



## Legislation Text

---

**File #:** 20-0526, **Version:** 2

---

Recommendation to find that the project is within the scope of the previously certified Program Environmental Impact Report prepared for the General Plan Land Use Element update EIR 03-16, SCH NO. 2015051054, that no further environmental analysis is needed, and that the project is categorically exempt pursuant to Section 15061(b)(3) of the State CEQA Guidelines; and

Request City Attorney to prepare an ordinance amending Title 21 of the Long Beach Municipal Code (Zoning Ordinance) to: (1) repeal Title 21.60, Division IV - Voluntary Incentive Program to Create Housing for Very Low- and Low-Income Households, and (2) Adopt a new Citywide mandatory incentive-based Inclusionary Housing program based on policy components recommended by staff, as modified by the Planning Commission. (Citywide)

In May 2017, the City Council adopted 29 policy recommendations to support the production of affordable and workforce housing. Policy 3.2 directs staff to begin the development of an Inclusionary Housing policy to enhance the production of affordable and mixed-income housing.

To assist with this effort, Development Services staff contracted with LeSar Development Consultants (LeSar), and their sub-consultants, Keyser Marston Associates (KMA) and The Robert Group (TRG). LeSar and TRG prepared background information and assisted with the community engagement process, and KMA completed an Inclusionary Housing Financial Evaluation (Attachment A - Economic Analysis). The Economic Analysis is a critical component of the development of an Inclusionary Housing policy, as It assesses the impacts created by the imposition of Inclusionary Housing requirements, determines the feasibility of an Inclusionary Housing requirement in the Long Beach housing market, and estimates the fee amounts that can be supported for projects that are permitted to pay an in-lieu fee. The Economic Analysis also includes the following background information related to Inclusionary Housing implementation:

- An overview of the existing inclusionary housing programs in California (over 170 jurisdictions);
- An overview of key court cases impacting Inclusionary Housing policy;
- An overview of recently adopted California Law regulating Inclusionary Housing policy;
- An overview of the role of the State Department of Housing and Community Development in ensuring that Inclusionary Housing policies do not constrain the production of housing;

- An overview of State Density Bonus requirements and its relationship to Inclusionary Housing;
- The economic feasibility, constraints, and opportunities of an Inclusionary Housing policy for Long Beach; and
- Baseline recommendations and options for a potential Inclusionary Housing policy.

Key recommendations of the Economic Analysis, including maximum allowable inclusionary percentages and in-lieu fee amounts, are included (Attachment B - Economic Analysis Key Recommendations).

Long Beach currently has a voluntary program to encourage Inclusionary Housing. Long Beach Municipal Code (LBMC) Title 21.60, Division IV - Voluntary Incentive Program to Create Housing for Very-Low and Low-Income Households, was adopted in 1991 and provides a voluntary Inclusionary Housing program (Attachment C - LBMC Title 21.60 Division IV). This program provides a density bonus of up to 25 percent of the number of units allowed under base zoning for development projects of 5 or more units on sites with allowable densities of 30 units per acre. This bonus is to be granted if at least 25 percent of the bonus units are set aside for very low-income households, or if at least 50 percent of the bonus units are set aside for low-income households. Under this voluntary incentive program, the requirement for affordable units may be met by the provision of onsite units, offsite units, rehabilitated units, or the payment of an in-lieu fee per density bonus unit granted, escalated annually by the Construction Cost Index (\$56,300 per unit in 2019). There are no records indicating that any affordable housing units have ever been produced through this voluntary program. Therefore, staff is recommending that the voluntary program be replaced with the proposed mandatory incentive-based Inclusionary Housing program.

In September 2017, the Governor signed Assembly Bill 1505 (AB 1505), summarized below. This new State law provides jurisdictions with the ability to adopt Inclusionary Housing policies that impose affordable housing requirements on residential development.

1. Inclusionary Housing requirements should not act as a constraint to development;
2. The requirements cannot deprive a property owner of a fair and reasonable return on their investment and cannot be “confiscatory;”
3. An Economic Analysis is required for Inclusionary Housing programs that require more than 15 percent of the units to be rented to households earning less than 80 percent of the Area Median Income (AMI), and such programs are subject to State review; and,
4. Inclusionary Housing programs must include alternative means of compliance such as in-lieu fees, land dedication, offsite construction, or acquisition and rehabilitation of

existing units.

