

City of Piedmont
COUNCIL AGENDA REPORT

DATE: May 18, 2026

TO: Mayor and Councilmembers

FROM: Rosanna Bayon Moore, City Administrator

SUBJECT: Study Session on Housing Element Program 3.G, Inclusionary Housing, and Program 3.E, Affordable Housing Fund

RECOMMENDATION

Receive presentation Regarding Housing Element Program 3.G [Inclusionary Housing], and Program 3.E[Affordable Housing Fund]. This is an informational item.

BACKGROUND AND DISCUSSION

Pursuant to the requirements of State law, on March 20, 2023, the City Council adopted Piedmont's 6th Cycle Housing Element. The Housing Element outlines policies and programs that the City will consider to help facilitate the development of the City's Regional Housing Needs Allocation (RHNA) of 587 new housing units at all income levels during the 2023-2031 planning cycle. The 6th Cycle Housing Element includes approximately 77 housing programs. Two of the Housing Element programs, 3.G and 3.E, are the subject of this staff report.

These programs are described in the Housing Element as follows:

Program 3.G Inclusionary Housing

Inclusionary housing is generally a program that requires provision of affordable housing on-site or off-site, or payment of an affordable housing in-lieu fee, as part of an otherwise market-rate housing development. The City will evaluate the potential to establish inclusionary housing requirements for new multi-family housing development, which would require affordable housing development. The City should also consider alternatives, such as land dedication and/or payment of an in-lieu fee, with the fee adequately calibrated to be equivalent to the cost of constructing an affordable unit.

Objective: Provide additional affordable housing opportunities equally distributed and integrated with market-rate developments.

Timeframe: Issue RFP to hire consultant to evaluate inclusionary options by December 2023. Finalize recommendations by December 2024. Adopt requirements April 2025, if applicable and recommended by the analysis.

Responsible Agency: Planning & Building Department with direction of the City Council and Planning Commission.

Geographic Targeting: Sites for multifamily and mixed-use development in Zone C and Zone D zoning districts.

Program 3.E Affordable Housing Fund

The City will create a Piedmont Affordable Housing Fund to receive philanthropic donations, in-lieu fees, and other sources of funding. These funds could be used for affordable housing programs, including a loan program for ADUs or other programs for other affordable housing types. The Affordable Housing Fund could be administered by a nonprofit affordable housing developer, such as Habitat for Humanity or other entity, to make low-interest loans (e.g., 4% interest rate) available to low or moderate-income property owners (e.g., up to approximately \$135,650 for a household of three people), with a focus on members of protected classes. Loans could be made available for the construction of new ADUs, Junior ADUs, and/or other small housing units with occupancy restricted to very-low-income (31% to 50% AMI) and extremely-low-income (30% or less of AMI) residents for a minimum period of 15 years. The City is targeting the support of approximately 10 new income-restricted ADUs, Junior ADUs, or other housing unit types during the planning period. The program could be extended to property owners with above moderate incomes with additional funding sources, such as fundraising efforts, philanthropic contributions, or grant funding.

Objective: Create Affordable Housing Fund for the construction of new ADUs and Junior ADUs and other affordable housing types with occupancy restricted to very low-income (31% to 50% AMI) and extremely-low-income (30% or less of AMI) residents for a minimum period of 15 years.

Timeframe: Meet with City Council by December 2023 to discuss potential risks and opportunities. Create affordable housing fund by July 2024.

Responsible Agency: Planning & Building Department, with direction of City Council and Planning Commission.

Geographic Targeting: Highest resource areas in Zone A and Zone E zoning districts.

Consultant Services in Support of Housing Element Implementation

On May 19, 2025, the City Council approved an agreement with Dyett & Bhatia and Economic Planning Systems (EPS) for services related to the completion of eleven (11) Housing Element implementation programs including programs 1.I, 1.K, 1.N, 1.T, 3.E, 3.G, 4.J, 4.K, 5.B, 5.H, and 5.K. This diverse scope of services is consolidated under the title “Expanding Housing Options Initiative” or “EHO.”

Number	Program Title	Due Date
1.I	Lot Merger Incentives in Zone C and Zone D	January 2026
1.K	City Services Impact Fee for Multi-family Housing	July 2025
1.N	Municipal Services Parcel Tax Study	April 2026
1.T	On- and Off-site Improvement Standards	January 2025
3.E	Affordable Housing Fund	July 2024
3.G	Inclusionary Zoning	April 2025
4.J	Small Lot Housing Study	March 2026
4.K	Small Lot Affordable Housing Study	March 2024
5.B	Shared Housing Matching Services	August 2024
5.H	Housing for Extremely Low-income Individuals and Households RFP	January 2026
5.K	Transitional and Supportive Housing grant & partnership opportunities	January 2026

Under the EHO scope of services approved by the City Council, the Piedmont Budget Advisory & Financial Planning Committee was asked to review potential funding programs in Housing Element programs 1.K, 1.N, 3.E, and 3.G.

Previous Committee and Commission Discussions

At a study session on October 28, 2025, the Piedmont Budget Advisory & Financial Planning Committee received a presentation from staff and Economic Planning Systems (EPS) regarding Housing Element programs 1.K, 1.N, and 3.E, as well as affordable housing in-lieu fees in general. The presentation included case studies for the following cities and towns in California: Lafayette, Belmont, and Tiburon (Program 1.K, Development Impact Fee Case Studies); El Cerrito and Elk Grove (Program 1.N Parcel Tax Case Studies); and Napa, Palo Alto, Santa Barbara, Laguna Beach, and Beverly Hills (Program 3.E, Affordable Housing Fund Case Studies).

At a study session on November 10, 2025, the Piedmont Planning Commission provided feedback on information regarding Housing Element program 3.G, Inclusionary Zoning. The Planning & Building Department team of staff and consultants presented slides introducing the EHO initiative and inclusionary zoning. Regarding inclusionary zoning, Commissioners expressed interest in the case study research, the numbers of new housing units developed under inclusionary ordinances in other jurisdictions, possible incentives for the production of rent-restricted affordable units, the applicability to development applications in practice, and other considerations.

At a study session on February 3, 2026, the Budget Advisory & Financial Planning Committee received another presentation from staff and the City's consultants and adopted Resolution 2026-001. The resolution includes a series of recommendations related to implementation of the Housing Element. With respect to inclusionary housing program (Inclusionary Zoning), the Budget Advisory Committee recommends to the City Council that the City commission a nexus study of an in-lieu fee as part of a potential inclusionary zoning program. With respect to the Affordable Housing Fee program, the Budget Advisory Committee recommends that the City Council direct staff to investigate a potential framework for an Affordable Housing Fund in the City Budget, identify the allowed uses of the Affordable Housing Fund, such as housing serving people earning 80 percent of the area median income for a period of 55 years or more and services supporting

occupants of affordable housing, the management and oversight of the Fund, and potential revenue sources, such as future in-lieu fees, and philanthropic donations.

At another study session on May 11, 2026, the Planning Commission received a progress update on the development of possible Inclusionary Zoning standards and draft Code language. The Commission expressed interest in ensuring that an inclusionary program require that affordable housing be consolidated with and integrated with market rate housing.

DISCUSSION

Inclusionary Housing

Inclusionary housing requirements are widely used in California to create affordable housing units. The basic concept is that when there are new housing units slated for development, a certain percentage of the units are required to be affordable to households that meet pre-established income thresholds. The legal authority to establish an inclusionary requirement for for-sale units is derived from the City's police powers to regulate land use within the community (see *California Building Industry Assn. v. City of San Jose* (2015) 61 Cal.4th 435), and Gov. Code section 65850.01, which authorizes inclusionary requirements for rental housing projects.

One of the overarching policy questions related to inclusionary housing is finding the balance between the program's ability to create new high quality affordable housing units against the program's impact on the feasibility of housing development. According to State law (Gov. Code section 65850.01(a) and MTC guidance published September 25, 2025, to ensure that a local ordinance is not a constraint on the development of housing, a local inclusionary housing ordinance that requires more than 15% of the units to be affordable, may be required to submit a feasibility study to the California Department of Housing and Community Development.

There are a number of policy decisions that would need to be considered as part of an inclusionary ordinance. The intent of this study session is to seek City Council feedback on the following elements of a potential future program:

- The minimize size of the project that the ordinance is applicable to;
- Required percentage of affordable units, typically in the range of 10% to 15%;
- Qualifying household income levels, typically with a mix of very low income, low income and moderate-income affordability levels;
- Number of years affordable units are restricted, typically 55 years or more;
- Types of development the ordinance applies to, such as rental, for sale, and/or senior housing;
- Alternative means of compliance such as in-lieu fees, land dedication, off-site development of new units or off-site acquisition of existing units, etc.;
- Limitations and procedures for the sale of owner-occupied affordable units;
- Exemptions and waiver criteria;
- Program administrative procedures.

It should be noted that the development of inclusionary housing units as part of a proposed development will concurrently trigger State density bonus laws, which provide development

applicants an opportunity to seek concessions and waivers of various local land use requirements. As part of an inclusionary housing program, cities can add additional local bonuses to further ensure the feasibility of the overall project.

Staff additionally notes that an inclusionary ordinance would not be applicable to the Moraga Canyon Specific Plan area, which is subject to separate requirements.

Affordable Housing Fund

Housing Element Program 3.E commits the City to create a fund for affordable housing in the City's budget by July 2024. The primary purpose of the affordable housing fund (AFA) as described in Program 3.E is to support the development of accessory dwelling units. Other uses for the fund could be added by the City Council. The City is not required to establish a funding stream for the affordable housing fund at this time. However, it would not be uncommon to direct a possible in-lieu fee revenue to the AFA if an in-lieu fee is created in the future as part of the implementation of Program 3.G, Inclusionary Housing. Other sources of revenue could include a future local affordable housing impact fee, future State and federal grants, and philanthropic donations.

CITY ATTORNEY REVIEW

This staff report has been reviewed and approved by the City Attorney.

FISCAL IMPACT

There are no costs associated with consideration by the City Council of this informational item. In the future, the City Council may consider implementation of the Housing Element programs discussed in this report, and at that time any associated costs to the City will be described.

By: Jeff Bond, Interim Planning and Building Director
Pierce McDonald, Senior Planner

ATTACHMENTS

- 1) Budget Advisory Committee Resolution 2026-001
- 2) Budget Advisory Committee Staff Report and Presentation, February 3, 2026
- 3) ABAG/MTC Inclusionary Housing, September 25, 2025
- 4) Meeting California's Housing Needs: Best Practices for Inclusionary Housing, Local Government Commission, November 2018
- 5) Alameda County Income Limits by Household Size

RESOLUTION N. 2026-001
RECOMMENDATION OF BUDGET ADVISORY AND FINANCIAL PLANNING
COMMITTEE TO CITY COUNCIL TO IMPLEMENT HOUSING ELEMENT
PROGRAMS 1.K, 1.N, 3.E, AND 3.G

WHEREAS, State of California housing element law, as set forth in Government Code §§ 65302 and 65580, et seq., requires the City of Piedmont to periodically prepare and update its Housing Element in its General Plan, and to establish goals, policies, and programs to accommodate the maintenance, diversification, and expansion of the City's housing supply to accommodate the City of Piedmont's regional housing needs allocation (RHNA) of 587 housing units, comprised of 238 above moderate income units, 92 moderate income units, 94 low income units, and 163 extremely and very low income units; and

WHEREAS, the 6th Cycle Housing Element must be adopted to comply with State law, accommodate the RHNA, affirmatively further fair housing, and facilitate and encourage a variety of housing types for all income levels, including multifamily housing (Gov. Code Sections 65583.2 and 65583(c)); and

WHEREAS, the preparation, adoption, and implementation of the 6th Cycle Housing Element requires a diligent effort to include all economic segments of the community; and

WHEREAS, to comply with State housing element law, the City Council of the City of Piedmont has prepared and adopted, on March 20, 2023, the 2023-2031 6th Cycle Housing Element (the 6th Cycle Housing Element); and

WHEREAS, Piedmont's 6th Cycle Housing Element includes the following Programs:

- Program 1.K City Services Impact Fee for Multifamily Housing to study the nexus between the impacts of new multifamily development on City services and infrastructure, such as roadways, sewer, and affordable housing;
- Program 1.N Municipal Services Parcel Tax Study to study the local municipal services parcel tax, Piedmont City Code Chapter 20.B to collect an annual tax from each new unit created under Housing Element programs, such as ADUs greater than 750 square feet, SB 9 development, and multifamily development;
- Program 3.E Affordable Housing Fund to create an affordable housing fund in the City budget to support new initiatives to support income-restricted affordable housing; and
- Program 3.G Inclusionary Zoning to consider a program to require a percentage of new housing units developed under Housing Element programs to be made available at below-market-rate rents and/or sale prices and to consider an alternative to be made available to applicants such as land dedication and/or payment of an in-lieu fee.

