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Agenda Item No. 5
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Wednesday, June 16, 2026

The Honorable Chair Lawson-Remer and County Supervisors
San Diego County Board of Supervisors
1600 Pacific Highway, Room 335
San Diego, CA 92102

RE: Item 5: ADOPTION OF THE COUNTY OF SAN DIEGO INCLUSIONARY HOUSING
ORDINANCE, RELATED IN LIEU FEE ORDINANCE, AND CEQA EXEMPTION

Honorable Chair Lawson-Remer and Supervisors:

Nolen Communities appreciates the opportunity to comment on the County of San Diego's (County) proposed Inclusionary Housing Ordinance ("IHO", or "Ordinance"). We thank staff for the incredible amount of work that has gone into developing the Ordinance and recognize their efforts to engage with Nolen on multiple occasions to solicit our feedback.

We provided comments on May 26th outlining concerns with the "process" that the County has followed since August 2024. Those concerns included a request to delay consideration of the IHO until the outdated Fiscal Analysis could be updated with current, accurate data and the County's Zoning Ordinance Update could be completed. We are disappointed, but not surprised, that our request has not been considered.

We are frustrated that the reason given for not delaying consideration of the IHO is due to "compliance with the Housing Element Update," even though multiple actions required by the Housing Element Update remain incomplete as noted by the California Department of Housing and Community Development. In particular, updates to the County's antiquated Zoning Ordinance that were required to be completed before adopting an Inclusionary Ordinance remain outstanding. This "ready, fire, aim" approach is not "Pro-Housing", it is instead a perpetuation of policy actions that appear designed to frustrate new housing.

While we remain convinced that the best approach for the Inclusionary Housing Ordinance is to delay action until the Fiscal Analysis is revised and the Zoning Ordinance Updates are completed, we offer the following comments on the specific content under consideration.

We note that our experience, and comments, specifically apply to General Plan compliant, “for-sale” projects, but generally also apply to “for rent” projects unless otherwise noted.

The Board is being asked to address four questions:

1. What percent of new homes should be “set aside” as Affordable homes?
2. What “project size” should be subject to the requirements of the IHO?
3. What methods of “alternative compliance” should be offered to give project proponents flexibility in providing Affordable housing?
4. What “incentives” should be available to minimize and offset the impacts of the Inclusionary Housing Ordinance.

However, this is a dangerous, and inaccurate, characterization of the issues being addressed through the Ordinance. For instance, not only is the set-aside amount being determined, but the timing for providing inclusionary units is also under consideration.

Set Aside Amount

Preliminarily, we are not convinced the set-aside amounts identified by the AECOM Fiscal Analysis remain feasible. As the Kaiser Marsten peer review explains, since the AECOM Fiscal Analysis was prepared, market conditions have changed in meaningful ways:

- Significant increases in construction costs, permanent loan interest rates, and insurance costs.
- Stabilization of home sales prices and apartment rental rates, limiting favorable revenue assumptions.
- Ongoing construction cost volatility driven by labor, materials, tariffs, manufacturing delays, and shipping costs.

Staff recognized this when they removed Tier 3 under the For-Sale and For Rent options; however, those Tier 3 set aside amounts suspiciously returned as potentially feasible. We strongly oppose the inclusion of Tier 3 for either “For Sale” or “For Rent” projects.

Projects should be afforded the flexibility to do either the Tier 1 or Tier 2 option presented by Staff. In some instances, having a higher set-aside at higher income limits will be better for projects, while in other instances, having a lower set-aside at lower income limits will be better. There should not be a one-size fits all approach – every project is unique.

Further, any project that qualifies for Density Bonus by setting aside at least 5% of its base units for “very-low” income households, or 10% for “low” income households, should be deemed to satisfy the local Inclusionary Ordinance and be exempt from any further requirements. These projects have already performed the financial and design gymnastics

required to optimize affordability and project feasibility. Any additional local requirement would only reduce the optimal mix of housing for that particular project.

The County should commit to re-evaluating the set-aside amount at specific timelines to ensure it is not overburdening projects. At a minimum, the County must update the Fiscal Analysis with current, supportable assumptions and costs. We recommend directing staff to return within three (3) months while working with builders and developers to confirm underlying economic assumptions.

Finally, the requirement should be phased in to give land values time to adjust as the Fiscal Study claims will happen. This gives the County the opportunity to adjust set-aside amounts pending revisions to the Fiscal Analysis and other new policies or fees. This is a best practice that will limit the financial impact of the IHO.

Timing of Delivery of Affordable Units

We perceive that the preference of this Board is for projects to build affordable homes onsite, as part of a mixed income project. The draft language in Section 6341.c.3.i.a compromises this ability for projects and must be revised.