State Housing Element Law requires local jurisdictions to accommodate a share of the region’s projected housing needs for the planning period by ensuring that they have adequately zoned land to accommodate housing production. This share, called the Regional Housing Needs Assessment (RHNA), is allocated to individual jurisdictions in the six-county region, including Los Angeles County, by the Southern California Association of Governments (SCAG). Further, the RHNA is distributed by income category. Table 1 below provides the Long Beach RHNA allocation and accomplishments through 2019 for the current planning period, 2013-2021 (5<sup>th</sup> Cycle RHNA).

**Table 1: Long Beach RHNA Progress through 2019**

<b>RHNA Allocation by income and units</b>	<b>Very-Low Income</b>	<b>Low Income</b>	<b>Moderate Income</b>	<b>Above Moderate Income</b>	<b>Total</b>
<b>Allocation</b>	1,773	1,066	1,170	3,039	7,048
<b>Progress (Permitted Units)</b>	436	191	28	2,600	3,255

An Inclusionary Housing program must balance the interests of property owners and developers against the public benefit created by the production of affordable housing units, and it can be expected to fulfill only a small portion of the unmet need for affordable housing in Long Beach.

Dedicated 100 percent affordable housing projects have access to public funding sources that provide a more cost-efficient way to achieve deeper affordability than can be supported by an Inclusionary Housing requirement. There are a variety of federal, state, and county funding programs that are typically used to subsidize these projects, the majority of which require income and affordability requirements that target very low-income households earning below 50 percent AMI. For example, the federal and state Low-Income Housing Tax Credit Programs, which are key financing components of subsidized affordable housing projects, have an average income and affordability requirement of 46 percent AMI. The State’s No Place Like Home Program (\$2 billion), available through the County of Los Angeles, requires income and affordability targeting at 30 percent AMI (extremely low-income). The State’s Multi-Family Housing Program (\$1.5 billion) requires income and affordability targeting at between 30 to 60 percent AMI. The City’s affordable housing resources can assist households earning up to 80 percent AMI, with specific targeting requirements at 30 percent, 50 percent, and 60 percent AMI. There are currently no programs available to subsidize the production of moderate-income units serving households earning up to 120 percent AMI.

As can be seen in the RHNA chart above, the market is producing few moderate-income units, and the ones that are shown were negotiated through the sale of Successor Agency-owned sites. Since there are no funding programs to assist in the production of moderate-

income units and the market does not produce them without an incentive, it is important that an Inclusionary Housing policy address the production of moderate-income units. Table 1 shows that more very low-income units are being produced than low-income units, which is a result of the income targeting required by the federal, state, and local housing funding programs mentioned above. It is also important that an Inclusionary Housing policy address the production of low-income units.

Based on State regulations, the Economic Analysis, the City's housing needs prescribed by RHNA, and available housing funding resources, staff has prepared a Proposed Inclusionary Housing Policy (Attachment D - Proposed Inclusionary Housing Policy). The Proposed Policy, which is summarized below, includes options for the required inclusionary percentage and income targeting, along with prescribed policy components. The Proposed Policy follows the recommendations of the Economic Analysis, with required inclusionary percentages that are below the maximum allowed, to cautiously balance the interests of property owners and developers with the public benefit created by the production of affordable housing units. Staff's recommended structure, including inclusionary percentages and income targeting is presented in Attachment D, and is summarized below.

### **Proposed Inclusionary Housing Policy Summary**

In Long Beach, market conditions and development activity vary significantly from one area of the City to another. The Economic Analysis found that only the Downtown (PD-30) and Midtown (SP-1) areas of the City have experienced residential development activity, with the most robust activity occurring in the Downtown area, and several subsidized affordable housing developments occurring in Midtown. Due to these conditions, the proposed policy divides the City into Area 1, consisting of Downtown and Midtown, and Area 2, consisting of the remainder of the City, where very few residential units have been built over multiple real estate cycles. Given the high level of recent development, and anticipated future development in Area 1, the Economic Analysis was able to support the imposition of mandatory Inclusionary Housing requirements in Area 1. Due to the absence of new development in Area 2, the Economic Analysis was not able to support the imposition of mandatory Inclusionary Housing requirements in Area 2, but instead recommends an incentive-based Inclusionary Housing program that includes deeper incentives to encourage development. A map identifying these areas is attached (Attachment E - Submarket Map).