WHEREAS, the intent of these Housing Element programs is to facilitate the development of market-rate and below-market-rate housing to help meet the demand for affordable housing in the City and to meet commitments in the Housing Element to complete programs within certain timeframes; and

WHEREAS, The Budget Advisory & Financial Planning Committee was established by the City Council as a standing City committee in October 2014 and the City Council defined the role of the Budget Advisory & Financial Planning Committee on February 21, 2023, as follows:

- a) Review the financial projections prepared for the City's Annual Budget and provide comment on whether they provide for the long term sustainable financial future of the City. This review shall take place between the preparation of the budget in April and its approval by the City Council in June of each year.
- b) Review and provide comment on the Mid-Year Budget Reports.
- c) Provide a financial review of any new program commitments and funding sources in excess of \$250,000 in any fiscal year.
- d) Periodically review and comment on the sufficiency of funding for long term obligations, including the Sewer Fund, Equipment Replacement Fund, Facilities Maintenance Fund and the City's pension and retiree healthcare costs and funding.
- e) Periodically examine the need for the Municipal Services Special Tax (Parcel Tax) and recommend whether this tax should be continued, and if so, at what rate. This charge shall be accomplished not later than eighteen (18) months prior to the expiration of the tax as set forth in Chapter 20B of the City Code.
- f) The Committee may propose additional financial areas of study, which must be approved by the City Council prior to being taken up by the Committee. In addition, the Council may assign additional areas of study to the Committee; and

WHEREAS, at its regular meeting of October 28, 2025, the Budget Advisory and Financial Planning Committee held a regularly scheduled public meeting and received a report from staff and a presentation from Economic Planning Systems (EPS) about Housing Element Programs 1.K, 1.N, 3.E, and inclusionary in-lieu fees, including case studies for the following cities and towns in California: Lafayette, Belmont, and Tiburon (Program 1.K, Development Impact Fee Case Studies); El Cerrito and Elk Grove (Program 1.N Parcel Tax Case Studies); and Napa, Palo Alto, Santa Barbara, Laguna Beach, and Beverly Hills (Program 3.E, Affordable Housing Fund Case Studies); and

WHEREAS, on February 3, 2026, the Budget Advisory and Financial Planning Committee held a regularly scheduled public meeting and received a report from staff and a presentation from EPS outlining the appropriate steps to continue implementation of Housing Element Programs 1.K, 1.N, 3.E, and 3.G.

NOW, THEREFORE, BE IT RESOLVED that the Budget Advisory and Financial Planning Committee of the City of Piedmont (Budget Committee) does hereby resolve, declare, determine, and order, based on substantial evidence in the record, as follows:

SECTION 1. Findings.

- A. That City records indicate that the above recitations are true and correct.
- B. That the Budget Committee recommends to the City Council that the City of Piedmont commission the preparation of a nexus study to determine potential impacts of multifamily

development, including SB 9 development, on City services and infrastructure and to determine a possible development impact fee(s);

- C. That the Budget Committee recommends to the City Council that the City amend the Municipal Services Special Tax by 2037 or earlier to include a tax levied on the types of new housing units to be created under Housing Element programs, including SB 9 development, townhouses and detached and semi-detached homes on a single lot;
- D. That the Budget Committee recommends that the City Council direct staff to investigate a potential framework for an Affordable Housing Fund in the City Budget, identify the allowed uses of the Affordable Housing Fund, such as housing serving people earning 80 percent of the area median income for a period of 55 years or more and services supporting occupants of affordable housing, the management and oversight of the Fund, and potential revenue sources, such as future in-lieu fees, impact fees, and philanthropic donations;
- E. That the Budget Committee recommends to the City Council that the City commission a nexus study of an in-lieu fee as part of a potential inclusionary zoning program;
- F. That the Budget Committee recommends to the City Council to direct staff to study the cost and feasibility of a Mello-Roos Community Facilities District Fee in areas of Piedmont where the Housing Element plans for denser multifamily development to occur with the intent to fund infrastructure improvements, including, but not limited to, roadways, landscaping, storm drainage improvements, park and recreation facilities, and undergrounding of utilities.
- G. That these efforts commence at the time that funding becomes available.

SECTION 2. All portions of this resolution are severable. If an individual component of this Resolution is adjudged by a court to be invalid and unenforceable, then the remaining portions will continue in effect.

Kiran Bawa, Finance Director

Date

City of Piedmont
CALIFORNIA



MEMORANDUM

DATE: February 3, 2026

TO: Budget Advisory & Financial Planning Committee

FROM: Kevin Jackson, Planning & Building Director
Pierce Macdonald, Senior Planner

SUBJECT: Consideration of a Resolution Recommending
Implementation of Housing Element Programs 1.K, 1.N,
3.E, and 3.G

AGENDA ITEM NUMBER 1

RECOMMENDATION

Adopt the attached resolution recommending City Council proceed with implementation of Housing Element Programs 1.K, 1.N, 3.E, and 3.G.

EXECUTIVE SUMMARY

On March 20, 2023, the City Council adopted Piedmont's 6th Cycle Housing Element (Housing Element), comprised of several policies and over seventy programs that the City will deliver to advance the development of a Regional Housing Needs Allocation (RHNA) of 587 new housing units at all income levels during the 2023-2031 cycle. Reducing the potential impacts of growth on City services, infrastructure, and budget were important considerations during the preparation of the Housing Element. Several Housing Element programs were meant to respond to the question, "Who pays for the improvements needed to serve new development?"

On May 19, 2025, the City Council approved an agreement with Dyett & Bhatia and Economic Planning Systems (EPS) for services related to the completion of eleven (11) Housing Element implementation programs including programs 1.I, 1.K, 1.N, 1.T, 3.E, 3.G, 4.J, 4.K, 5.B, 5.H, and 5.K. This diverse scope of services is consolidated under the title "Expanding Housing Options Initiative" or "EHO."

Number	Program Title	Due Date
1.I	Lot Merger Incentives in Zone C and Zone D	January 2026
1.K	City Services Impact Fee for Multi-family Housing	July 2025
1.N	Municipal Services Parcel Tax Study	April 2026
1.T	On- and Off-site Improvement Standards	January 2025
3.E	Affordable Housing Fund	July 2024
3.G	Inclusionary Zoning	April 2025
4.J	Small Lot Housing Study	March 2026
4.K	Small Lot Affordable Housing Study	March 2024
5.B	Shared Housing Matching Services	August 2024
5.H	Housing for Extremely Low-income Individuals and Households RFP	January 2026
5.K	Transitional and Supportive Housing grant & partnership opportunities	January 2026

At a study session on October 28, 2025, the Piedmont Budget Advisory & Financial Planning Committee received a presentation from staff and Economic Planning Systems (EPS) regarding Housing Element programs 1.K, 1.N, and 3.E, as well as affordable housing in-lieu fees in general. The presentation included case studies for the following cities and towns in California: Lafayette, Belmont, and Tiburon (Program 1.K, Development Impact Fee Case Studies); El Cerrito and Elk Grove (Program 1.N Parcel Tax Case Studies); and Napa, Palo Alto, Santa Barbara, Laguna Beach, and Beverly Hills (Program 3.E, Affordable Housing Fund Case Studies).

At this time, City staff recommend that the Budget Advisory & Financial Planning Committee consider possible recommendations to the City Council to take the next steps to continue to implement Housing Element programs 1.K, 1.N, 3.E, and 3.G. Staff members have prepared a draft resolution for the consideration of the Committee (Attachment A) which recommends a number of nexus studies and feasibility studies to further the implementation of the Housing Element programs. The recommended nexus studies and feasibility studies are not part of the current EHO scope of services. These studies are described in the Discussion section of this report.

BACKGROUND

Under the EHO scope of services approved by the City Council, the Piedmont Budget Advisory & Financial Planning Committee is asked to review potential funding programs in Housing Element programs 1.K, 1.N, 3.E, and 3.G. These programs are described in the Housing Element as follows:

Program 1.K City Services Impact Fee for Multi-family Housing

The City has high standards for provision of services to community residents. In order to maintain the existing level of services, City will study the nexus between the impacts of new multi-family development on City services and infrastructure and the costs to provide the services and infrastructure. If warranted, such study would provide the basis for the City's impact fees for developers of multi-family housing including mixed-use multi-family housing. Fees received will help fund continuation of service to offset potential impacts of the increased population envisioned in the Housing Element.

Objective: To ensure new projects help pay for the cost of maintaining City services and infrastructure.

Timeframe: Review impact fees by December 2024. Modify fees, as directed through study, by July 2025

Responsible Agency: Planning & Building Department with Public Works and Finance Departments with direction of City Council and Planning Commission.

Geographic Targeting: Citywide.

Program 1.N Municipal Services Parcel Tax Study

The City will study the local municipal services parcel tax to determine if the tax could be structured to collect an annual tax from each new unit created under Housing Element programs, including ADUs over 750 square feet (as allowed by State law). Potential revenue enhancements will be measured against the possibility of creating new constraints to housing production.

Objective: Study local municipal services tax to potentially generate additional revenue from units created under Housing Element programs.

Timeframe: Conduct study by April 2026.

Responsible Agency: Planning & Building Department and Finance Department with direction of City Council and Planning Commission.

Geographic Targeting: Citywide.

Program 3.E Affordable Housing Fund

The City will create a Piedmont affordable housing fund to receive philanthropic donations, in-lieu fees, and other sources of funding. These funds could be used for affordable housing programs including a loan program for ADUs with Habitat for Humanity or other programs for other affordable housing types. The affordable housing fund could be administered by a nonprofit affordable housing developer, such as Habitat for Humanity or other entity, to make low-interest loans (e.g., 4% interest rate) available to low or moderate-income property owners (e.g., up to approximately \$135,650 for a household of three people), with a focus on members of protected classes. Loans could be made available for the construction of new ADUs, Junior ADUs, and/or other small housing units with occupancy restricted to very-low-income (31% to 50% AMI) and extremely-low-income (30% or less of AMI) residents for a minimum period of 15 years. The City is targeting supporting approximately 10 new income-restricted ADUs, Junior ADUs, or other housing unit types during the planning period. The Program could be extended to property owners with above moderate incomes with additional funding sources, such as fund-raising efforts, philanthropic contributions, or grant funding.

Objective: Create Affordable Housing Fund for the construction of new ADUs and Junior ADUs and other affordable housing types with occupancy restricted to verylow-income (31% to 50% AMI) and extremely-low-income (30% or less of AMI) residents for a minimum period of 15 years.

