Office of the City Manager

SUPPLEMENTAL AGENDA MATERIAL

Meeting Date: **September 10, 2013**

Item Number: **43**

Item Description: **Referral to City Manager: Changes to Municipal Code Regarding Affordable Housing Requirement Implementation**

Supplemental/Revision Submitted By: Jane Micallef, Director, Health, Housing & Community Services

"Good of the City" Analysis:
The analysis below must demonstrate how accepting this supplement/revision is for the "good of the City" and outweighs the lack of time for citizen review or evaluation by the Council.

On September 3, 2013, the State Senate passed AB 1229 Affirming Local Control of Affordable Housing: Inclusionary Zoning. The content of the bill is relevant to the Council's discussion of item numbers 23 (Support AB 1229), 43, and 51 (Update on Monitoring Inclusionary Housing Rental Units).

The bill is now waiting for the Governor's signature and advocates are campaigning for signature. If signed, the bill would clarify the legislative intent that inclusionary zoning does not conflict with the Costa Hawkins Rental Housing Act. This addresses the finding in the *Palmer vs. City of Los Angeles* case that prompted the City to adopt the Affordable Housing Mitigation fee in lieu of the Inclusionary Housing Ordinance for rental housing. If signed, the City would have the option of enforcing the Inclusionary Housing Ordinance again. The attached fact sheet gives more information.

Consideration of supplemental or revised agenda material is subject to approval by a two-thirds vote of the City Council. (BMC 2.06.070)

A minimum of **42 copies** must be submitted to the City Clerk for distribution at the Council meeting. This completed cover page must accompany every copy.

Copies of the supplemental/revised agenda material may be delivered to the City Clerk Department by 12:00 p.m. the day of the meeting. Copies that are ready after 12:00 p.m. must be delivered directly to the City Clerk at Council Chambers prior to the start of the meeting.

Supplements or Revisions submitted pursuant to BMC § 2.06.070 may only be revisions of the original report included in the Agenda Packet.

AB 1229 – Affirming Local Control of Affordable Housing: Inclusionary Zoning

IN BRIEF

AB 1229 would re-authorize cities and counties to adopt ordinances with inclusionary rental housing requirements for lower income households.

The purpose of the bill is to return local control to local governments to adopt and/or continue to implement their own inclusionary housing policies. This ability is restored by overturning a 2009 appellate court decision.

BACKGROUND

Inclusionary zoning (IZ) describes local land use ordinances that require a fractional portion of units in a new housing development to be offered at affordable levels to low-income and moderate-income families. Inclusionary units can be rental or homeownership units.

Inclusionary zoning policies have existed in California for nearly 40 years as a way to establish economically diverse communities with housing that is affordable to a range of income groups.

They help ensure that, as we build communities, there are places for workers to live near their jobs. They allow lower-income families to benefit from better schools and better services. These policies have also proven to reduce opposition to affordable housing by ensuring it's included at the beginning as the new community is developed.

Nearly 170 cities and counties have some form of inclusionary housing policy in place as a complement to other local, state, and federal programs to help address California's affordable housing shortage, combat discrimination, and reduce pollution and greenhouse gas emissions.

In the past decade alone, inclusionary programs have produced approximately 30,000 units of new housing affordable to lower-income households.

THE ISSUE

Local inclusionary housing programs have been successfully implemented in California for decades until very recently.

A recent appellate court decision, *Palmer/Sixth Street Properties L.P. v. City of Los Angeles,* 175 Cal. App. 4th 1396 (2009), has created uncertainty and confusion for local governments about the availability of this important local land use tool.

The *Palmer* decision held for the first time that the state's Costa-Hawkins rent control law (*Civil Code §§ 1954.50-1954.535)* prohibits local governments from creating affordable rental housing through local inclusionary housing programs.

Now, this well-established policy that has provided quality affordable housing to over 80,000 Californians is in jeopardy.

THE SOLUTION

Local inclusionary housing programs in California have proven to be one of the most effective tools for producing new homes that are affordable to working families and for creating strong, economically diverse communities with a range of housing options.

Inclusionary housing policies have also allowed low-wage workers to live closer to their jobs, thereby reducing the state's pollution and greenhouse gas emissions. It is one of the best tools available to promote sustainable and greener communities.