For projects that elect to build affordable housing units onsite, the draft Ordinance requires that 100% of the affordable units are permitted before issuing building permits for 50% of the market rate units, and that 100% of the affordable units are certified for occupancy before 75% of the market rate units are ready for certification.

Because housing projects are so capital intensive, they are typically not profitable until very late in the overall production – perhaps the final 10% of units. By requiring the affordable housing units to be completed before a full 25% of the market rate units can be sold, the County is forcing higher interest costs onto the balance sheets of projects. At a minimum, we recommend the following changes to Section 6341.c.3.i.a.

The County may not issue building permits for more than ~~50~~75% of the market-rate units until it has issued building permits for all of the affordable units, and the County may not approve unit occupancy final inspections for more than ~~75~~90% of the market-rate units until it has issued unit occupancy final inspections for all of the affordable units.

Project Size

Minimum project size should not be arbitrarily assigned based on round numbers, rather, it should make sense in the context of density bonus, which generally aligns with project sizes that divide evenly by 5% (or 15%). This would induce more projects to consider using density bonus, which could increase total housing production and reduce unit sizes.

Similar to phasing in the set-aside amount described above, the County should consider a gradual reduction in the size of projects that are subject to the Inclusionary Ordinance. Generally, larger projects are more likely to be able to support the costs of an Inclusionary requirement while smaller projects are more likely to become infeasible due to the increased costs imposed by an inclusionary requirement.

Therefore, we recommend the County implement a phased approach, where the minimum project size is set at 40 “base” units in 2026, and reduced as follows:

- July 1, 2027 – 33 units
- July 1, 2028 – 26 units
- July 1, 2029 – 20 units
- July 1, 2020 – 13 units

For projects under 13 units, the County should consider a per-unit (not per SF) fee, such as the City of Carlsbad which established a fee of \$8,515 per single-family residence. This provides greater certainty for smaller projects will still allowing the County to collect important fees to build affordable housing.

Alternative Compliance

Due to the diversity of projects in the County, the Ordinance should provide the maximum flexibility for Ordinance compliance, especially during any “phase in” period. Accordingly, the County should allow for all the Alternative Compliance options presented.

We believe three of these options - in-lieu fees, off-site development and land donations - must work in harmony. The concept for these Alternative Compliance options is to allow multiple projects to collaborate and more efficiently produce relatively more affordable homes than would otherwise be constructed by an individual project.

- In-lieu fees – The Board has expressed legitimate reservations regarding the use of in-lieu fees. Generally, Nolen believes there are significant benefits to providing affordable homes within a market rate project; however, we also believe that the OPTION for in-lieu fees offers an opportunity to create permanent local affordable housing funding. In-lieu fees can be collected, pulled together, and leveraged to create more affordable homes.
- Off-Site Development – Along the same lines, having the OPTION to develop affordable units more efficiently through an off-site development provides the same potential for more efficient affordable housing development. However, off-site development should have to occur within the same Community Plan Area.

- Land Donation – In concert with in-lieu fees and off-site development, having the OPTION to donate land, within the same Community Plan Area, to satisfy the Ordinance could lead to more efficient affordable housing development.

Affordable ADUs are an important Alternative Compliance option for projects, including our projects. In early 2024, Nolen urged the Board of Supervisors to move forward with a local ordinance under AB1033 to allow an ADU to be sold separate from the primary residence. Our request was based on the number of ADU’s being constructed in the County and the relative consistency of ADU’s with exiting land use dynamics across the unincorporated area. This request was further driven by the County’s insistence on using ADUs as a means of demonstrating compliance with its RHNA obligations.

If the County is going to take credit for affordable ADUs annually, it follows that the County should allow projects to build and sell deed-restricted ADUs. This will ensure that ADUs counted as very-low, low- or moderate income are actually deed-restricted.

We further recommend that the County follow the language from the Encinitas Municipal Code relative to using ADU’s to meet a local inclusionary requirement. This language provides flexibility for projects to use ADUs without strictly matching bedroom counts.

Incentives

As the AECOM Fiscal Study states, “[c]ompliance with a mandatory inclusionary housing requirement...will reduce project return” (Fiscal Analysis, AECOM, 2023, pg. 67) The Incentives identified and offered fall short of helping projects offset the increased costs of providing affordable housing under the Ordinance.

To establish a baseline for evaluating Incentives, it’s important to understand the costs that Inclusionary Housing adds to a new house. From the County’s own “Supporting Materials”, based on the “Range of Feasible Scenarios for Set-Aside Options”, the average cost of the Ordinance for a new “For-Sale” homes is approximately \$43,000 per unit. See Table 1.