Timeframe: Meet with City Council by December 2023 to discuss potential risks and opportunities. Create affordable housing fund by July 2024.

Responsible Agency: Planning & Building Department, with direction of City Council and Planning Commission.

Geographic Targeting: Highest resource areas in Zone A and Zone E zoning districts.

Program 3.G Inclusionary Housing

Inclusionary housing is generally a program that requires provision of affordable housing on-site or off-site, or payment of an affordable housing in-lieu fee, as part of an otherwise market-rate housing development. The City will evaluate the potential to establish inclusionary housing requirements for new multi-family housing development, which would require affordable housing development. The City should also consider alternatives, such as land dedication and/or payment of an in lieu fee, with the fee adequately calibrated to be equivalent to the cost of constructing an affordable unit.

Objective: Provide additional affordable housing opportunities equally distributed and integrated with market-rate developments.

Timeframe: Issue RFP to hire consultant to evaluate inclusionary options by December 2023. Finalize recommendations by December 2024. Adopt requirements April 2025, if applicable and recommended by the analysis.

Responsible Agency: Planning & Building Department with direction of the City Council and Planning Commission.

Geographic Targeting: Sites for multifamily and mixed-use development in Zone C and Zone D zoning districts.

DISCUSSION

Role of the Budget Advisory & Financial Planning Committee. The Budget Advisory & Financial Planning Committee was established by the City Council on February 21, 2023, and its role includes the review of, and comment on, potential funding sources. In addition, the Council may assign additional areas of study to the Committee.

At a study session on October 28, 2025 with the Committee, during the initial information-gathering stage of the EHO planning process, the Committee Members considered the goals and objectives the Council had established and gave comments related to the feasibility of these potential revenue-generating programs in reducing fiscal impacts and establishing new funding mechanisms.

This staff report is accompanied by a slide presentation to be delivered on February 3, 2026. The slides (Attachment B) present the potential costs and benefits of the City taking the next steps to continue to implement Housing Element Programs 1.K, 1.N, 3.E, and 3.G. Several of these steps would require additional professional services estimated to cost approximately \$50,000, total. The necessary nexus studies and feasibility studies are not scoped in the current EHO contract with Dyett & Bhatia and EPS.

Draft Resolution. City staff have prepared a draft resolution for the consideration of the Budget Advisory & Financial Planning Committee. The resolution (Attachment A) proposes five (5) recommendations to the City Council to further the implementation of Housing Element Programs 1.K, 1.N, 3.E, and 3.G. The proposed recommendations are as follows:

- Commission the preparation of a nexus study to determine potential impacts of multifamily development, including SB 9 development, on City services and infrastructure and to determine a possible development impact fee(s) (Program 1.K);
- Amend the Municipal Services Special Tax by 2037 or earlier to include a tax levied on the types of new housing units to be created under Housing Element programs including SB 9 development, townhouses and detached and semi-detached homes on a single lot (Program 1.N);
- Direct staff to investigate a potential framework for an Affordable Housing Fund in the City Budget, identify the allowed uses of the Affordable Housing Fund, such as housing serving people earning 80 percent of the area median income for a period of 55 years or more and services supporting the occupants of affordable housing, the management and oversight of the Fund, and potential revenue sources, such as future in-lieu fees, impact fees, and philanthropic donations (Program 3.E);
- Commission a nexus study of an in-lieu fee as part of a potential inclusionary zoning program (Program 3.G); and
- Study the cost and feasibility of a Mello-Roos Community Facilities District Fee in areas of Piedmont where the Housing Element plans for denser multifamily development to occur with the intent to fund infrastructure improvements, including but not limited to

roadways, landscaping, storm drainage improvements, park and recreation facilities, and undergrounding of utilities (Program 1.K).

NEXT STEPS

The recommendations of the Budget Advisory & Financial Planning Committee will be presented at future meetings of the Planning Commission and City Council in Spring 2026. The Budget Advisory & Financial Planning Committee may play an advisory role prior to public hearings before the Planning Commission and City Council for adoption of any revenue-generating or funding programs.

ATTACHMENTS

- A *Pages 6-8* Resolution
- B *Pages 9-36* EHO Slide Presentation
- C *Page 37* City of Piedmont Zoning Map

Related Document

[*City of Piedmont 6th Cycle Housing Element, Adopted March 2023, Revised August 2023*](#)

RESOLUTION N. 2026-____
RECOMMENDATION OF BUDGET ADVISORY AND FINANCIAL PLANNING
COMMITTEE TO CITY COUNCIL TO IMPLEMENT HOUSING ELEMENT
PROGRAMS 1.K, 1.N, 3.E, AND 3.G

WHEREAS, State of California housing element law, as set forth in Government Code §§ 65302 and 65580, et seq., requires the City of Piedmont to periodically prepare and update its Housing Element in its General Plan, and to establish goals, policies, and programs to accommodate the maintenance, diversification, and expansion of the City's housing supply to accommodate the City of Piedmont's regional housing needs allocation (RHNA) of 587 housing units, comprised of 238 above moderate income units, 92 moderate income units, 94 low income units, and 163 extremely and very low income units; and

WHEREAS, the 6th Cycle Housing Element must be adopted to comply with State law, accommodate the RHNA, affirmatively further fair housing, and facilitate and encourage a variety of housing types for all income levels, including multifamily housing (Gov. Code Sections 65583.2 and 65583(c)); and

WHEREAS, the preparation, adoption, and implementation of the 6th Cycle Housing Element requires a diligent effort to include all economic segments of the community; and

WHEREAS, to comply with State housing element law, the City Council of the City of Piedmont has prepared and adopted, on March 20, 2023, the 2023-2031 6th Cycle Housing Element (the 6th Cycle Housing Element); and

WHEREAS, Piedmont's 6th Cycle Housing Element includes the following Programs:

- Program 1.K City Services Impact Fee for Multifamily Housing to study the nexus between the impacts of new multifamily development on City services and infrastructure, such as roadways, sewer, and affordable housing;
- Program 1.N Municipal Services Parcel Tax Study to study the local municipal services parcel tax, Piedmont City Code Chapter 20.B to collect an annual tax from each new unit created under Housing Element programs, such as ADUs greater than 750 square feet, SB 9 development, and multifamily development;
- Program 3.E Affordable Housing Fund to create an affordable housing fund in the City budget to support new initiatives to support income-restricted affordable housing; and
- Program 3.G Inclusionary Zoning to consider a program to require a percentage of new housing units developed under Housing Element programs to be made available at below-market-rate rents and/or sale prices and to consider an alternative to be made available to applicants such as land dedication and/or payment of an in-lieu fee.

WHEREAS, the intent of these Housing Element programs is to facilitate the development of market-rate and below-market-rate housing to help meet the demand for affordable housing in the City and to meet commitments in the Housing Element to complete programs within certain timeframes; and

WHEREAS, The Budget Advisory & Financial Planning Committee was established by the City Council on February 21, 2023, and the role of the Committee is as follows:

- a) Review the financial projections prepared for the City's Annual Budget and provide comment on whether they provide for the long term sustainable financial future of the City. This review shall take place between the preparation of the budget in April and its approval by the City Council in June of each year.
- b) Review and provide comment on the Mid-Year Budget Reports.
- c) Provide a financial review of any new program commitments and funding sources in excess of \$250,000 in any fiscal year.
- d) Periodically review and comment on the sufficiency of funding for long term obligations, including the Sewer Fund, Equipment Replacement Fund, Facilities Maintenance Fund and the City's pension and retiree healthcare costs and funding.
- e) Periodically examine the need for the Municipal Services Special Tax (Parcel Tax) and recommend whether this tax should be continued, and if so, at what rate. This charge shall be accomplished not later than eighteen (18) months prior to the expiration of the tax as set forth in Chapter 20B of the City Code.
- f) The Committee may propose additional financial areas of study, which must be approved by the City Council prior to being taken up by the Committee. In addition, the Council may assign additional areas of study to the Committee; and

WHEREAS, at its regular meeting of October 28, 2025, the Budget Advisory and Financial Planning Committee held a regularly scheduled public meeting and received a report from staff and a presentation from Economic Planning Systems (EPS) about Housing Element Programs 1.K, 1.N, 3.E, and inclusionary in-lieu fees, including case studies for the following cities and towns in California: Lafayette, Belmont, and Tiburon (Program 1.K, Development Impact Fee Case Studies); El Cerrito and Elk Grove (Program 1.N Parcel Tax Case Studies); and Napa, Palo Alto, Santa Barbara, Laguna Beach, and Beverly Hills (Program 3.E, Affordable Housing Fund Case Studies); and

WHEREAS, on February 3, 2026, the Budget Advisory and Financial Planning Committee held a regularly scheduled public meeting and received a report from staff and a presentation from EPS outlining the appropriate steps to continue implementation of Housing Element Programs 1.K, 1.N, 3.E, and 3.G.

NOW, THEREFORE, BE IT RESOLVED that the Budget Advisory and Financial Planning Committee of the City of Piedmont (Budget Committee) does hereby resolve, declare, determine, and order, based on substantial evidence in the record, as follows:

SECTION 1. Findings.

- A. That City records indicate that the above recitations are true and correct.
- B. That the Budget Committee recommends to the City Council that the City of Piedmont commission the preparation of a nexus study to determine potential impacts of multifamily development, including SB 9 development, on City services and infrastructure and to determine a possible development impact fee(s);

- C. That the Budget Committee recommends to the City Council that the City amend the Municipal Services Special Tax by 2037 or earlier to include a tax levied on the types of new housing units to be created under Housing Element programs, including SB 9 development, townhouses and detached and semi-detached homes on a single lot;
- D. That the Budget Committee recommends that the City Council direct staff to investigate a potential framework for an Affordable Housing Fund in the City Budget, identify the allowed uses of the Affordable Housing Fund, such as housing serving people earning 80 percent of the area median income for a period of 55 years or more and services supporting occupants of affordable housing, the management and oversight of the Fund, and potential revenue sources, such as future in-lieu fees, impact fees, and philanthropic donations;
- E. That the Budget Committee recommends to the City Council that the City commission a nexus study of an in-lieu fee as part of a potential inclusionary zoning program; and
- F. That the Budget Committee recommends to the City Council to direct staff to study the cost and feasibility of a Mello-Roos Community Facilities District Fee in areas of Piedmont where the Housing Element plans for denser multifamily development to occur with the intent to fund infrastructure improvements, including but not limited to, roadways, landscaping, storm drainage improvements, park and recreation facilities, and undergrounding of utilities.

SECTION 2. All portions of this resolution are severable. If an individual component of this Resolution is adjudged by a court to be invalid and unenforceable, then the remaining portions will continue in effect.

EXPANDING HOUSING OPTIONS INITIATIVE



**Piedmont
is Home**



City of Piedmont Budget Advisory & Financial Planning Committee

February 3, 2026



**Economic & Planning
Systems, Inc.**

The Economics of Land Use

1330 Broadway, Suite 450 • Oakland, CA 94612
510. 841.9190 • www.epsys.com

BIG PICTURE QUESTION:

Who pays for the improvements needed to serve new development?

OVERVIEW



Review implementation options and provide illustrative scenarios for selected funding programs:

- City Development Impact Fee
- Community Facilities District
- Municipal Parcel Tax
- Affordable Housing In-Lieu Fee
- Affordable Housing Fund

CITY DEVELOPMENT IMPACT FEE

CITY DEVELOPMENT IMPACT FEE

Staff Recommendation

- Authorize nexus study necessary to approve a one-time impact fee on new development to help fund public infrastructure.