AB 1229 would restore local control over these important land use decisions back to local governments.

FOR MORE INFORMATION

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Office of the City Manager

ACTION CALENDAR
October 15, 2013
(Continued from September 10, 2013)

To: Honorable Mayor and Members of the City Council

From: Christine Daniel, City Manager

Submitted By: Jane Micallef, Director, Health, Housing & Community Services

Subject: Update on Monitoring Inclusionary Housing Rental Units

INTRODUCTION

At the May 21, 2013, City Council meeting, staff was asked to provide an update on monitoring procedures for the below market rate (BMR) units. The discussion on May 21 focused on potential changes to the Affordable Housing Mitigation Fee. However, since no units have yet been created under the new Mitigation Fee program, this report provides a summary of the process for reviewing applicants for the program and the annual reporting required by the Inclusionary Housing regulatory agreements. Affordable Housing Mitigation Fee units would be monitored with the same process.

FINANCIAL IMPLICATIONS

The Health, Housing & Community Services Department (Department) monitors a total of 69 properties with a total of 1,047 Housing Trust Fund and 306 Below Market Rate units. Monitoring, which includes routine physical inspections of a sample of the units, requires 75% of a Community Development Project Coordinator (HTF Compliance Monitor/Inclusionary Housing Monitor) and 75% of a Housing Code Inspector at an annual cost of approximately $226,248.

BACKGROUND

There are 25 market rate developments in Berkeley that are subject to an Inclusionary Housing regulatory agreement. Together, the properties consist of 1,536 rental units of which 306 are restricted to below market rate rents and are available to very low and low-income families and individuals.

Since the program's inception, staff have worked to monitor the BMR units to ensure the units are occupied by income eligible households, the rents being charged by the property owners are affordable, and the physical condition of the BMR units are well-maintained and meet local health and safety standards. Since 2009—when a staff person was specifically assigned to monitor the City-supported affordable housing projects including the 1,047 units in Housing Trust Fund properties as well as the 306 BMR units in market-rate developments—further improvements have been made to ensure compliance with requirements of the Inclusionary Housing program.

Specifically, staff has formalized the reporting process for applicant review and annual reporting. Property owners and property managers or their leasing agents are familiar with the City's procedures for reporting and continue to work with staff to make sure the units are occupied by eligible tenants. At this point, all 306 BMR units are under the purview of 13 property management companies. This consolidation means that most property owners and managers are familiar with their obligations under the Inclusionary Housing program, and that these managers and owners are known to staff.

Providing affordable housing for low income individuals and families is the goal of the program. To make sure eligible tenants are housed, City staff review each applicant for tenancy in a BMR unit. The following is a summary of the applicant review process the Health, Housing & Community Services Department requires for the Inclusionary Housing program:

Tenant Application Review Process for BMR Units

Process:	**Performed By:**
(1) BMR Applicant completes rental application at a specific site and the application is reviewed by Property Manager or Leasing Agent.	Owner / Property Manager
(2) Property Manager performs due diligence and determines if applicant meets Inclusionary Housing program requirements. If BMR applicant is eligible, Property Manager submits Tenant Approval Form to City for review/approval.	Owner / Property Manager
(3) City staff reviews application and income documentation to determine if applicant is income-eligible, and Property Manager's calculation of rent is correct.	Inclusionary Housing Monitor (IH Monitor)
(4) IH Monitor sends comments to Owner / Property Manager within 3-5 business days. If no additional information is required, IH provides written approval of applicant and the BMR rent.	IH Monitor
(5) Owner executes lease with the BMR Applicant.	Owner / Property Manager

The Owner/Property Manager is responsible for marketing and leasing the BMR units, managing the application process and initial applicant review, and maintaining the waiting list for the property. The Inclusionary Housing Monitor reviews the marketing plan and waiting list as part of the review of the annual report. For new projects, the Owner/Property Manager must submit a marketing plan to the Department for review. The marketing plan must list the publications and physical locations where notices will be posted regarding the availability of BMR units. The notices must include information regarding location of the property, number of BMR units available, income limits and

rents. The notice also must provide contact information and additional information on application requirements and deadlines.