#### *Proposed Policy for Areas 1 and 2*

Area 1 consists of Area 1a, the Downtown Plan Area (PD-30), and Area 1b, the Midtown Plan Area (SP-1). In Area 1 (a and b), a mandatory Inclusionary Housing requirement will be required for the development of any new residential rental or ownership housing project containing 10 or more units. The requirement will be triggered for any applicable residential development project requiring Site Plan Review, and will take effect January 1, 2021. Any projects that have submitted a complete application for a development entitlement prior to the effective date will be exempt from these requirements.

Area 2 includes all other areas of the City not included in Area 1. There has been almost no new residential development in Submarket Area 2 over multiple real estate cycles, indicating that the housing development market is constrained. Based on the Economic Analysis, staff recommends establishing an incentive-based program that encourages residential development where there has historically been none, as well as ensure that any new housing contains units affordable to lower-income households. This program may include a density bonus greater than otherwise allowed by current State density bonus law, as well as other development incentives or concessions including, but not limited, to reductions in site development standards or modifications of zoning code or design requirements. The incentive program and associated Inclusionary Housing requirements will take effect January 1, 2021, following a 2020 update to the City’s Density Bonus Ordinance.

The Incentive-based Inclusionary Housing requirement will be triggered upon the development of new residential rental or ownership housing units in projects with 10 or more units where an action requiring a legislative approval or exception is required (discretionary approval), such as a General Plan Amendment or Zone Change. The requirements are focused on residential or mixed-use zoned properties compatible with higher-density residential development and underutilized commercially-zoned properties.

In Area 1 and Area 2, applicable new residential projects will be required to include a percentage of income-restricted affordable housing units targeting a specific income category or income categories. The percentage of total project units refers to the percentage of the total number of units in a project that are required to be made affordable. The income percentage indicates the required income category targeted for the affordable units in the project.

The Inclusionary options in Table 2 below were presented to the Planning Commission on February 20, 2020, with staff recommending Rental Housing Option B.

**Table 2: Area 1 and Area 2 Inclusionary Requirements**

<b>Rental Housing Option A</b>	<b>10% of Total Project Units</b> 20% Very Low Income and 80% Low Income
<b>Rental Housing Option B</b>	<b>12% of Total Project Units</b> 50% Low Income and 50% Moderate Income
<b>Rental Housing Option C</b>	<b>14% of Total Project Units</b> 30% Low Income and 70% Moderate Income
<b>Ownership Housing</b>	<b>10% of Total Project Units</b> 100% Moderate Income

After considering public comment and requesting clarifying information from staff, the Planning Commission requested modifications, ultimately approving the inclusionary

requirements presented below for Rental Housing Option B, with no changes to the Ownership Housing requirements.

<b>Rental Housing Option B</b>	<b>12% of Total Project Units</b> 25% Very Low Income, 25% Low Income, and 50% Moderate Income
<b>Ownership Housing</b>	<b>10% of Total Project Units</b> 100% Moderate Income

Based on the Planning Commission recommendation, staff is providing the options contained in Table 3 below to the City Council for consideration.

***Table 3: Area 1 and Area 2 Inclusionary Requirements***

<b>Rental Housing Option A</b>	<b>10% of Total Project Units</b> 20% Very Low Income and 80% Low Income
<b>Rental Housing Option B</b>	<b>12% of Total Project Units</b> 25% Very Low Income, 25% Low Income, and 50% Moderate Income
<b>Rental Housing Option C</b>	<b>14% of Total Project Units</b> 30% Low Income and 70% Moderate Income
<b>Ownership Housing</b>	<b>10% of Total Project Units</b> 100% Moderate Income

**STAFF RECOMMENDATION - AREAS 1 and 2**

**Rental Housing Option B  
12% of Total Project Units**

25% Very Low Income, 25% Low Income, and 50% Moderate Income
<b>Ownership Housing 10% of Total Project Units, 100% Moderate Income</b>

Although the options in Table 3 are provided for the City Council’s consideration, staff recommends Rental Housing Option B, where It is recommended that the Inclusionary requirement be set at 12 percent of total project units, with 25 percent of the units set aside for very low-income households, 25 percent for low income households, and 50 percent of the units at moderate income households.

