



AGENCY: City Council
MEETING DATE: November 12, 2024
DEPARTMENT: Community Development
PRESENTED BY: Marie Jones Consulting
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AGENDA ITEM SUMMARY

TITLE: Receive Report, Hold a Public Hearing and Consider Adopting a Resolution of the Fort Bragg City Council Adding an Inclusionary Housing Fee for the 2024 and 2025 Fee Schedules.

ISSUE:

The City of Fort Bragg adopted an inclusionary housing ordinance in 2007. Then, in 2009, two Court of Appeal decisions created uncertainty around inclusionary ordinances: *Palmer/Sixth St. Properties, L.P. v. City of Los Angeles* and *Building Industry Assn. of Central California v. City of Patterson*. In *Palmer*, a developer challenged a mandatory rental inclusionary requirement in Los Angeles. The developer argued that the Costa-Hawkins Rental Housing Act, a law that limits rent control in residential tenancies, prohibited the imposition of mandatory inclusionary policies in rental housing. The Court of Appeal agreed with the developer. The court's decision effectively invalidated local inclusionary requirements for rental housing and in lieu fees associated with them. However, for-sale inclusionary requirements remained valid. In the *Patterson* case, another Court of Appeal determined that an in lieu fee associated with the City of Patterson's inclusionary ordinance was not "reasonably justified" as required by the development agreement for the project as there was no reasonable relationship between the amount of the fee, as increased, and "the deleterious public impact of the development."

However, two recent changes to inclusionary housing law have occurred since 2009 which have changed the landscape yet again. In 2015 (*CBIA v. City of San Jose*) the California Supreme Court ruled that inclusionary housing ordinances are part of a locality's exercise of its police powers. The court reasoned that Inclusionary Housing is similar to land use regulations that restrict property use (i.e., setbacks, density, lot coverage, etc.) and price controls (i.e., rent stabilization), which have been held to be constitutional and do not require just compensation. In 2017 Governor Brown signed AB 1505, which reinstated a municipality's right to apply inclusionary requirements to rental housing. Government Code §65850(g) states that cities may:

"Require, as a condition of the development of residential rental units, that the development include a certain percentage of residential rental units affordable to, and occupied by, households with incomes that do not exceed the limits for moderate income, lower income, very low income, or extremely low-income households. . ."

And that:

“The ordinance shall provide alternative means of compliance that may include, but are not limited to, in-lieu fees, land dedication, off-site construction, or acquisition and rehabilitation of existing units.”

Thus, in 2017 the City of Fort Bragg's Inclusionary Housing ordinance again became enforceable as the City's ordinance includes the required alternative equivalent actions.

The City's Fee Schedule notes that the inclusionary housing in-lieu fee shall be “determined at the time of application.” The City has received an application for a market rate apartment project of 53 units and thus the City Council should adopt an inclusionary housing in-lieu fee at this time.

ANALYSIS:

The inclusionary housing ordinance (attachment 1) implements the Housing Element of the General Plan, by offering incentives for the development of housing that is affordable to low- and moderate-income households. Per section 17.32.040 developments of greater than 7 units “must construct 15 percent of all new dwelling units in a residential development as affordable units.” Per section 17.32.060.A.1 the required affordability levels are different for rental and for sale units:

- For rental units one-third of the inclusionary units must be affordable to very low-income households with income less than 50% of area median income (AMI); One-third must be affordable to low-income households with income less than 80% of area median income; and one-third must be affordable to moderate-income households with income less than 120% of area median income, with the first priority for rental given to essential public service employees within the City; and second priority given to local residents who work within city limits. Essential public service employees include City of Fort Bragg sworn police officers, Fort Bragg Fire Protection Authority fire fighters, Fort Bragg Unified School District teachers, and Mendocino Coast District Hospital health care workers.
- For “for sale” units the formula is that half of the inclusionary units must be affordable for households of Moderate Income (100% of AMI) and half for workforce housing (120% of AMI).

MJC has prepared an Inclusionary Housing In-lieu Fee Nexus Study (Attachment 1). Please review the five-page report as it is critical to understanding the options for setting the Inclusionary Housing In-Lieu Fee.