Considerations

- Many Bay Area cities use an impact fee as a tool to manage the impacts and costs of growth.
- Revenue materializes once development occurs.
- Impact fees increase development costs, which may affect feasibility of housing production.
- City can approve fee based on a future nexus study to be prepared consistent with Mitigation Fee Act (Study Cost: ~\$30,000).

CITY IMPACT FEE ILLUSTRATIVE SCENARIOS

		Scenario 1: Modest Fee		Scenario 2: Higher Fees	
	Housing Element Growth ^{1,2}	Fee / unit ³	Total Revenue	Fee / unit ³	Total Revenue
Single Family Detached	50	\$15,000	\$750,000	\$25,000	\$1,250,000
ADUs ⁴	160	\$4,500	\$360,000	\$10,000	\$800,000
Townhomes / Multifamily	434	\$7,000	\$3,038,000	\$12,000	\$5,208,000
TOTAL	644		\$4,148,000		\$7,258,000

[1] For simplicity, table assumes that commercial development is negligible.

[2] Data of units is based on Housing Element sites inventory capacity and EPS assumptions.

[3] EPS assumptions.

[4] Impact fees can only be applied to ADUs above 750 sq. ft. Calculation assumes fees would apply to 50% of projected units (80 units). The fee rate is estimated at 30% of the single-family detached fee in Scenario 1 and 40% of the SFD fee in Scenario 2.

MELLO-ROOS COMMUNITY FACILITIES DISTRICT (CFD)

MELLO-ROOS CFD

Staff Recommendation

- Direct staff to investigate the scope, cost, and potential outcomes of preparing a CFD feasibility study.

Considerations

- Enables levy of a land-secured “special tax” to fund public infrastructure and services, paid annually.
 - Infrastructure CFDs can secure tax-exempt bonds that are issued to cover specific public improvements.
 - Deed-restricted affordable housing is exempt from CFD special taxes
- Must be approved by 2/3^{rds} of either property owners or registered voters (if more than 12) in defined area geography.
 - Can be initiated by City Council or property owner petition

MELLO-ROOS CFD -- CONTINUED

Considerations

- Some cities have approved a CFD overlay that requires property owners to “opt in” as a condition of project approval.
 - Would only apply to developments seeking and requiring discretionary approvals.
 - Moraga Canyon is a possible application.

MUNICIPAL SERVICES PARCEL TAX

MUNICIPAL SERVICES PARCEL TAX

Staff Recommendation

- Update the structure of the existing municipal services parcel tax by 2037 to capture new development types.

Considerations

- Proposed changes require 2/3rds voter approval to pass.
- Current tax structure does not identify the development types that are forecasted for growth (e.g., townhomes, duplexes, triplexes, and others).

CURRENT MUNICIPAL SERVICES TAX

Rates are as of 2025-2026

Per Parcel According to Size	Single-Family Residence	Developed Commercial Properties	Multi-Family Residence	Parcels Divided by Tax Code Area Line
0 to 4,999 sq. ft.	\$732			
5,000 to 9,999 sq. ft.	\$823			
10,000 to 14,999 sq. ft.	\$950			
15,000 to 20,000 sq. ft.	\$1,084			
Over 20,000 sq. ft.	\$1,237			
0 to 10,000 sq. ft.		\$1,237		
Over 10,000 sq. ft.		\$1,856		
Per Dwelling Unit			\$507	
Per Parcel				\$750

POTENTIAL CHANGES TO MUNICIPAL TAX

- New combined category for *Townhome / Multifamily Units*.
- Increase Multifamily (5+ units) rate by 10%
- Adds *Townhome / Multifamily (2-4 unit structures)* category
 - Rate = average of Single-Family (0 to 4,999 sq. ft.) and Multifamily (5+ units)
- No change to ADU tax structure, which will continue to be assessed as part of single-family development.

POTENTIAL NEW TAX RATE SCHEDULE

Per Parcel According to Size	Single-Family Detached Residence	Developed Commercial Properties	Townhome/Multi-Family Residence		Parcels Divided by Tax Code Area Line
			2-4 Units	+5 Units	
0 to 4,999 sq. ft.	\$732				
5,000 to 9,999 sq. ft.	\$823				
10,000 to 14,999 sq. ft.	\$950				
15,000 to 20,000 sq. ft.	\$1,084				
Over 20,000 sq. ft.	\$1,237				
0 to 10,000 sq. ft.		\$1,237			
Over 10,000 sq. ft.		\$1,856			
Per Dwelling Unit			\$620	\$507 \$558	
Per Parcel					\$750

Townhome term means detached and semi-detached housing units, duplexes, triplexes, four-plexes, and airspace condominiums on one lot where each unit can be conveyed separately.

PARCEL TAX REVENUE SCENARIO

Land Use	Existing Units ¹	Allowable Growth	Tax Rate / Unit	Annual Additional Revenue ³
Single-Family Detached	3,697	50	\$732	\$36,600
2-4 Unit Structure ²	144	84	\$620	\$68,352
5+ Unit Structure	79	350	\$558	\$199,329
TOTAL	3,920	484		\$304,281

[1] Assumes that commercial development is negligible and that all single-family detached units pay the fee for units 0 to 4,999 sq. ft.

[2] Assumes that 20% of new multifamily development is in 2-4 unit structures.

[3] For single-family and 5+ unit multifamily, the additional revenue is from new units only. For 5+ multifamily, the additional revenue is the increase in units and in the rate.

AFFORDABLE HOUSING IN-LIEU FEE

AFFORDABLE HOUSING IN-LIEU FEE

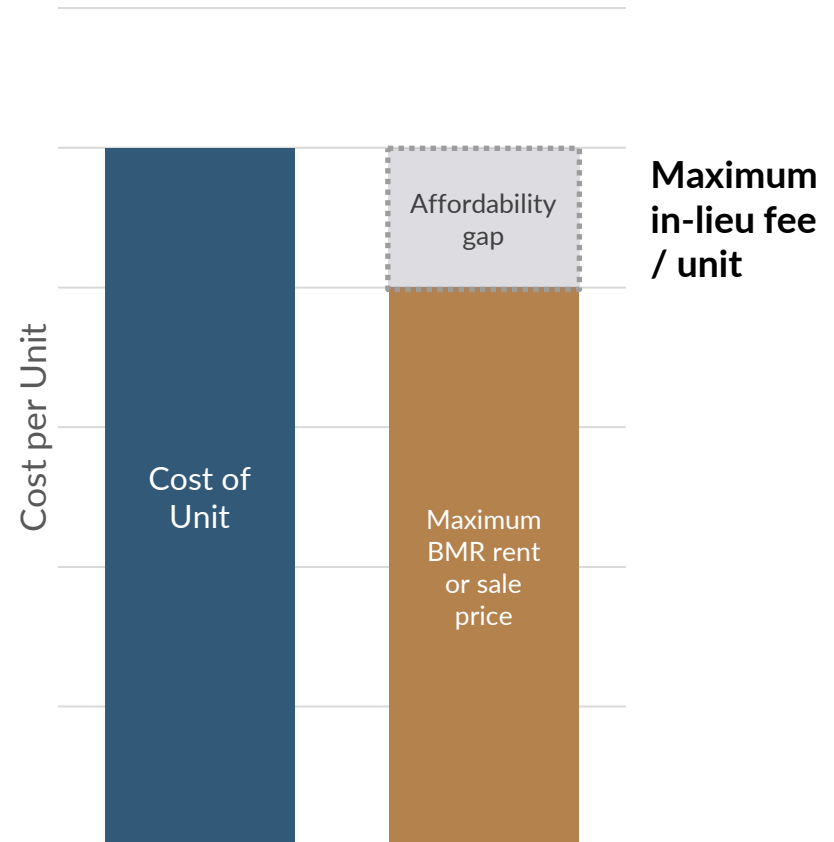
Staff Recommendation

- Prepare an in-lieu fee study specific to Piedmont's market, to be implemented with possible new Inclusionary Zoning Program.

Considerations

- Maximum fee equals developer subsidy needed to build income-restricted units.
- Typically presented as alternative to providing affordable units on-site to meet an inclusionary requirement.

Illustrative Example



POTENTIAL INCLUSIONARY IN-LIEU FEE APPLICABILITY

1. **ADUs on single-family parcels greater than 5,000 sq. ft.**
 - On lots >5,000 sq. ft., ADU construction is currently required for single-family development on vacant lots or for single-family reconstruction.
 - Housing Element anticipates capacity of 160 new ADUs. Fee scenario assumes property owners pay in-lieu fee for up to 10 ADUs.
2. **SB 9 lot splits**
 - A single-family lot split as allowed by SB 9 may add up to 3 additional units per lot.
 - Fee scenario assumes 3 projects per year over 20 years, or 60 new units, and that property owners prefer to pay in-lieu fee for 30 units.
3. **SB 1123 / SB 684 small lot subdivisions**
 - Fee scenario assumes up to 10 new units created and in-lieu fees paid for 5 units.
4. **Multifamily development**
 - Based on Housing Element capacity on existing sites (644 units total).
 - Assume 414 units of multifamily and in-lieu fee paid for 207 units.

IN-LIEU FEE REVENUE SCENARIOS

	Scenario 1: Berkeley In-Lieu Fee				Scenario 2: Oakland In-Lieu Fee	
	Total Forecasted Development	Participating Development ¹	In-Lieu Fee / sq. ft. ²	Total Revenue	In-Lieu Fee / sq. ft. ²	Total Revenue
ADUs in SF lots	160	10	\$18.85	\$150,800	\$3.80	\$30,400
SB 9 lot splits	60	30	\$62.83	\$2,261,880	\$14.98	\$539,280
SB 1123 / SB 684 subdivisions	10	5	\$62.83	\$376,980	\$14.98	\$89,880
2-4 Unit Structures	84	42	\$62.83	\$3,166,632	\$14.98	\$754,992
5+ Unit Structures	330	165	\$62.83	\$12,440,340	\$36.17	\$7,161,660
TOTAL	644	252		\$18,396,632		\$8,576,212

[1] Assumes 50% of forecasted development would opt to pay in-lieu fees, except for ADUs.

[2] The calculation assumes 800 sq. ft. for ADUs and 1,200 sq. ft. unit size for all other structure types. In-lieu fee rates for ADUs are assumed to be 30% of the single-family fee.

AFFORDABLE HOUSING FUND

AFFORDABLE HOUSING FUND

Staff Recommendation

- Housing Element Program 3.E commits the City to create an affordable housing fund in the City's budget to receive and manage in-lieu fees, philanthropic donations, and other sources of funding.
- Direct staff to research best structure / parameters of the fund consistent with Housing Element.

Implementation Considerations	Options
Administration	• City-managed • Third-party administrator • Partnership with other housing trust or fund
Potential Revenue Sources	• In-lieu fees from inclusionary zoning program • Philanthropic contributions • Impact fees
Possible Uses	• Incentivize ADU projects in single-family lots • Purchase of properties to convert to affordable housing • Accrue larger amounts over time to aid financing of multifamily affordable projects

SUMMARY OF RECOMMENDATIONS & CONCLUSION

CITY DEVELOPMENT IMPACT FEE

Staff Recommendation



Adopt the resolution recommending that the City Council commission the preparation of a nexus study to determine the potential impacts of multifamily development, including SB 9 development, on City services and infrastructure and to determine a potential fee(s).

- *Housing Element Program 1.K*

MELLO-ROOS COMMUNITY FACILITIES DISTRICT

Staff Recommendation



Adopt the resolution recommending City Council direct staff to study the cost and feasibility of a Mello-Roos Community Facilities District Fee in areas of Piedmont where the Housing Element plans for denser multifamily development to occur with the intent to fund infrastructure improvements, including, but not limited to, roadways, landscaping, storm drainage improvements, park and recreation facilities, and undergrounding of utilities.

