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August 03, 2020

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County of Los Angeles
Kenneth Hahn Hall of Administration
500 West Temple St. Ste 383
Los Angeles, CA 90012

Re: OPPOSE – Los Angeles County Draft Inclusionary Housing Ordinance

Dear Supervisor Barger,

The Los Angeles/Ventura Chapter of the Building Industry Association of Southern California, Inc. (BIA), is a non-profit trade association representing approximately 1,000 companies employing over 100,000 people focused on building housing for all. On behalf of our membership, we respectfully oppose the County's proposed Inclusionary Housing Ordinance, unless amended with our comments and concerns outlined in this letter.

The County should not move forward with the proposed Inclusionary Housing Ordinance because it is based on assumptions about a market and feasibility which no longer exist due to the ongoing, global pandemic. Because of this concern, we ask that you not pass this Ordinance and direct staff to reevaluate the economic feasibility study after the fourth quarter of 2020. At that time, more information will be available to help determine whether or not a new study will need to incorporate new market data or if the draft Ordinance can continue in the process, as-is.

We are disappointed that, amid both a housing crisis and now a deadly pandemic, the County is moving forward with an ordinance that will make it much harder for homebuilders to provide housing and shelter.



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Procedurally, we are concerned that this hearing is taking place at a time when stakeholder input is impaired because of emergency communication and meeting protocols. In addition, below, we offer our substantive comments on the current draft proposal and why it will hinder development and result in fewer affordable housing units. Our comments include our proposal of alternatives which, if they were pursued, would be more fruitful and more suited to the moment.

Concerns:

For over two years, BIA has been working with staff to provide feedback on a County inclusionary policy. That notwithstanding, almost none of our comments have been addressed (with the main exception being our suggestion for a middle-income category). Our remaining concerns are outlined below following the setting forth of the relevant proposed Ordinance text:

1. *Applicability. Notwithstanding any contrary provisions in this Title 22, the provisions of this Chapter, in conjunction with Chapter 22.166 (Housing Permits), shall apply in all zones that allow residential use as a principal use, and apply to all eligible housing developments, including projects to substantially rehabilitate and convert an existing commercial building to residential uses, or the substantial rehabilitation of an existing multifamily dwelling, as defined in Section 65863.4 (d) of the California Government Code, where the result of the rehabilitation would be a net increase in available dwelling units. (Pages 17-18)*
 - a. **Concern(s):** The proposed Ordinance applies to housing developments, including all rental and for sale residential projects, with lower percentage requirements for projects with 15 or fewer units. There is a very narrow exemption for five or fewer units. This exemption is not broad enough and stands to devastate small builders. In fact, the small project definition was made even more narrow as it had originally been 20 units or less. Additionally, inclusionary housing policies are not financially feasible and simply do not work when applied to for-sale housing (as opposed to rental properties, which generally tend to have far more “collective” ownership). The various regulatory concessions and incentives that are provided for inclusionary housing projects are generally not practicably useful in for-sale housing projects and do not help to offset the added expense to providing subsidized units. For this reason, both the cities of Glendale and Long Beach chose to exempt for-sale housing or eliminate the applicability of its affordability requirements in parts of their respective cities.

Recommendation(s): There should be a threshold of applicability to exempt, at least, 50 or fewer units; and there should be an exemption for for-sale housing.



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b. **Concern(s):** This provision provides that where a Specific Plan differs from the regulations of a basic zone, the Specific Plan controls – except the Specific Plan regulations may be waived or modified by a Housing Permit in order to implement Density Bonus and Inclusionary Housing provisions, if there is not an affordability component already existing. For builders already in the pipeline, who have begun planning projects within existing Specific Plans, the potential intervening addition of an inclusionary housing provision is highly problematic. Builders cannot have reasonably anticipated this change, and its uncritical imposition will create unforeseen losses.

Recommendation(s): Inclusionary housing provisions should not apply to any existing Specific Plans.

2. *Rental. If the project consists of rental units, the affordable housing set aside units shall be provided at an affordable rent, as described in Table 22.121.050-A, below. Notes: 1. Units shall be setaside for extremely low, very low, or lower income households. 2. Projects with less than 15 baseline dwelling units. 3. Calculations for the average affordability shall comply with Subsection C (Calculation), below. (Pages 18-19)*

For-sale. If the project consists of for-sale units, the affordable housing set-aside units shall be provided at an affordable sale price, as described in Table 22.121.050-B, below. (Page 19)

a. **Concern(s):** The rental set-aside inclusionary policies appear to exclude the option of providing moderate and middle-income units and only includes calculations for very low, low and lower-income households. This restriction stands to hurt those eligible for moderate and middle-income housing and reduces the flexibility for builders to provide more diverse-income housing. The County's Moderate income RHNA allocation for 2014 to 2021 is 4,930 units yet only 19 Moderate income units have been built in the unincorporated County between 2014 through the end of 2019. This is a concerning statistic and the proposed Inclusionary Ordinance only promises to ensure that Moderate income housing market remains not underserved, but unserved.

Also worrisome are the prescribed percentages found in each table of set-aside allocations. The County's set-aside percentage goes up to 20% which would be one of the highest in the region and is proposed based on old market data. In the last year, the City of Glendale and the City of Long Beach both removed or provided alternative options for a 20% set-aside that included mixed income categories. This was done because the market would not be able to bear a 20% set-aside and it would make projects infeasible.