The BMR units are available to very-low and low-income households and student households 24 years old and younger are also eligible as long as they meet all of the following requirements:

1. Be of legal age under state law (or at least 18 years old) at the time of application;
2. Not be claimed as a dependent by parents or legal guardians pursuant to IRS regulations. To verify, the applicant must submit his/her tax returns from the previous year and parents' tax returns from the previous year to confirm independence; and
3. Obtain a certification of the amount of financial assistance that will be provided by parents, signed by the individual providing the support. This certification is required even if no assistance will be provided.

For households that consist of more than one full-time student, each student must meet the criteria set forth above in order for the household to qualify for a BMR unit. To date, property managers have complied with these program requirements and continue to work collaboratively with the Inclusionary Housing Monitor if questions arise regarding eligibility of students as well as other prospective applicants who might have special circumstances.

Annual Reporting and Monitoring

City staff also monitors ongoing tenancies and rents in the BMR units, marketing efforts, and repair and rehabilitation plans to ensure that the BMR units continue to meet program goals. The regulatory agreement for Inclusionary Housing properties requires that the Owner provide a written report to the City for the preceding calendar year, certifying compliance with the requirements of the agreement. In February of each year, staff collects an Annual Monitoring Report from properties with BMR units. The report form requires owners to provide information on tenant income and household status updates, rents, marketing efforts and the owner's plans to make improvements or repairs to the property.

Staff reviews the completed, submitted reports to confirm each tenant is still income eligible and that the rents fall within the allowable limits. The reports also provide information on major repairs or capital improvements the owners have planned for the property. The compliance rate is high for completion of the reports. For this reporting year, 21 of 25 properties submitted an annual report or 86% of the property owners. Staff has contacted the owner of the properties that have not yet submitted the reports and expects 100% compliance by the end of June 2013.

Monitoring also includes routine physical inspections of the BMR units. The Department's goal is to perform site visits of each property every two years or every three years for high performing properties. High performing properties are those that are well-maintained physically, do not have outstanding housing code compliance issues and are compliant with the requirements of the regulatory agreement. Prior to assigning staff to monitor the BMR units in 2009, the City did not perform routine physical inspections of the BMR units. The routine inspections have been incorporated into the monitoring procedures and will be scheduled accordingly. To stay on track, staff is scheduled to complete a site visit of each Inclusionary Housing property by June 30, 2014.

Currently, the inspections are performed by the Inclusionary Housing Monitor with assistance from a Housing Code Inspector. The site visit for each property consists of a physical inspection of the BMR units and the common areas and a review of the tenant files. If staff identify a problem with program compliance during a site visit or based on reports submitted, the Inclusionary Housing Monitor follows up with the property manager by sending a letter noting the specific areas of non-compliance. The letter provides recommendations for addressing the issues and a deadline by which to correct them. If non-compliance involves health and safety issues or a violation of the local housing code, the Housing Code Inspector also provides a letter noting the specific code violations and a deadline to correct them.

To date, staff has inspected three of the 25 Inclusionary Housing properties with a total of 58 BMR units. The inspections resulted in a few housing code violations, such as missing smoke detectors and electric outlet covers in some units, peeling paint, broken door locks. All the issues have been addressed by property management and all three cases have been closed since the units were inspected in 2011.

CONTACT PERSON
Lourdes Chang, Community Development Project Coordinator, HH&CS (510) 981-5419

Attachments:
1: List of Market Rate Developments with Below Market Rate Units, as of June 2013
2: Annual Report Form (Template)

MARKET-RATE DEVELOPMENTS WITH BELOW MARKET-RATE UNITS

[as of June 2013]