Table 1. Estimated Per Unit Cost of Inclusionary Ordinance – For Sale

For Sale	Total Fee	Market Rate Homes	Affordable Homes	Added Cost per Market Rate Unit	Average Cost Increase per Unit
5% Very Low	\$ 765,225.00	28	2	\$ 27,329.46	
10% Low	\$ 1,441,475.00	27	3	\$ 53,387.96	
10% Moderate	\$ 860,625.00	27	3	\$ 31,875.00	\$ 43,132.69
15% Moderate	\$ 1,169,175.00	25	5	\$ 46,767.00	
5% Low + 10% Mod	\$ 1,407,600.00	25	5	\$ 56,304.00	

Similarly, the Ordinance would increase the average cost of a “For Rent” unit, only the cost increase is over \$46,000 per unit as shown in Table 2, below.

Table 2. Estimated Per Unit Cost of Inclusionary Ordinance – For Rent

For Rent	Total Fee	Market Rate Homes	Affordable Homes	Added Cost per Market Rate Unit	Average Cost Increase per Unit
5% Extremely Low	\$ 1,331,663.00	28	2	\$ 47,559.39	
5% Very Low	\$ 1,008,900.00	28	2	\$ 36,032.14	
10% Low	\$ 1,023,975.00	27	3	\$ 37,925.00	\$ 46,318.26
5% VL + 5% L +					
10% Mod	\$ 1,466,400.00	23	7	\$ 63,756.52	

The County is considered three options for incentives, two which are tied to density bonus and one related to expedited permitting. These incentives do not provide commensurate benefit compared to the costs of the Ordinance. Each is discussed below:

Local Density Bonus

From the AECOM Fiscal Analysis, the County determined the “benefits” of density bonus do not offset the costs of inclusionary housing. As the AECOM report states, “for unincorporated area projects, *the available density bonuses provided by the State Density Bonus Law do not offer enough value to fully offset the revenues lost to affordable set-asides.*” (Fiscal Analysis, AECOM, 2023, pg. 64)

The County’s own Development Feasibility Analysis (DFA) found that more density isn’t financially feasible in certain communities. In fact, the “sweet spot” for density is up to approximately 20 units/acre. Beyond this density, it’s not always accretive to add units because doing so results in smaller homes and higher construction costs that can’t be supported by the market. Accordingly, a local density bonus for projects at densities over VR-20 is not necessarily helpful.

Further, with implementation of AB1287, project proponents are already eligible for density bonuses of up to 100%. A 5% local density bonus is far less impactful than what is provided under State Density Bonus. Further, the benefit appears to only apply up to 50% total density bonus, which means projects may not even be eligible for this bonus. And the language in the draft Ordinances suggests it would require using an incentive to request the additional 5% density. Therefore, while it is likely some projects may benefit from this small local bonus; it’s benefit it is likely to be nominal.

Concessions/Incentives

The County already offers more concessions than state law requires. However, the draft Ordinance is confusing at best, and potentially cancels its own benefit. Specifically, the

language in Section 6341.e.1 states “the other incentives listed below may be provided only if each is individually requested as a regulatory incentive.”

This suggests that if an applicant qualifies for a density bonus, then the proposed additional incentives offered by the Ordinance may be permitted only if it is requested as a regulatory incentive. This implies that the only way to get an extra incentive is to use an incentive to request it, thereby “offsetting” that additional incentive.

Priority Review

Projects that include Affordable Housing should already benefit from expedited processing under state law and local policy, even though this is not necessarily the County’s practice.

The state legislature adopted SB330 which provides that lead agencies, like the County, must meet certain review timelines, typically 30 days. Applying for a permit under SB330 is now standard practice, thus, “priority review” would have to be completed faster than 30 days to benefit projects beyond what is already required under state law.

Locally, Board Policy A-68 (Attachment 1), most recently updated in 2022, was adopted “[t]o secure significant reductions in the time required to exercise the regulatory function with regard to housing developments to be occupied by lower income persons.” The policy applies to projects up to 80% AMI, and states that “[i]n order to produce such housing in the shortest possible time and to reduce development costs to the greatest extent, it is desirable to expedite permit processing.” Specifically, the Policy states that:

It is the policy of the Board of Supervisors that: The County shall expedite the processing of permits and other clearances required by the County prior to construction or rehabilitation of a housing development to be occupied in whole or in part by lower income persons.

If the “priority review” envisioned by the Ordinance would be completed faster than 30 days, and would limit the number of reviews to no more than 3 screenchecks unless the County could demonstrate a public health and safety concern, that commitment would be a meaningful step to supporting housing projects that include affordable housing and we fully support this type of priority review.

If that commitment is not what’s envisioned by “priority review”, then we propose other Incentives like those identified in the BIA’s Comprehensive Housing Implementation Plan & Strategy. Specifically,

- Ministerial approvals for projects that include on-site affordable housing.
 - Expanded use of “Checklists” for projects that include on-site affordable housing.

