to bring a report to the Board of Supervisors for further discussion, and requested some additional information to be included in the

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **10/23/2018** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Candace Andersen, District II Supervisor
Diane Burgis, District III Supervisor
Karen Mitchoff, District IV Supervisor
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: October 23, 2018

David Twa, County Administrator and Clerk of the Board of Supervisors

By: June McHuen, Deputy

Contact: Kara Douglas
925-674-7880

cc:

BACKGROUND: (CONT'D)

report.

The Ordinance was adopted by the Board of Supervisors on October 24, 2006 and requires new residential developments to include a minimum number of dwelling units that are affordable to very low, lower, and moderate income households. For residential developments of five or more dwelling units, 15 percent of the dwelling units must be made affordable to households of certain levels of income (for rental residential developments, 12 percent of the units must be affordable to lower income households and 3 percent to very-low income households; for for-sale residential developments, 12 percent of the units must be affordable to moderate income households and 3 percent to lower income households).

The Ordinance includes several alternatives for compliance: provide the units on-site within the development (required if the development includes more than 125 dwelling units); provide the affordable units off-site; convey land to another developer for the construction of affordable housing; pay an in-lieu fee; or implement another alternative that is mutually agreed on by the County and developer.

In 2009, the Court in *Palmer/Sixth Street Properties, L.P. v City of Los Angeles* concluded that the rental housing requirements, including the in-lieu fee for rental developments, in the City's inclusionary housing ordinance were in conflict with and preempted by the vacancy decontrol provisions of the Costa-Hawkins Rental Housing Act, which allows residential landlords to set the initial rent levels at the commencement of a tenancy. In response to the Palmer decision, the County (and numerous other jurisdictions) changed the affordable housing in-lieu fee for new rental developments from \$26,774.55 per market rate unit to \$0.

In 2017, the legislature responded to the Palmer decision by enacting AB 1505 which explicitly authorizes cities and counties to impose an in-lieu fee as an alternative to compliance with on-site affordable housing requirements for rental developments. AB1505 went into effect January 1, 2018.

Department of Conservation and Development (DCD) staff seeks input from the Board of Supervisors on the reinstatement of the in-lieu fee for new rental developments and an adjustment to the in-lieu fee for new for-sale developments. The in-lieu fees are calculated using the formulas in the Ordinance and are based on the difference between the average rent price, or sales price, and what households in the target income group can afford to pay for housing. (See Attachments A and B for the fee calculations.) In 2009, the Board of Supervisors approved the current in-lieu fee for rental developments of \$0.

The 2018 in-lieu fee calculation, according to the formula provided in the Ordinance, is \$24,200.55 per unit for rental developments (which is less than the \$26,774.55 fee that was in place at the time of the Palmer decision) and \$6,600.06 per unit for for-sale

developments (which is higher than the current in-lieu fee of \$3,874). Staff intends to include an in-lieu fee of \$24,200 per unit for rental developments and \$6,600 per unit for for-sale developments in an updated Land Development Fee Schedule, which staff intends to present to the Board for consideration on December 18, 2018. The in-lieu fee for rental units is significantly higher than the fee for for-sale units primarily because the affordability minimums for rental developments (12% lower income, 3% very low income) are more aggressive than those for for-sale units (12% moderate income, 3% lower income).

A brief survey of other local jurisdictions revealed a wide range of approaches and amounts of in-lieu fees. Most jurisdictions set a flat amount per unit though some calculate in-lieu fees based on square footage of development. Some jurisdictions have tiered in-lieu fees based on unit size or location within the jurisdiction. For example, Walnut Creek has established in-lieu fees for both rental and for-sale developments at \$18 per square foot of development. Oakland has established three different zones and in-lieu fees range from \$1,000 per unit to \$22,000 per rental unit and \$23,000 per for-sale unit depending on the zone in which the development is located. Berkeley and Emeryville established in-lieu fees of \$34,000 or \$37,962 per unit depending on whether the in-lieu fee is paid when the final map is filed or when the certificate of occupancy is issued. Pleasanton recently raised its in-lieu fees to over \$43,000 per unit for rental and ownership developments. Concord's current in-lieu fees are \$0 for rental developments and \$5,053 per unit for for-sale development. As mentioned above, the Ordinance provides a formula for calculating the in-lieu fees for rental and for-sale developments in the unincorporated county. Modifications to the formulas would require amending the Ordinance and staff is not recommending amending the Ordinance at this time.

DCD's planning division currently has ten applications for for-sale developments: five have not submitted a compliance plan, two are including the units on-site, and three are paying the in-lieu fee. There are six applications for rental developments: four have more than 125 units, and all required affordable units are included within the developments. The other developments are for 13 and 16 units and have not submitted compliance plans yet. DCD staff will notify all developers who have submitted applications that are subject to the Ordinance that the in-lieu fees will increase in 2019 so that they have ample notice to secure current fees prior to the fee increase.

DCD staff is seeking direction from the Board of Supervisors regarding reinstatement of the in-lieu fee for rental developments and an update of the in-lieu fee for for-sale developments. Staff intends to include updated in-lieu fees in an updated Land Development Fee Schedule, which staff intends to present to the Board for consideration on December 18, 2018.

ATTACHMENTS

Rental In-lieu fee calculation

Ownership in-lieu fee calculations