- *Housing Element Program 1.K*

MUNICIPAL SERVICES PARCEL TAX

Staff Recommendation



Adopt the resolution recommending to the City Council that the City amend the Municipal Services Special Tax by 2037 or earlier to include a tax levied on the types of new housing units to be created under Housing Element programs, including SB 9 development, townhouses, and detached and semi-detached homes on a single lot.

- *Housing Element Program 1.N*

AFFORDABLE HOUSING IN-LIEU FEE

Staff Recommendation



Adopt the resolution recommending City Council commission the preparation of an in-lieu fee study specific to Piedmont's market to be implemented as part of a possible new Inclusionary Zoning Program.

- *Housing Element Program 3.G*

AFFORDABLE HOUSING FUND

Staff Recommendation



Adopt the resolution recommending City Council direct staff to investigate a potential framework for an Affordable Housing Fund in the City Budget, identify the allowed uses of the Affordable Housing Fund, such as housing serving people earning 80 percent of the area median income for a period of 55 years or more and services supporting the occupants of affordable housing, the management and oversight of the Fund, and potential revenue sources, such as future in-lieu fees, impact fees, and philanthropic donations.

- *Housing Element Program 3.E*

THANK YOU

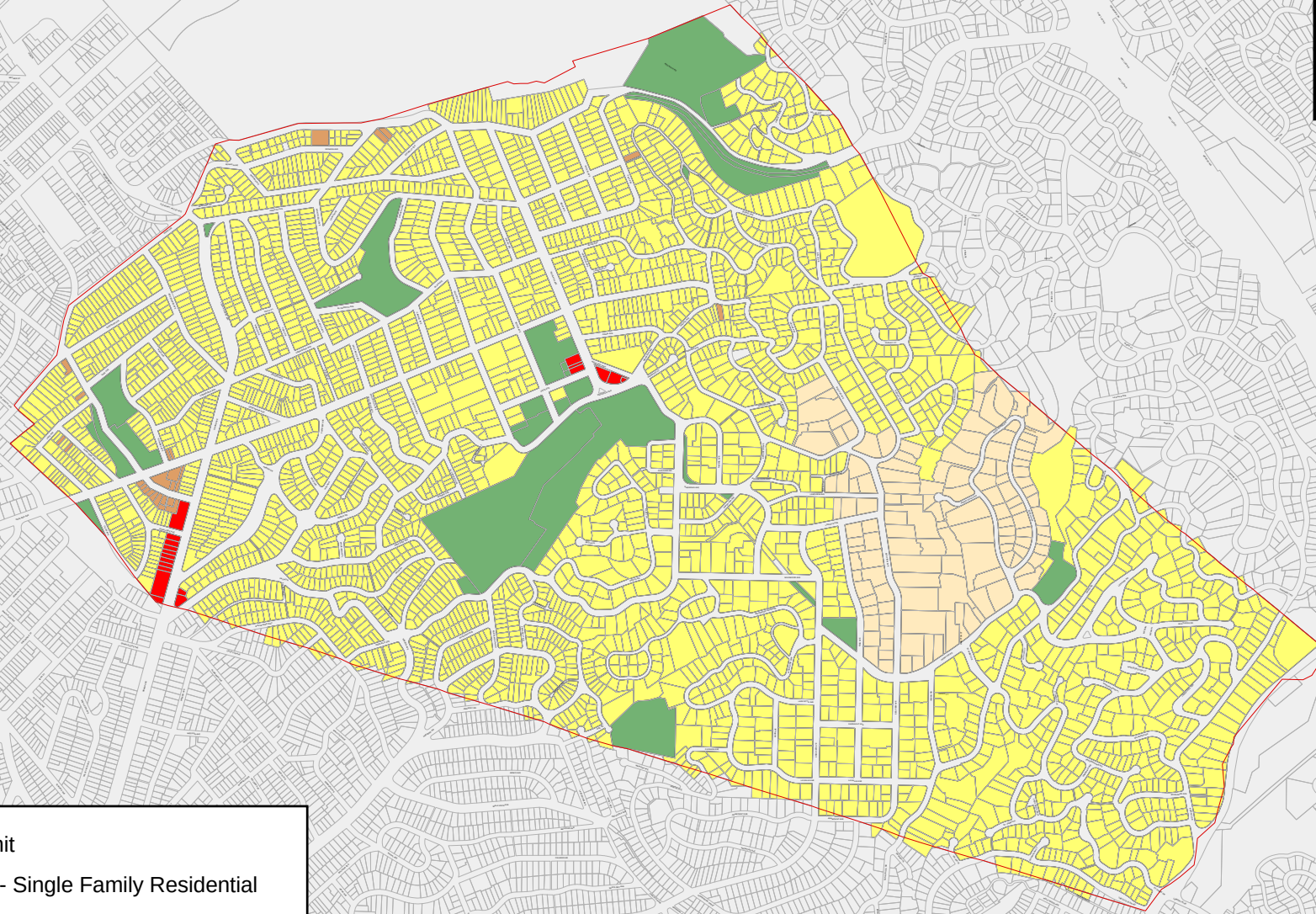
City of Piedmont Zoning Map

Attachment 2

ATTACHMENT C

Agenda Report Page 37
Page 45

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- City Limit
- Zone A - Single Family Residential
- Zone B - Public Facilities
- Zone C - Multi-Family Residential
- Zone D - Mixed Use and Commerical
- Zone E - Estate Residential

0 650 1,300 2,600 3,900 5,200 Feet

Inclusionary Zoning

Inclusionary zoning requires new residential construction projects to contribute to a jurisdiction's affordable housing stock. Inclusionary zoning can enable jurisdictions to leverage private dollars for affordable housing, bringing affordable units online faster and in greater numbers than relying exclusively on public funding streams. Inclusionary zoning can also help ensure new affordable housing units are developed in the same neighborhoods as new market-rate development, which has the potential to further economic integration and reduce historic patterns of exclusion and segregation.

Legal Context

What Does State Law Require?

[AB 1505 \(2017\)](#) outlines state requirements for a jurisdiction's inclusionary zoning ordinance. The law requires jurisdictions to allow alternative means to comply with requirements, such as in-lieu fees, building affordable units off-site or dedicating land for the construction of affordable housing. Under certain circumstances, the law also allows HCD to review a local ordinance that requires more than 15% affordable units.

Program Design, Implementation and Evaluation Considerations

The callout box below labeled "TOC Policy Requirements" describes the policy features necessary for a jurisdiction to receive credit toward TOC Policy compliance. All other policy features discussed in this document represent details found in existing policies on the subject and a jurisdiction may want to consider them when adopting or implementing a policy, but nothing is required for TOC Policy compliance unless noted as a requirement in the "TOC Policy Requirements" callout box or the [TOC Policy Administrative Guidance](#).

At-A-Glance

RELEVANT STATE LAWS

[AB 1505 \(2017\)](#)

POTENTIAL FUNDING SOURCE

- Revenue from in-lieu fees
- Annual monitoring fees
- General Funds

COST

Low. May require a feasibility analysis or other studies. Operations can be cost-neutral as they can be funded by monitoring fees assessed on properties.

ADMINISTRATIVE BURDEN



Medium

Staff capacity needed to develop program, conduct feasibility studies if needed and lead public and legislative processes. The feasibility study and oversight of ongoing operations can be contracted out.

EXTRA CONSIDERATIONS



Highly effective

WHICH P?

Production

POTENTIAL PARTNERS

- Community Based Organizations

OPTION FOR TOC POLICY COMPLIANCE?

Yes!



Elements of the Program

- Required percentage of affordable units
- Affordability requirements
- Period of affordability
- Building type and tenure that ordinance applies to
- Alternative means of compliance
- In-lieu fees
- Tenant selection process
- Ongoing monitoring



TOC Policy Requirements: To comply with the TOC policy, inclusionary zoning ordinances must require at least 15% of units be deed-restricted affordable units. Jurisdictions may elect to set requirements higher than 15%. If the inclusionary zoning policy requires less than 15% affordable units, the jurisdiction must provide an analysis showing economic equivalency of the alternative standard (e.g., fewer units at deeper levels of affordability) or a financial feasibility analysis showing that a 15% requirement is not feasible for the jurisdiction's local market conditions. [MTC has developed a spreadsheet to help determine if an alternative standard is economically equivalent to the TOC Policy requirement.](#)

The policy must apply to both rental and ownership units. For rental units, the policy's affordability requirements must require the income mix of affordable units to average out to 80% of AMI or less, with no affordable rental units available to households above 120% of AMI. For ownership units, the policy's affordability requirements must require the income mix of affordable units to average out to 120% of AMI or less, with no affordable ownership units available to households above 150% of AMI. Jurisdictions should require deeper levels of affordability where feasible or by offering additional incentives. The affordability deed restriction must be at

least 55 years for rental housing and at least 45 years for ownership housing.

The policy must apply to newly constructed residential or mixed-use residential projects.

The policy may exempt properties with fewer than 11 units, student housing, 100% affordable housing, senior housing or other special housing types.

Per state law, inclusionary zoning must allow for alternative means of compliance (e.g., paying in-lieu fees to support affordable housing development, building affordable units off-site or dedicating land for the construction of affordable housing).

A jurisdiction with an in-lieu fee that typically results in less than \$100,000 per required onsite affordable unit must provide justification for how the fee will result in at least as many restricted affordable housing units as would be required of a project providing on-site units. [MTC has developed a spreadsheet to help determine whether an in-lieu fee is equivalent to at least \\$100,000 per required onsite affordable unit.](#)

Jurisdictions must establish a management plan for monitoring and implementation that outlines procedures for annual monitoring to ensure that residents are income-eligible, and rents are consistent with program guidelines.

Program Design Considerations

Jurisdictions may want to consider the following:

FEASIBILITY STUDY: Conducting an economic feasibility study to ensure that the requirements do not pose a barrier to new construction. Feasibility studies look at market rents, prices and construction costs to evaluate whether projects that face a given

affordable housing requirement are likely to be financially feasible. They can allow jurisdictions to recalibrate the affordability requirements of inclusionary zoning to match changing market conditions. Additionally, HCD may request a feasibility study for requirements greater than 15%.

MANDATORY OR VOLUNTARY: While most inclusionary zoning ordinances are mandatory, some are voluntary, providing valuable incentives to developers to include affordable units in their projects.

AFFORDABILITY REQUIREMENTS: Setting the required percentage of affordable units. This percentage may vary by construction type or geography within the jurisdiction.

INCOME TARGETS: Developing inclusionary housing affordability requirements in response to housing needs identified in the jurisdiction's Housing Element or related affordable housing plan. Jurisdictions can encourage deeper levels of affordability where feasible or by offering additional incentives. Some jurisdictions provide incentives for projects to elect to serve lower-income households.

HOMEOWNERSHIP: Applying inclusionary requirements to for-sale projects, typically at a higher AMI than rental units. Programs can specify what happens to an ownership unit at resale if the resale is prior to the expiration of the term of affordability, keeping in mind how the sales proceeds are divided between the city and seller and whether a new affordable term begins upon sale to the new owner. Many jurisdictions renew the affordability term upon sale to the new owner.

BUILDING TYPE: Defining the types of projects that are subject to the inclusionary requirements - usually this includes setting a minimum project size in terms of units or gross square feet.

GEOGRAPHY: Most inclusionary policies apply city-wide. However, some jurisdictions apply different inclusionary rates to distinct parts of their cities, for example higher rates in the downtown core.