For example, under the requirement proposed by staff, a rental project containing 100 total units would be required to provide a total of 12 affordable units, of which 3 would be very low-income units (25 percent), 3 low-income units (25 percent) and 6 moderate-income units (50

percent). Where there is an uneven split between very low- and low-income units, a higher number of units will be allocated to the very low-income category. For example, a rental project containing 120 units would be required to provide a total of 14.4 affordable units. The developer would pay the in-lieu fee for the fractional unit (.4) and would be required to include 4 very low-income units, 3 low-income units, and 7 moderate-income units.

Other Program Components for Areas 1 and 2

*Phased Implementation*

The mandatory Inclusionary Housing requirements in Area 1 and the incentive program in Area 2 are proposed to be phased in starting January 1, 2021, according to the schedule in Table 4 below. The required percentages will take effect on January 1 of the year indicated in Table 4, with the full requirements to be imposed January 1, 2024 and beyond. The proposed phasing is recommended to cautiously implement the Proposed Policy and evaluate impacts to market-rate development during the Proposed Policy’s initial five-year review period.

**Table 4: Inclusionary Requirement Phasing Schedule**

Year	Rental Option B (12%)	Ownership (10%)
	<b>Required Percentage of Total Project Units</b>	
<b>2020/2021</b>	5%	4%
<b>2022</b>	6%	5%
<b>2023</b>	8%	7%
<b>2024</b>	12%	10%

*Alternative Means of Compliance*

State law requires that Inclusionary Housing Policies must offer alternative means of compliance with the Inclusionary requirement, which may include in-lieu fees, land dedication, offsite construction, or acquisition and rehabilitation of existing units. The proposed list of alternative means of compliance are listed in Table 5 (below). These proposed alternatives would require onsite compliance for large projects of 21 units or more and allow smaller projects the flexibility to choose whether to construct the units onsite or pay an in-lieu fee. Offsite production is also proposed as an alternative means of compliance. However, both staff’s analysis of other jurisdictions’ best practices and stakeholder feedback indicated that offsite compliance often becomes infeasible after the triggering market-rate units are constructed. Because of this, staff’s proposed offsite production option, if chosen by an applicant, would require discretionary approval by the City as well as an increased Inclusionary unit percentage over what would have otherwise been required. This option also

requires the Inclusionary units to begin construction before the market-rate units can be developed.

**Table 5: Inclusionary Housing - Alternative Means of Compliance**

<b>Option</b>	<b>Description</b>
<b>Onsite within a Market-Rate Project</b>	· Units shall be dispersed through the project and be of equal size, mix, access to amenities, and quality to the market-rate units. · Onsite development mandatory for projects with 21 or more units.
<b>In-Lieu Fee Payment Option</b>	· Allowed by-right for projects up to 20 units. · Allowed by-right for all ownership projects. · Allowed by-right for any fractional Inclusionary Housing Requirement.
<i>Rental, Moderate-Income</i>	\$223,000 per unit or \$37.90 per s.f. of GBA.
<b>Option</b>	<b>Description</b>
<i>Rental, Low-Income</i>	\$356,000 per unit or \$37.90 per s.f. of GBA.
<i>Rental, Very Low-Income</i>	\$383,000 per unit or \$38.50 per s.f. of GBA.
<i>Ownership, Moderate-Income</i>	\$270,000 per unit or \$23.80 per s.f. of GBA.
<b>Offsite Production</b>	· May be considered by the City through a discretionary process for projects of 20 units or less. · Site must be within Long Beach, within 1 mile of the market-rate project, and have appropriate land use designations. · City must have approval rights. · Inclusionary percentage increased by 20% above the otherwise required percentage. · Offsite units must be rental units. · Inclusionary units must begin construction prior to construction of market-rate units.