As noted in the attached short report the inclusionary housing in-lieu fee will shape a developer's decision-making process. When deciding if he/she will pay an in-lieu fee or provide required inclusionary units, a developer will weigh the relative monetary value of the benefits of the density bonus and planning incentives, which are required by law if they provide the inclusionary housing units, versus the direct cost of paying the in-lieu fee.

The City Council should consider the unintended consequences of setting the fee too high or too low.

- If the fee is set too low, applicants will generally choose to pay the fee rather than provide inclusionary housing on site. A very low fee will also not generate sufficient

funds to actually build affordable units and thereby will not achieve the policy goal of the ordinance.

- If the fee is set too high, developers with small projects on small parcels will generally not be able to make their project financially feasible due to the high fee and they may not be able to provide the required inclusionary housing on site due to the small project size. If the high fee makes a project financially unfeasible, the developer will instead decide to build no housing or fewer units (less than 4) to avoid triggering the inclusionary requirement. This would also not result in the preferred goal of more affordable and market rate housing.

Each housing project is unique as it occurs within a specific timeline of market rents, construction costs, sale prices and financing rates that all conspire to make a project feasible or infeasible. The Inclusionary Housing requirement is part of that mix, and it can benefit a project financially if the market is strong enough to support additional density and the City provides a planning incentive (reduced parking, increase height, etc.) which significantly improves the financial performance of the project. In a down market, inclusionary housing is more likely to place a drag on the production of new housing units, because it can become that little extra requirement that eliminates financial viability. Certainly, in a down market the inclusionary fee should be recalibrated to reflect real housing and construction costs.

Inclusionary Housing can both result in more affordable units and improve the financial performance of a housing project so long as the planning incentives and density bonus are of sufficient benefit to offset the marginal cost of providing the inclusionary units.

RECOMMENDED ACTIONS:

Provide direction regarding a reasonable in-lieu fee for the City of Fort Bragg for 2024/25. MJC recommends:

- An inclusionary housing in-lieu fee for rentals of between \$4/SF and \$8/SF. In which case the total in-lieu fee for the proposed 53-unit (54,115 SF) project would be \$216,460 at \$4/SF, \$324,690 at \$6/SF and \$432,920 at \$8/SF.
- An inclusionary housing in-lieu fee for “for sale” units of between \$10 and \$15/SF.
- Retain the requirement to calculate the in-lieu fee at time of application, so that the fee remains fresh and accurate relative to market conditions.

ALTERNATIVE ACTION(S):

The amount of the in-lieu fee will change over time to reflect changes in construction costs, inflation and other market factors. The Council can also consider:

- Adopting a formula for determining the fee amount as needed,
- Adopt a fee to be adjusted each year by the Engineering News Record-20 City Construction Cost Index, or
- Continue to require that the fee amount be determined at the time of application submittal.

FISCAL IMPACT:

The proposed inclusionary housing in-lieu fee will have a small impact on staff time as it will require staff to calculate the fee and collect it at the building permit stage and account for it within the Housing Trust Fund. The in-lieu fee will have no impact on General Fund revenues

as the funds are obligated by ordinance to be used to acquire property and/or construct affordable housing.

GREENHOUSE GAS EMISSIONS IMPACT:

The inclusionary housing ordinance is intended to allow for increase housing production (through required incentives and density bonus) in Fort Bragg, which will reduce overall emissions as the City is small and compact and results in fewer vehicle miles traveled than new development in within the county.

CONSISTENCY:

The establishment of an In-lieu fee is consistent with Housing Element programs and policies of the General Plan and implements the following program:

Program H-2.4.1 Inclusionary Housing Ordinance: Continue to implement the City’s Inclusionary Housing Ordinance. Monitor the Inclusionary Housing Ordinance to determine if it constrains new housing development and if it does, take action to mitigate the constraint on new housing development.

IMPLEMENTATION/TIMEFRAMES:

Depends on direction provided. If the Council identifies an inclusionary housing in-lieu fee, the City Council will consider a fee schedule update per the usual hearing procedure.

ATTACHMENTS:

1. City of Fort Bragg Inclusionary Housing In-Lieu Fee Nexus Study
2. Resolution of the Fort Bragg City Council Adding an Inclusionary Housing Fee to the 2024 and 2025 Fee Schedule.
3. Inclusionary Housing Ordinance

NOTIFICATION:

Notify Me List
Applicant – Akashdeep “Kosh” Grewal
City of Fort Bragg Planning Commission