ALTERNATIVE MEANS OF COMPLIANCE:

Offering additional compliance alternatives such as building affordable units off-site and dedicating land for the construction of affordable housing. Some jurisdictions with an off-site alternative require that off-site affordable units be completed prior to, or alongside, the primary development and/or near the market rate project when feasible to foster mixed-income neighborhoods and reduce segregation. These alternative means of compliance provide valuable flexibility for developers, allowing them to be more cost-effective and ensuring units come online more quickly.

IN-LIEU FEES: Structuring fees to lead to outcomes that are at least equivalent to the inclusionary requirement. Jurisdictions can include the formula used to calculate the fee in the ordinance, thus enabling annual fee updates to reflect the changing costs of construction. Many jurisdictions include their inclusionary fees in their annual fee schedules.

TIMING OF IN-LIEU FEES: Identifying a specific time in the development process to collect in-lieu fees. Later fee collection can improve the financial feasibility of an in-lieu fee, while earlier fee collection enables affordable housing development to closely trail market rate development.

PERIOD OF AFFORDABILITY: Requiring income restrictions for 55 years, 99 years or for the life of the project. Affordability terms also sometimes vary by housing tenure.

INCENTIVES: Providing meaningful incentives to provide inclusionary units rather than paying fees. Most jurisdictions offer a density bonus to allow developers to build additional market-

rate units to offset reduced revenue. Density bonuses are typically given as an increase in allowed dwelling units per acre (DU/A) or floor area ratio (FAR).

TENANT SELECTION: Establishing a fair and transparent tenant selection process, such as random lotteries. Some jurisdictions develop a master waitlist for inclusionary rental units in the city. When a vacancy occurs, the jurisdiction provides the property manager with the names on the waitlist.

TENANT PREFERENCE POLICY: Giving priority to certain applicants in the lottery process (for example, households displaced by disasters or eviction). Preferences add significant complexity to the screening and selection process and should be used only when they support clear and important public policy goals. Preference policies should be designed with careful attention to fair housing goals. Policies that offer a preference based on local residency are often adopted only after completion of a fair housing analysis that ensures that the policy will not have a ‘disparate impact’ on any racial group.

REGULATORY AGREEMENTS: To ensure long-term affordability of inclusionary units, regulatory agreements can be recorded on the property title. These agreements may include the following elements:

- Recitals outlining the basis for affordability requirements, such as inclusionary zoning provisions, density bonus terms, or other relevant entitlements, along with the legal description of the property.
- Identification of affordable units, including the number of units, unit sizes, and bedroom counts.
- Affordability period and detailed rent calculation methodology, including provisions for annual rent increases, income certification requirements, and policies for over-income tenants.

- Required lease terms, with a focus on fair housing compliance
- Property management requirements, such as marketing, maintenance responsibilities and record-keeping standards.
- Procedures for managing changes, including the expiration of affordability terms, condominium conversions, or defaults.
- Process of amending the agreement, if necessary.

DESIGN AND LOCATION: Requiring that inclusionary units are comparable to market rate units in terms of unit size, number of bedrooms, amenities and other key features. Generally, jurisdictions require that inclusionary units be evenly distributed throughout the project. Jurisdictions can avoid exacerbating any existing segregation patterns by requiring that offsite units are located near a project’s market-rate units and meet similar design standards.

MARKETING: Requiring a marketing plan that describes how the units will be marketed to tenants or buyers and how tenant and buyer qualifications will be verified. Jurisdictions can define a review and approval process for marketing plans. Policies can also require developers of inclusionary units to list all vacancies on the Bay Area Housing Finance Authority (BAHFA)’s Doorway Housing Portal to ease the burden of finding openings for potential applicants. Jurisdictions can require developers to affirmatively further fair housing goals by marketing units to diverse racial and ethnic groups by sharing listings in the jurisdiction’s commonly spoken languages, and by multiple methods of publication, such as websites, social media and flyers.

Program Implementation, Administration and Enforcement

Inclusionary zoning policies are generally implemented via ordinance. Before and after policy adoption, jurisdictions can conduct outreach about the importance of investing in affordable housing and mixed-income communities and engage community partners, such as real estate developers, in the process.

Jurisdictions may entrust property managers with the responsibility of performing annual income verification and providing explanations when individuals on the waitlist are not selected. Alternatively, jurisdictions may partner with a third-party administering agent, who can market units, ensure tenants are eligible and support/monitor property management companies. By working with a nonprofit or other third-party partner, jurisdiction staff will have more capacity to focus on other responsibilities. For instance, the nonprofit Housing Land Trust of Sonoma County manages the inclusionary ownership housing for many Sonoma County jurisdictions. Through this partnership, inclusionary units go directly into the land trust's portfolio, making the units permanently affordable. Jurisdictions can identify which tasks could be accomplished in-house, which tasks can be delegated to property managers, and which can be contracted to a third-party administering agent or nonprofit.

Jurisdictions can collect annual monitoring fees from rental and ownership projects to ensure that the jurisdiction maintains and grows capacity to effectively monitor long-term affordability as the portfolio of below market rate units grows.

Program Evaluation

To evaluate the effectiveness of inclusionary zoning programs, jurisdictions can consider the following questions:

- How many affordable units have been created and are they onsite or offsite?
- How much money has been collected in fees? How has that money been spent?
- If the program is producing BMR homeownership units, do those units remain affordable to the same income groups over time?
- Does the pool of applicants reflect the full racial diversity of the broader local housing market?
- Do the demographics of the residents of inclusionary units reflect the diversity of the applicant pool?
- What percent of projects are selecting the fee option compared to onsite?
- Is the current fee enough to allow the jurisdiction to fund at least one affordable unit for each unit that would otherwise have been provided onsite?

Complementary Policies

AFFORDABLE HOUSING OVERLAY ZONE:

Affordable housing overlay zones provide additional incentives for affordable housing development in specified geographic areas.

Other Resources

EXAMPLES*

[City of San Mateo - BMR \(Inclusionary\) Ordinance](#)

[City of Belmont - Inclusionary Zoning Ordinance](#)

[City of Hayward - Affordable Housing Ordinance](#)

[City of Richmond - Inclusionary Zoning and Affordable Housing Linkage Fees](#)

SAMPLE RFPS

[City of Alameda - Rental and Ownership Program RFP](#)

[City of Emeryville - Affordable Housing Program RFP](#)

NEXUS AND FEASIBILITY STUDIES

[City of Hayward - Analysis and Feasibility Study](#)

[City of Santa Rosa - Residential Impact Fee Nexus and Feasibility Study](#)

[City of Hayward - Inclusionary Zoning Feasibility Study](#)

[City of Santa Cruz - Inclusionary Zoning Feasibility Study](#)

OTHER RESOURCES

[Grounded Solutions Network - Inclusionary Zoning Design Worksheet](#)

[Grounded Solutions Network - Program Assessment for Inclusionary Housing Policies](#)

[Lincoln Land Institute - Inclusionary Zoning: Creating and Maintaining Equitable Communities](#)

[Inclusionary Housing.org, powered by Grounded Solutions Network](#)

[Local Government Commission - Meeting California's Housing Needs: Best Practices for Inclusionary Housing](#)

[Association of Bay Area Governments - Inclusionary Housing: Designing a Policy](#)

[Metropolitan Transportation Commission - Survey of Existing Policies](#)

[Metropolitan Transportation Commission - Production Policy 1: Inclusionary Zoning](#)

[Metropolitan Transportation Commission - TOC Inclusionary Zoning Resources](#)

**Note that examples have not been vetted for full TOC Compliance.*

This document is intended to provide general information and does not constitute legal advice. Additional facts, facts specific to a particular situation, or future developments may affect the subjects discussed in this document. Seek the advice of your jurisdiction's legal counsel before acting or relying upon this information. For specific questions regarding TOC compliance, please reach out to TOCpolicy@bayareametro.gov.

Meeting California's Housing Needs: Best Practices for Inclusionary Housing



Inclusionary housing is used in hundreds of communities across the country to create units that are affordable to lower-income households in new market-rate residential developments. More than 170 cities and counties in California have used inclusionary-housing policies to help address affordable-housing needs while advancing equitable-development goals.

Inclusionary policies capture some of the value of rising real-estate prices to provide community benefits by using local land-use controls to ensure that much-needed affordable-housing units are produced along with market-rate units and that the limited supply of developable land is put to work in a way that serves households at all income levels.

Inclusionary housing — also referred to as “inclusionary zoning” — is a flexible tool that can be tailored to local circumstances. There is no one “model” inclusionary-housing policy, but rather a number of best practices to consider when adopting or amending an ordinance.

This factsheet explores the range of policy options to consider when designing a local inclusionary ordinance and highlights best practices that maximize community benefits and fulfill policy goals.

An inclusionary-housing ordinance is one part of an equitable-development strategy, and should not be viewed as the sole way to address affordable-housing needs. In most communities, building the needed amount of housing for lower-income families will still require public subsidies and must be integrated with other strategies.

Following a period of legal uncertainty around inclusionary ordinances, a 2015 Supreme Court decision affirmed city and county authority to impose inclusionary requirements based on local government's broad police powers. And passage of Assembly Bill 1505 in 2017 reinstated the authority to apply inclusionary policies for rental housing.



■ November 2018

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Benefits of an Inclusionary Housing Ordinance

A well-designed ordinance can generate numerous benefits for communities seeking to increase housing affordability and develop diverse, inclusive neighborhoods. These include:

- ◆ More choices for lower-income households about where to live.
- ◆ Reduced opposition to affordable housing by producing affordable units within communities as they develop, not after.
- ◆ Support for compact infill development, reduced sprawl and achievement of local Regional Housing Needs Assessment (RHNA) targets for all income levels.
- ◆ Reduced vehicle miles traveled (VMT) and greenhouse gas emissions by providing people at all income levels more opportunities to live closer to work and in transit-rich areas.
- ◆ Ensuring that the entire community benefits from a growing economy. Public and private investments help create economic growth that raises property values. Inclusionary housing helps capture some of the value created by these investments to ensure that the benefits do not accrue solely to property owners and helps buffer against displacement pressures by ensuring that lower-income residents can remain in the community.
- ◆ Reduced segregation and concentration of poverty.

Keys to a Successful Ordinance

Adopting a detailed inclusionary ordinance with input from a wide range of community stakeholders is the best method for implementing effective and legally defensible inclusionary requirements.

The ordinance's language should provide clarity and certainty for the development community, and be structured to realistically achieve its goals. It should be backed by data and research that establishes both the need for the policy and the feasibility of the requirement.

The key elements of a well-crafted inclusionary ordinance include:

1. State the need.

Local governments have **broad discretion under the police power** granted by the state constitution to regulate the use of land within their borders, so long as the regulation is reasonably related to advancing the general welfare. A local inclusionary ordinance, then, should start with a statement of findings related to the need for the policy to improve the community's well-being.

Most California jurisdictions have a **severe shortage of housing units affordable to low- and very low-income households**. The need to address that shortage provides a strong basis for inclusionary zoning, as does the need to meet the jurisdiction's share of the region's ongoing housing need at the lower-income levels (which is nearly impossible to do with subsidy alone).



Jurisdictions also frequently point to the need to **address past patterns of racial and economic segregation** in their community, ensure the preservation and development of diverse neighborhoods, meet fair-housing mandates, and make the best use of a limited supply of developable land.

The ordinance should be directly tied to the findings establishing the need for the policy. For example, if the findings cite the shortage of low- and very low-income housing units in the community, then one of the policy's goals should be to ensure that those units get produced. A well-crafted ordinance will start with findings that support the policy choices reflected in the design of the ordinance.