**Condominium Conversion and Ownership Units**

Developers who choose to obtain a tentative tract map for a residential rental project will be required to fulfill the appropriate rental Inclusionary Housing requirement for the mapped project, regardless of whether they plan to sell the units as condominiums later. Should the project be converted later, the developer may maintain the units as affordable rental units; market the units for sale at moderate-income levels and offer the existing tenant a first right of option to purchase; or relocate the tenants under the terms imposed by the City’s Condominium Conversion Ordinance (LBMC 20.32) and sell the units at a price affordable to moderate-income households.



When an Inclusionary Housing unit is originally sold, the home buyer must enter into a covenant agreement with the City. To secure the obligation, the home buyer will enter into a loan agreement and deed of trust with the City that carries an original principal balance that is equal to the affordability gap that existed when the home buyer purchased the Inclusionary Housing unit. The City is not required to contribute any cash to the transaction.

### *General Program Provisions*

- Affordability covenant periods will be set at 55 years for rental units and 45 years for ownership units.
- Projects will be subject to the City's Affordable Housing Monitoring Fee included in the City's adopted fee schedule (rental units only).
- In-lieu fees will be deposited into a new Inclusionary Housing Fund. The use of the funds will be restricted for new construction of affordable housing development. Up to 30 percent of the funds may be used for moderate-income housing (up to 120 percent AMI) and a minimum of 70 percent of the funds must be used for lower-income housing (80 percent AMI and below).
- Annual reporting of the program will be incorporated into the Housing Element Annual Progress Report. An initial review of the program will be conducted at the end of the 3<sup>rd</sup> year.
- The entire program will be re-evaluated every 5 years.
- An administrative manual will be prepared and updated as needed to reflect changes that are made to the Program.

### *Density Bonus Incentives*

A tool commonly used to reduce the financial impact associated with the imposition of Inclusionary Housing requirements is the density bonus established in the Government Code (65915). The provisions require jurisdictions to provide density bonuses based on a sliding scale ranging from 5 to 35 percent depending on the magnitude of the income restrictions being imposed. The City must agree to apply the affordable units used to fulfill the density bonus requirements to the Inclusionary Housing requirements that will be imposed on a project. The density bonus also requires developers to replace units that were previously occupied by lower-income households that were demolished or vacated prior to a density bonus application. Therefore, Inclusionary units can be used to fulfill both density bonus and

replacement housing requirements.

The density bonus can act to materially reduce the financial impacts created by Inclusionary Housing requirements. The City is required to grant a developer's request for the statutorily established density bonus along with the requisite number of concessions and incentives, as well as any necessary development standards reductions or waivers. Expanded density bonus incentives will be necessary to implement the Submarket Area 2 requirements. An update to the City's Density Bonus Ordinance will be completed in Summer 2020 so the Area 2 requirements can be implemented beginning in October 2020.

### *Other Development Incentives*

- A. The City offers developer impact fee exemptions for low-income units through the LBMC, for transportation improvement, park and recreation facilities, police facilities, and fire facilities development impact fees.
- B. Projects including affordable units incorporated within the market-rate project will be provided priority plan check review status without the cost of expediting fees.
- C. Projects including a level of affordable units beyond the base inclusionary requirements will receive priority entitlement processing.
- D. Once a project is approved, the applicant will receive priority entitlement processing and building permit processing if that same design is used again at an additional location.

### Summary of Community Engagement and Public Comment

Two initial community meetings were held on December 5 and 8, 2018, for community members to learn about the components and concept of an Inclusionary Housing policy and for staff to provide information on the study process and timeline. These two meetings were attended by a total of 67 community members. Staff fielded more than 35 questions during the meetings and received approximately 15 comments via comment card. Many of the inquiries were related to specific components of an Inclusionary Housing policy, such as: the geographic location of Inclusionary Housing units; whether a policy would be mandatory; purpose and amount of in-lieu fees; and potential application to multi-family rehabilitation projects. Other comments and questions from community members encouraged staff to study the potential impacts on new development that may result from the imposition of an Inclusionary Housing requirement and suggested that incentives for new development be considered.