- Expanded CEQA exemptions for projects that include on-site affordable housing.
- Fixed Fees instead of deposit-based reviews for projects that include on-site affordable housing.
- Expanded use of entitlement-level self-certification and AI plan check for projects that include on-site affordable housing.
- Reduced or Deferred Impact Fees for projects that include on-site affordable housing.

Summary

With these above recommendations, we believe the County can implement a successful Ordinance that, rather than stifling new development, will encourage housing. As evidenced in the City of San Diego, when there is increased certainty and clarity in the development approval process, more projects move forward and more housing is built. And the construction of new housing in San Diego has contributed to rents leveling out and even falling.

We appreciate your consideration of our recommendations and remain available to answer any questions you may have.

Respectfully Submitted,

A handwritten signature in blue ink that reads "Sean Kilkenny". The signature is written in a cursive style and is positioned above a horizontal line.

Sean Kilkenny, Partner
Nolen Communities

CC Ms. Dahvia Lynch, Deputy Chief Administrative Officer
Mr. Vince Nicholetti, Director, Planning and Development Services
Mr. Rami Talleh, Deputy Director, Planning and Development Services
Mr. Ben Larson, Land Use and Environmental Planner, Planning and Development Services

Attachments

Attachment 1. Board Policy A-68

**COUNTY OF SAN DIEGO, CALIFORNIA
BOARD OF SUPERVISORS POLICY**

Subject	Policy Number	Page
Affordable Housing Expedited Review Process	A-68	1 of 3

Purpose

To secure significant reductions in the time required to exercise the regulatory function with regard to housing developments to be occupied by lower income persons.

Background

Lower income housing, as identified in the County's Housing Element of the General Plan and as defined by the State Department of Housing and Community Development, includes three income groups based on the County Area Median Income (AMI): extremely low-income (up to 30 percent AMI), very low-income (31 to 50 percent AMI) and low-income (51 to 80 percent AMI). In order to produce such housing in the shortest possible time and to reduce development costs to the greatest extent, it is desirable to expedite permit processing.

The California Housing Finance Agency (CalHFA) encourages procedures which will expedite the processing of zoning changes, use permits, building permits, environmental clearance, and any other type of permit, approval or clearance required by the County prior to construction or rehabilitation of a housing development financed by CalHFA.

The following policy and procedure are adopted to meet these objectives.

Policy

It is the policy of the Board of Supervisors that: The County shall expedite the processing of permits and other clearances required by the County prior to construction or rehabilitation of a housing development to be occupied in whole or in part by lower income persons.

Procedure

1. An applicant seeking an expedited permit process for construction or rehabilitation of an affordable housing development or a housing development financed by CalHFA shall submit a written request to the Department of Housing and Community Development (HCD). The request shall include all of the following:
 - a. Documentation that some or all of the units will be rented or sold to lower income persons. This may be a contract with HCD or another affordable housing financing agency such as the California Tax Credit Allocation Committee (CTCAC), a commitment form provided by HCD and signed by the applicant, or some other legally enforceable instrument;
 - b. A summary of funding requirements associated with the timing of the permit process (if any); and,
 - c. A proposed timeline and summary of all critical dates associated with project approval and funding (if applicable).

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2. HCD shall review requests to determine if a proposed development will provide housing for lower income persons as defined above. HCD will convey its determination to the applicant and the Department of Planning & Development Services (PDS).
3. After receiving a determination from HCD that a proposed development will provide housing for lower income persons, a PDS project manager shall be assigned to the project.
4. The PDS project manager shall evaluate the requested expedited permit process timeline and determine if the request is achievable. The PDS project manager shall prepare and authorize a project review schedule that incorporates reasonable expedited permit processing requests. The approved project review schedule shall identify the obligations of the applicant and the PDS staff assigned to the project. The approved project review schedule shall reference applicable federal, state, and local requirements associated with permit process.
5. The PDS project manager will distribute an expedited project review schedule to the applicant.
6. Whenever the review time indicated in the expedited project review schedule is exceeded, the PDS project manager will contact the appropriate party. Subsequently, within the means and within the reasonable use of discretion by PDS, the PDS project manager will:
 - a. Facilitate feasible corrective measures; and,
 - b. If necessary, authorize a revised expedited project review schedule.

Sunset Date

This policy will be reviewed for continuance by December 3, 2029.

Previous Board Action

5-17-77 (52)
6-12-79 (17)
10-30-84 (90)
10-18-88 (48)
12-8-98 (53)
3-12-2002 (10)
04-07-09 (7)
09-25-12 (11)

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12-15-15 (21)
12-13-22 (30)

CAO Reference

1. Housing and Community Development
2. Planning & Development Services