"Lower-income" households refers to those making 80% or less of area median income (AMI). The term encompasses households that are "low-income" (those making 50-80% of AMI) and "very low-income" (those making less than 50% of AMI).

2. Get the numbers right: how many, where, when and for how long?

How many affordable units should be required and to whom should they be affordable?

An inclusionary ordinance should clearly define how many affordable units must be included in a project and at which income levels. The vast majority of ordinances set the requirement as a percentage of the total number of units in the project, while a few communities use a square-footage metric.

LOW AND VERY-LOW: The requirement will typically be split between low- and very low-income households (for example, 15% of the total are affordable units, with 10% low and 5% very low). Some laws also include a target for extremely low-income households.

MODERATE: Some communities also require moderate-income units, but this should be based on a careful analysis of the market and its ability to serve moderate-income households. If the market is producing moderate-income units on its own, there would be no rationale for having an inclusionary requirement for moderate-income units.

In California, the requirements in most inclusionary policies adopted so far have fallen within the 10-20% range – 15% being the most common.

What percentage a community establishes will be dependent on its affordable housing needs, local market conditions, the financial incentives available to developers, and the mix of affordability levels required.

FIXED: Some communities require fixed percentages at each designated income level, whereas others may provide some flexibility (for example, allowing for a lower percentage of inclusionary units overall when the units are provided at a deeper affordability level).

FLEXIBLE: Some jurisdictions structure their inclusionary policies to involve a sliding scale, so that projects that include higher percentages of affordable units also qualify for more incentives, such as greater density increases.

While there may be reasons to build flexibility for the required number of affordable units into an ordinance, **too much flexibility can undermine the creation of new housing at the income levels needed most and cannot be produced by the market alone.**

Which projects should have to comply with the inclusionary requirement?

While it may be tempting to carve out various exceptions to an inclusionary requirement, the best practice is to apply the requirement to all housing-development projects throughout a community or the geographic area covered by the policy. This is the best way to ensure that the policy is

implemented equitably and serves the overall goal of ensuring that all neighborhoods – single-family and multi-family, lower-density and higher-density – incorporate housing options at a range of income levels.

SMALL PROJECTS: Many jurisdictions choose to exempt small projects from complying with an inclusionary requirement. The rationale is often to ensure that smaller development projects are financially feasible. While a small-project exemption may be well-intended, it can be difficult to reconcile an exemption with the ordinance's overall goals and create potential legal issues.

It can also be a challenge to settle on a definition of “small” that doesn't simply encourage projects that come in just under the threshold, thus frustrating the goal of ensuring that all new housing development contributes to meeting the community's affordable-housing needs.

Rather exempting these projects altogether, **a better practice is to provide small projects with the option to pay an in-lieu fee as an alternative to compliance with on-site production requirements.** This is particularly true in areas where a high proportion of development activity occurs on smaller projects.

Should inclusionary requirements be different for for-sale projects and rental projects?

In most jurisdictions, the most defensible ordinance will be one that imposes an inclusionary requirement equally on rental and for-sale housing. Requirements that treat the two differently may have fair-housing implications and, much like exemptions for small projects, can be challenging to reconcile with the ordinance's goals.

For example, an ordinance that requires the inclusion of low- and very low-income units in rental developments, but only moderate-income units in for-sale developments, could run counter to the goal of ensuring that all neighborhoods have a mix of housing at all income levels in cities where rental and for-sale development generally happen in different neighborhoods.

Furthermore, **depending on local demographics, such policies may lead to disparate impacts on certain protected classes**, potentially violating legal requirements. In weighing whether to impose the same or different requirements on rental and for-sale housing, it's crucial to consult with an attorney with expertise in fair-housing laws.

RENTAL/FOR-SALE MIX: One way to maximize the production of affordable units and increase flexibility is to allow developers of single-family projects the option of meeting the inclusionary requirement by including affordable multi-family rental units within the development rather than affordable for-sale, single-family homes.

However, this option should be crafted carefully to ensure consistency with the ordinance's overall goals and fair-housing obligations. Rental units can generally be produced more cost-effectively than for-sale units, so this option should reflect that by requiring that a higher percentage of rental units be produced.

Under California law, if the inclusionary requirement is adopted through a program in the jurisdiction's housing element, the program must provide developers with this option. However, nothing requires a jurisdiction to adopt an inclusionary requirement through its housing element, and this approach is not ideal.

Should inclusionary requirements be structured differently in different neighborhoods?

Inclusionary requirements most typically apply jurisdiction-wide. **While different neighborhoods within a city may have differing development markets, a well-designed policy already adjusts for those differences.** For example, in a neighborhood where the development market is especially hot and land costs are high, the value of an increase in allowable density is also much higher, making a higher inclusionary requirement feasible.

SPECIFIC PLANS: However, in large cities, it may make sense to consider area-specific increases in an inclusionary requirement because some parts of town may be much hotter development markets than others. An effective way to accomplish this is through the adoption of a specific plan that lays out the land-use controls that apply within a designated geographic area.

TRANSIT AREAS: Some jurisdictions have also crafted specific inclusionary policies that apply to areas adjacent to transit stations, recognizing the wide body of research demonstrating how crucial it is to build affordability into transit-oriented development and the resulting benefits that increase transit ridership, reduce greenhouse gas emissions, and strengthen community stability.

How long should inclusionary units remain affordable?

Given the time and resources that go into developing housing, an inclusionary ordinance should aim to set the affordability term — how many years a unit must remain “affordable” — for the longest period of time that is feasible.

One important thing to consider in determining the affordability term is the cost of maintaining a unit's affordability over time compared to the cost of having to provide a new affordable unit to replace it when the deed-restriction period ends. In most cases, the former will be far more cost-effective than the latter.

BUILDING WEALTH: One advantage of homeownership is the ability to build wealth through the ownership of an appreciable asset. Strict resale controls that require the home to be resold at an affordable price to another low-income homeowner significantly restrict the wealth-building advantages of homeownership. On the other hand, the program should protect against the owner of a for-sale inclusionary home quickly reselling the home at a significant profit.

For rental units, 55 years is a common affordability term required by many affordable-housing funding programs in California. An inclusionary ordinance should require at least as long a period, although it's not uncommon for jurisdictions to require longer periods — or even to mandate that inclusionary rental units be deed restricted in perpetuity, as West Hollywood does.

The typical term with for-sale units is 45 years. Affordability restrictions for these units present some additional policy considerations about the sale of the home during the affordability term.

SHARING EQUITY: The most common way of balancing these interests is an equity-sharing policy in which any appreciation is split between the selling homeowner and the jurisdiction. The jurisdiction then uses its share to assist in future homeownership opportunities for low-income buyers. Some policies have initial limits on resale (such as 10 years) that require the home to be resold only to a low-income buyer at an affordable price during that period.

Other ordinances have a sliding-scale, equity-sharing provision that states that no proceeds to a homeowner who sells during the initial years, but provides a greater share of the proceeds to the homeowner closer toward the end of the 45-year term.

Should the inclusionary requirement change over time?

Housing markets are constantly changing, and it would be a challenge to amend an inclusionary requirement in response to every rise and dip in local conditions. However, building in a set review period can be useful for a number of reasons. **Periodic review can help determine whether the percentage of units required remains appropriate for local conditions so that the community is not losing out on affordable units** that could feasibly be achieved with a higher inclusionary requirement.

It can also help in assessing whether changes to income targeting are necessary. For example, if a community has steadily produced low-income units but not very low-income units, it may be necessary to increase the percentage of very low-income units required by the ordinance and adjust available incentives accordingly to account for the higher cost of providing these units. Every five years is a reasonable review period.

SYNC WITH HOUSING ELEMENT: Another option is to review the ordinance concurrent with the housing-element adoption process every eight years. (While most local jurisdictions in California must update their housing element every eight years, some rural jurisdictions remain on a five-year cycle.)

3. Couple with incentives and concessions.

From both a legal and a practical standpoint, an inclusionary-housing policy should include incentives and concessions for developers to help offset the cost of providing the affordable units. Common concessions and incentives include:

- ◆ Density increases, including the option of greater density increases in exchange for higher percentages of affordable units.
- ◆ Waivers of development standards, such as height and setback requirements.
- ◆ Reduction in or a waiver of minimum parking requirements, especially for projects located in transit areas.
- ◆ Expedited permit processing or ministerial approval.
- ◆ Waiver, reduction or deferral of development fees, either on the inclusionary units or the entire project.
- ◆ Direct financial subsidies.

California law requires that developers who comply with an on-site inclusionary requirement that meets the affordable-housing requirements of the state **Density Bonus Law** must receive all of the benefits to which they are entitled under that law. These benefits include a density increase, concessions and incentives, waivers of development standards and reduced parking requirements. For example, a project that includes 20% of units affordable to low-income households is entitled to a 35% density bonus, two concessions or incentives and various other benefits provided under the state law.

4. Establish clear development standards.

In addition to specifying the percentage of affordable units and at which income levels, an ordinance should establish clear standards for the inclusionary units. Among such best practices:

- ◆ The affordable units must be indistinguishable from the market-rate units in the development, at least outwardly.



- ◆ The project includes a similar mix of unit types. For example, if a multifamily rental development will have an equal number of 1-, 2- and 3-bedroom units, the affordable units should also incorporate an equal mix of 1-, 2- and 3-bedroom units. Many ordinances also require that inclusionary units be the same square footage as the market-rate units, although in some cases jurisdictions have built in flexibility to reduce square footage while including the same number of bedrooms to reduce project costs.
- ◆ Inclusionary units must be located throughout the development rather than clustered in one area.
- ◆ Residents of the affordable units must have access to all amenities — such as a pool, a fitness center and parking — that market-rate residents have.
- ◆ The affordable units must be completed either prior to or concurrent with the market-rate units, and prior to issuance of a certificate of occupancy.

ACCESSORY DWELLING UNITS: For single-family for-sale developments, some jurisdictions have allowed accessory dwelling units (ADUs) as a way to fulfill an inclusionary requirement. This is not considered a best practice and should be avoided. **While cities and counties should encourage the construction of ADUs, which can be a land- and cost-efficient way of expanding a community's housing supply, they are problematic from an inclusionary standpoint.**

ADUs are readily distinguishable from the other units in a for-sale development, and may raise equity and fair-housing concerns if used as the means for achieving compliance with an inclusionary policy.

ADUs are also typically studios or 1-bedrooms rather than a match of the bedroom mix of the primary development, and are often designed as “micro” or “efficiency” units without similar amenities as the primary development. They are challenging to deed-restrict and monitor, and are unlikely to provide the long-term affordability that an inclusionary ordinance should require.

5. Provide alternative methods of compliance.

Because one of the primary goals of an inclusionary requirement is to make affordable units available in all housing developments, ordinances should require on-site construction of the inclusionary units to the maximum extent possible. However, most jurisdictions have chosen to allow alternatives to on-site production of inclusionary units under certain circumstances.

In California, **state law requires that alternative methods of compliance be provided to developers of inclusionary rental housing**, although what those alternatives are, and when each alternative is available, is left up to individual jurisdictions. The law doesn't require alternatives for developers of for-sale housing. Common alternatives include in-lieu fees, off-site construction, land donation, and the acquisition and rehabilitation of existing units.

When weighing how to offer to provide some flexibility, alternatives should be appropriately limited to maximize on-site construction. **Alternatives should be available where on-site production of units is less feasible, rather than as a default option for all developments.** Common mistakes that can lead to inadequate production of actual housing units include setting in-lieu fees too low and failing to establish adequate standards for land donation.