A third community meeting was held on June 29, 2019, to present the preliminary findings of the Economic Analysis and its initial recommendations. A total of 28 people attended, and 13 comments were submitted. The top three policy options supported by attendees of this meeting were: encouraging or requiring onsite production; allowing fulfillment of affordability requirements with a mix of combined affordability levels; and, imposing Inclusionary Housing requirements on new projects in Area 2 that request zone changes, density increases, height

increases, or other development waivers.

Following the June 2019 community meeting, two stakeholder focus group meetings were held on August 5, 2019, one for members of the housing advocacy community and one for members of the development community. Seven representatives attended the housing advocates stakeholder meeting. These participants expressed a desire for the study to frame impacts in terms of social equity in addition to analyzing economic feasibility, and supported onsite inclusionary development rather than payment of an in-lieu fee or offsite development. A total of 11 stakeholders attended the developers' stakeholder meeting. Comments from the development community included support for a voluntary, flexible approach to encourage development in Submarket Area 2 as well as a grandfather clause for developments already in the pipeline. Stakeholders in this meeting expressed various concerns with the methodology and assumptions made in the Economic Analysis, and requested the full text of the study, which had not been released by the date of the stakeholder meeting.

A Planning Commission Study Session was held on August 22, 2019, to present the methodology and results of the Economic Analysis; outline preliminary recommendations for a potential Inclusionary Housing policy; and, present the results of staff's stakeholder engagement efforts. Several community members expressed the preference that the Inclusionary Housing requirements be made mandatory citywide, as well as a preference that the Inclusionary percentages and in-lieu fees be made as high as feasibly possible. Others spoke regarding the potential negative impacts to development throughout the city because of the imposition of Inclusionary requirements. Commission members posed questions regarding the effectiveness of Inclusionary Housing policies in other cities and potential best practices; recommended in-lieu fee structure; a potential phasing schedule for the imposition of Inclusionary Housing requirements; and, technical clarifications relating to the methodologies and assumptions of the economic analysis.

Comments gathered at the various community events and Planning Commission Study Session as well as written comments, including a peer review of the Economic Analysis, which was prepared by Beacon Economics and commissioned by the Downtown Long Beach Alliance, are attached (Attachment F - Summary of Community Input). KMA's response to the peer review is also attached (Attachment G - KMA's response to the Peer Review).

### Public Hearing Notice

In accordance with public hearing notification requirements for a Zoning Ordinance Amendment in LBMC Section 21.21.302.C, notice of this public hearing was published in the Long Beach Press-Telegram on May 19, 2020; written notices were sent to the California Coastal Commission and all City libraries. Three public hearing notices were posted in public places throughout Long Beach. Additionally, notice of the proposed code amendment was distributed through the City's LinkLB e-mail blast system.

### Environmental Review

In accordance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines, this project is within the scope of what was analyzed in the previously certified Program Environmental Impact Report (PEIR) EIR 03-16 (SCH NO. 2015051054) prepared for the General Plan Land Use Element update, which found significant and unavoidable impacts related to air quality, global climate change, noise and transportation. The proposed Inclusionary Housing program will not result in any new significant impacts or any impacts greater than those analyzed in the PEIR. None of the conditions requiring a new subsequent or supplemental environmental impact report, as stated in Section 21166 of the Public Resources Code or in Sections 15162 or 15163 of the CEQA Guidelines, are present.

Additionally, pursuant to Section 15061(b)(3) of the State CEQA Guidelines, the proposed Inclusionary Housing program has been determined to be categorically exempt as the proposed program will be included in the amendment to Title 21 and is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. The proposed Inclusionary Housing program does not involve the physical development of housing units, but rather establishes the requirement that future market-rate residential development projects will be required to include a percentage of units affordable to low- and moderate-income households. Therefore, the activity is not subject to CEQA.

This matter was reviewed by Assistant City Attorney Michael J. Mais on May 8, 2020 and by Budget Management Officer Rhutu Amin Gharib on May 13, 2020.

City Council action is requested on July 14, 2020.

There is no fiscal or local job impact associated with this recommendation. This recommendation has no staffing impact beyond the normal budgeted scope of duties and is consistent with existing City Council priorities.

Approve recommendation.

[Enter Body Here]

OSCAR W. ORCI  
DIRECTOR OF DEVELOPMENT SERVICES

APPROVED:

THOMAS B. MODICA  
ACTING CITY MANAGER