	PROPERTY ADDRESS	DEVELOPMENT NAME	Total Units	Total BMRUnits
1	Addison Street, 2002	ARTech Building	21	4
2	Allston Way, 2116	Gaia Building	91	18
3	Allston Way, 2161	Allston Place	60	12
4	Bancroft Way, 2398	Wesley House	6	1
5	Center, 2055	Berkeley Central	118	23
6	Cherry, 2801	2801 Cherry	4	1
7	Delaware, 1080	N/A	51	10
8	Fulton, 2310	Stadium Place	75	15
9	Haste, 2110	Fine Arts Building	100	20
10	Kittredge, 2020	Library Gardens	176	35
11	Martin Luther King Way, 1950	New Californian (Trader Joe's)	148	22
12	Martin Luther King Way, 2500	N/A	10	2
13	Oxford, 1910	Berkeleyan	56	2
14	San Pablo, 2700	Avenue West	31	6
15	Shattuck, 1385	1385 Shattuck	32	8
16	Shattuck, 1797	Hillside Village	65	16
17	Telegraph, 2616-20	Telegraph Bay Apartments	20	4
18	Telegraph, 3001	Telegraph Gardens	28	6
19	University, 700	4th & U Apartments	171	31
20	University, 1116-1132	Campanile Court	81	13
21	University, 1370	Acton Courtyard	71	20
22	University, 1627	Renaissance Villas	34	6
23	University, 2004	Touriel	35	7
24	University, 2119	Bachenheimer	35	7
25	Heinz, 800	Durkee Building	17	17
	TOTAL		**1536**	**306**

Health Housing & Community
Services Department

City of Berkeley

BELOW MARKET RATE / INCLUSIONARY HOUSING PROGRAM
ANNUAL MONITORING REPORT
YEAR ENDING 2012

Per the Regulatory Agreement with the City of Berkeley, the Owner is required to submit an annual report regarding tenant and rent information for each of the Below Market Rate (BMR) units for this property. The report is due February 28, 2013. Please contact Lourdes Chang, Community Development Project Coordinator – Asset Management/Compliance Monitoring, at (510) 981-5419 or at lchang@ci.berkeley.ca.us, if you have questions. Thank you.

GENERAL INFORMATION: Property Owner:	Property Address:
Property Management Company:	Property Manager (Name/Phone/E-mail):
Date of Inclusionary Housing Agreement: Date of Certificate of Occupancy:	Total Units: Total # Inclusionary (Below Market Rate) Units:
*Please complete *Table 1. Occupancy and Rent Information* (See attached Excel Worksheet) and submit the completed form with this report.	
MARKETING: Please submit the most recent marketing plan for this property along with the annual monitoring report.	Do you maintain a waiting list for the BMR units? Yes / No
Please describe the marketing/outreach activities for this property for the year 2012 (i.e., did you publish ads in the local paper – which ones? Ads on Craigslist? Did you do outreach to local community groups re: rental opportunities?):	

Health Housing & Community Services Department

PHYSICAL CONDITION/ PROPERTY NEEDS:
Does the Owner plan to perform any Major Repairs/Rehab Work on the property in the next two years? If so, please describe below and indicate the projected date as to when the repairs will be undertaken. (Please use another sheet if necessary.)

OWNER'S CERTIFICATION:
I certify under penalty and perjury that the information provided in this annual report is true and in conformance with the terms of the Inclusionary Housing Agreement with the City of Berkeley.

_____ _____
Signature of Owner / Owner Representative Print Name

City of Berkeley Inclusionary Housing Program - Annual Monitoring Report

Table 1. Occupancy and Rent Information

PROJECT NAME/ADDRESS:	<ENTER PROJECT ADDRESS/NAME - HERE>	DATE AMR COMPLETED:	mm/dd/yr

Insert extra rows if needed.

A	B	C	D	E	F	G	H	J	K	L	M
Unit No.	Rent Limit as % of AMI (50%-60%-80% AMI)	Section 8?	Density Bonus Unit?[1]	Unit Type (Studio / 1BR / 2BR / 3BR / 4BR / 5+BR)	Square Footage of Unit	Household Size (number)	Current Net Rent (Gross Rent minus Utility Allowance)	Current Household Annual Income	Date of Initial Occupancy (m/d/yyyy)	Date of Last Income Certification	Date Of Most Recent Rent Increase (m/d/yyyy)
Example	*50% AMI*	*X=Yes, 0=No*	*X=Yes, 0=No*	*2 BR*	*900 sqft*	*3*	*1200*	*$ 32,300*	*1/1/1990*	*12/9/2009*	*2/1/2010*

**Insert additional rows if necesssary.*

Notes:

1. Please indicate if unit is a density bonus unit and therefore, is also subject to the State's Density Bonus Requirements.