Timing is also a crucial factor in the structure of alternatives. For example, some jurisdictions have required that off-site inclusionary units be completed concurrent with or prior to the development that triggered the inclusionary requirement, or before a certificate of occupancy for that development is issued. Ideally, alternatives should be used only when they will lead to the production of more affordable units than would otherwise be provided on-site, while still being consistent with the ordinance's other goals.

In-lieu fees

One common alternative is in-lieu fees, which are paid instead of constructing the required affordable units. **In-lieu fees are generally paid into a local affordable-housing trust fund that finances the construction of affordable housing at other locations within the community.** Of all the alternatives, in-lieu fees provide the greatest challenge to achieving inclusionary goals and therefore should be considered carefully and sparingly.

Unlike off-site construction and land-dedication alternatives, **in-lieu fees don't guarantee a site for the construction of the affordable units.** If the amount of the fee is not sufficiently high, the payment may also not produce enough revenue to help produce new affordable units. Without adequate funding and identified locations for their use, the fee revenue could sit unused.

TRUE COST: Furthermore, if in-lieu fees don't reflect the true cost of producing on-site units, this may drive most developers to opt for paying the fee rather than producing an affordable unit on-site. Over time, this can frustrate the policy and lead to an insufficient proportion of affordable units being developed.



If properly designed, an in-lieu fee option can have advantages in certain jurisdictions. **In-lieu fees can enable a jurisdiction to leverage state and federal funds** that may not have otherwise been available, allowing for more affordable units to be built than would have been created on-site.

IN-LIEU ADVANTAGES: It can also provide flexibility to produce needed units that the inclusionary requirement is not producing, such as extremely low-income units; use funds to preserve existing affordable housing with expiring deed restrictions; produce rental units in places where the inclusionary requirement is primarily creating for-sale units (or vice versa); or develop affordable units in parts of the city where development isn't happening and thus the inclusionary requirement is having no impact.

If allowed, the fee amount should be set at a level comparable to the cost of producing a similar unit to the one that otherwise would have been provided on-site. One of the most common methods for determining the fee amount is to base it on the gap between the affordable-housing and market-rate costs. For example, if it costs \$300,000 to produce a low-income unit but the rent only covers the financing on \$230,000, then the in-lieu fee would be set at \$70,000 to cover the difference.

The amount of an in-lieu fee will need to change over time to reflect changes in construction costs, inflation and other market factors. Therefore, it is better to **put the formula for determining the fee amount into an ordinance rather than state the amount itself**, since amending an ordinance on a regular basis can be time-consuming, costly and potentially controversial.

ADJUSTING THE FEE: The ordinance should specify the mechanism for adjusting the fee over time, such as tying it to increases in the local Construction Cost Index, as San Francisco does. If an ordinance distinguishes between rental and for-sale units in its inclusionary requirements, in-lieu fees should also be distinguished in the same manner to ensure they are an adequate substitute for the provision of on-site units.

Off-site construction

Allowing construction of inclusionary units off-site can have advantages. For example, a developer may be able to build affordable units more cost-effectively off-site, thus enabling more units to be produced. However, there are also pitfalls that jurisdictions should work to avoid.

One important consideration with off-site construction is the allowable geography – how far from the development site. Given that the inclusionary requirement seeks to foster mixed-income neighborhoods and reduce segregation, even if inclusionary units can't be produced on-site in a new development, they should be produced nearby. In cases where that isn't possible, the jurisdiction should ensure that they are dispersed equitably throughout the community and not clustered in lower-income neighborhoods.

Jurisdictions also typically require more units to be built off-site than would be required on-site. This means the value of the cost savings over on-site construction is captured and translated into a community benefit, and that the policy properly expresses an appropriate preference for on-site units.

Ensuring on-site and off-site construction have similar costs incentivizes on-site construction (which should be the norm), while still providing a meaningful alternative for those projects that can't feasibly accommodate on-site affordable units.

Another best practice is to **require that the off-site units be constructed before or concurrent with the market-rate units**, which can be achieved by having the off-site units finished before building permits are issued for the market-rate development site. That way an off-site alternative doesn't simply become an escape hatch to avoid complying with the site's inclusionary requirement.

Land donation

Land donation can be a useful option where affordable-housing developers have difficulty finding building sites. Paired with in-lieu fees or other sources of affordable-housing funding, **dedicated land can be used to produce needed types of housing that might not otherwise get built**, such as homes for people with special needs or permanent supportive housing.

However, jurisdictions must establish clear parameters for exercising this alternative. Donated land should be equivalent or greater in value to the affordable units that otherwise would have been produced on-site, and should be ready for development at the time it is donated. It is also important here to consider the allowable geography to make sure that the required affordable units are not concentrated in certain neighborhoods.

6. Include procedure for requesting waivers or reductions.

An inclusionary requirement may not withstand legal scrutiny if it doesn't include a process by which a developer can request a waiver or reduction of the requirement. Much like the inclusionary requirement itself, **the waiver process should be as clear and specific as possible**, detailing both the procedures for requesting the waiver – process, timeline, appeal procedure – and the standards by which the request will be evaluated.

Feasibility Studies

While not required by state law in California, preparing a feasibility study in support of an inclusionary requirement helps ensure that the requirement is right-sized for local conditions. It's important not to set an inclusionary requirement so high that it stops development, and equally crucial not to set it too low and miss out on affordable units.

A feasibility study is an opportunity to analyze local market conditions and the economics and tradeoffs of various policy options – affordability percentages and levels, incentives – to make sure the ordinance delivers the number and type of affordable units that a community needs. It also provides a data-driven foundation for the requirement, which can help overcome opposition by showing that it can be implemented without impeding the developers' ability to earn a profit.

The California Department of Housing and Community Development generally requires local jurisdictions to analyze inclusionary requirements as a potential constraint on development in their housing elements. A feasibility study can help demonstrate that the requirement isn't a barrier.

NEXUS STUDIES: Feasibility studies should not be confused with nexus studies. A jurisdiction must prepare a nexus study to impose an exaction. A nexus study would be required if a jurisdiction wanted to adopt a commercial linkage fee, for example, where it must show that the amount of the fee is roughly proportional to the need for affordable housing generated by new commercial development.

An inclusionary requirement is not an exaction but rather a land-use regulation, much like a density requirement or a height restriction, and need only be related to advancing a legitimate purpose. A nexus study is not required when adopting a traditional inclusionary ordinance.

For more information about the preparation of feasibility studies for inclusionary studies: inclusionaryhousing.org/resources/#feasibility

The waiver or reduction process should be carefully structured so that it functions as the exception and not the rule, and is only used in rare cases.

The City of Napa's inclusionary requirement withstood a constitutional challenge in part because it included a waiver-request provision. The City used a **constitutional test** to determine whether a waiver would be approved, under which the developer had to show that the requirement as applied would be unconstitutional.

Other jurisdictions apply a **hardship standard**, allowing for a waiver or reduction if the developer can show that the requirement would deprive them of all economically viable use of the land. An economic-hardship standard should not be about the level of profit, but about whether any profit can be made.

7. Monitor implementation and compliance.

A jurisdiction that chooses to adopt an inclusionary ordinance should be prepared to devote staff time and resources to ongoing monitoring and other administrative tasks needed to implement the ordinance effectively.

In addition to ensuring that deed restrictions and covenants are recorded in time and that affordability is maintained for the required time period, it is important to **ensure that units are occupied by households at the appropriate income levels over time and that resale provisions are enforced.**

To maximize the program's effectiveness, a jurisdiction should adopt procedures that:

- ◆ Establish whether the jurisdiction, property managers or a designated third party will be responsible for verifying tenant or homebuyer eligibility, income recertification and other occupancy factors. The best practice is to have the jurisdiction perform these tasks, although smaller jurisdictions may find it more cost-effective to pool resources with other neighboring jurisdictions and contract with a third party. Having property managers perform these tasks can prove overly burdensome due to the training required.
- ◆ Ensure that a list of available units is up-to-date and readily accessible to households in the targeted income categories, and that the list is maintained in a way that ensures compliance with fair-housing obligations.
- ◆ Determine which qualified applicants (those meeting household-income restrictions) are chosen to rent or buy inclusionary units.
- ◆ Recertify tenant income annually and determine when a tenant household no longer qualifies for residency in the inclusionary unit.

Some jurisdictions require that tenants move at the end of the lease term as soon as their household income exceeds the income limit for the unit. Others allow a tenant to remain until their household income exceeds the income limit by a set amount or percentage.

The policy should be tied to the cost of market-rate housing in the community and ensure that tenants are aware of requirements and receive adequate notice when they exceed income limits and must vacate the unit. To avoid displacement, consider allowing tenants to stay in a unit after their income exceeds allowable limits but convert that unit rent to market rate. The next comparable unit in the development that becomes vacant would then be offered as affordable to replace that "lost" unit.

- ◆ State how sales of for-sale units will be handled, including the referral of potential buyers and how funds derived from equity-sharing agreements will be used. Also, if the jurisdiction has an option to purchase a unit upon resale or at the end of the regulatory period, it should have a mechanism in place for handling those options.

A strong monitoring program can have the added benefit of providing clear data about the success of the ordinance. This information can then be used to establish that the inclusionary requirement is not a constraint on development for purposes of the housing-element review process, and for potential future discussions about amendments to the inclusionary requirement.

MORE RESOURCES

- ◆ inclusionaryhousing.org
- ◆ lgc.org/advancing-inclusionary-housing-policy

Other Value-Capture Tools to Produce Affordable Housing in Development

While "inclusionary housing" usually refers to mandatory land-use policies designed to construct affordable housing within market-rate developments, other tools can also capture land value to produce needed affordable units.

Voluntary inclusionary requirements

California has a statewide, voluntary inclusionary method in the form of Density Bonus Law, with which all cities and counties must comply. Under this law, developers who include affordable units in their projects are entitled to a density increase and other incentives.

Local governments can offer density increases above those specified in the state law in exchange for higher levels of affordability (units for households at the lower AMI levels).

Linkage fees

A linkage fee can be imposed on commercial and residential development to generate funds for affordable housing. The amount of this fee is set based

on the community's need for affordable housing generated by new development. A growing number of California cities have adopted commercial linkage fees, including Los Angeles, Oakland, Sacramento and San Diego.

While linkage fees can be a crucial revenue source, a linkage fee for affordable housing doesn't produce the other community-wide benefits of a traditional inclusionary requirement, such as economically integrated neighborhoods, and may also not be as economically valuable. Pairing a commercial linkage fee with a traditional inclusionary requirement is one way for a community to maximize the production of affordable housing while also advancing other important policy goals.

Ad hoc inclusionary requirements

Some jurisdictions have tried to negotiate inclusionary requirements on a project-by-project basis, often on larger projects. These ad hoc requirements are problematic from a legal standpoint and don't ensure that all new residential development includes housing affordable at a range of income levels.

2025 Income Limits - Alameda County

	Number of Persons in Household			
	1	2	3	4
Acutely Low Income	\$ 16,750	\$ 19,150	\$ 21,550	\$ 23,950
Extremely Low Income	\$ 33,600	\$ 38,400	\$ 43,200	\$ 47,950
Very Low Income	\$ 55,950	\$ 63,950	\$ 71,950	\$ 79,900
Low Income	\$ 87,550	\$ 100,050	\$ 112,550	\$ 125,050
Median Income	\$ 111,850	\$ 127,850	\$ 143,800	\$ 159,800
Moderate Income	\$ 134,250	\$ 153,400	\$ 172,600	\$ 191,750

Source: California Department of Housing and Community Development, April 23, 2025

<https://www.hcd.ca.gov/sites/default/files/docs/grants-and-funding/income-limits-2025.pdf>