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- b. **Recommendation(s):** We again recommend that for-sale housing be exempted, and we suggest the following as it would apply to rental housing; Include a more flexible “sliding-scale” of “set-aside” percentages with mixed income categories and incentives beginning at 5% or lower. An example of this policy is found in the City of Los Angeles’ [Transit Oriented Communities](#) (TOC) program; the steeper the income category designation, the lower the set-aside percentage with more incentives.
- 3. *For-sale. The initial sale of the affordable housing set-aside units shall be restricted to eligible buyers and shall require an equity-sharing agreement with the County, as described in Chapter 22.166 (Housing Permits). (Page 21)*
 - d. Provisions restricting the initial sale to eligible buyers, and requiring equity sharing with the County that states the following terms: ... (Page 26)*
 - v. The County's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price, plus the amount of any down payment assistance or mortgage assistance. If upon resale the fair market value is lower than the initial fair market value, then the value at the time of the resale shall be used as the initial fair market value; and (Page 26)*
 - vi. The County, a County-designated agency, or a qualified nonprofit shall maintain right of first refusal on the unit for the purpose of sale or rental to eligible households; and (Page 27)*
 - x. All County equity-sharing proceeds shall be deposited into the County Affordable Housing Trust Fund, or equivalent, and shall be used within five years for any of the purposes described in Section 33334.2(e) of the California Health and Safety Code that promote home ownership (Page 27)*
- a. **Concern(s):** As proposed, in a for-sale project with set-aside units, there is no specific set-aside time frame; and the initial sale is restricted to eligible buyers and requires an equity-sharing agreement with the County. We don’t understand how the County is eligible to claim any rights to equity (lest a “taking” occur); unless it were donating land, participating in the financing or providing some other investment. Moreover, this would be an insurmountable financial challenge for homebuilders, would make land acquisition difficult and financing infeasible. Finally, we are unaware of any successful precedent for such a highly unusual provision in any Inclusionary policy across the State.



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b. **Solution(s):** The equity-share provision should be removed in any case; and, as noted above, we believe that for-sale housing should be exempted from the Inclusionary Ordinance.

Alternatives:

Below we list alternatives to the draft Ordinance. If these alternatives were considered and used to replace those proposed, they would better achieve the intended benefits of an inclusionary policy and better foster the production of housing at all income levels across the County.

1. Voluntary, Incentive-Based Affordability Component

An incentive-based approach, when applied to inclusionary housing, would provide homebuilders with the ability to incorporate moderate to very-low income housing units within their projects by providing offsets to balance the additional costs. A good example of affordable housing production through a voluntary process exists in the City of Los Angeles (as noted above) through their voter-approved TOC program. Its program allows homebuilders to choose set-aside thresholds tied to tiered incentive options to produce affordable units near transit rich corridors. Where there can reasonably be more affordable units that benefit lower income families, there are gradually provided more builder incentives. This voluntary program, when compared to the mandatory component of the program, has produced significantly more housing units because it actually helps the housing production process, rather than hinders it.

2. Meaningful Offsets & Applicability Threshold

If the County were to impose an inclusionary housing policy on rental, residential development there would need to be a cost reduction in another part of the County's building process. This would offset the cost of providing below market-rate housing by reducing overall costs in other parts of the project approval process. Those offsets could be included through a menu of options that led to a commensurate cost reduction, including, but not limited to the following – based on individual project needs:

- Increased buildable area
- Higher density options
- Reduction of open space
- Reduction or elimination of County building fees
- Reduced outdoor or common space requirements
- Reduced setbacks
- Reduced or exempted parking requirements



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- Expedited or by-right approval process
- Etc.

A voluntary program should have flexible incentives to negate the increase of providing inclusionary units. This would ensure that projects are financially feasible. Currently, the proposed Ordinance cites only vague builder concessions and Density Bonus law, which builders can already utilize without this proposed Ordinance. This is not enough to encourage development of affordable units in the County or maintain the existing level of homebuilding – let alone foster increased production.

Other Considerations:

1. Increased Cost to Housing & the “Missing Middle”

Any increase in housing construction costs, such as this inclusionary policy, pushes working families and individuals further from housing affordability and exacerbates the “missing middle” housing gap. Costs, like inclusionary housing expenses, continue to rise making housing too expensive to build and still deliver a product that’s affordable to middle-income earners. Even with the addition of a narrowly applicable middle-income category, the overall effect of an inclusionary housing policy will drive up the costs of housing. Homebuilders will be forced to either build subsidized housing or luxury housing. Applying a potentially unworkable inclusionary housing ordinance to residential development will likely make our region’s housing shortfall worse.

2. Implementation Timeline & Grandfather Clause

If the County were to adopt a mandated inclusionary housing policy and implement it immediately, this drastic change would negatively affect the market, which is already being crushed by the economically stunting effects of COVID-19. Any policy that is adopted should be done so gradually, as a phased-in approach, over several years. This would ensure that there are no additional disruptions to the current building progress, which is already hammered by the current events. A robust grandfather clause for projects in the pipeline should also be included in any new policy. Homebuilders who have invested in the County before a serious change in land value occurred, through an unforeseen County imposed policy, should not be subject to an ordinance that would so drastically affect their ability to produce housing.

Conclusion:

We urge you to consider how this Ordinance will impact the overall costs to produce housing.



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We are asking that before you pass an Ordinance, you direct staff to reevaluate the economic feasibility study after the fourth quarter of 2020. In light of the potential “significance in new information” which the County cannot possibly now ignore (concerning the potentially crushing effects of the ongoing pandemic), it would be an “abuse of discretion” for the County to accept the proffered feasibility study without waiting, at least, until this year’s fourth quarter to reassess the inputs.

There will be ample opportunity ahead for the County to reshape the proposed Ordinance into a functional, meaningful tool by which to address affordable housing. Unfortunately, the current draft is not an acceptable or appropriate solution – and especially not for this moment. Should you have any questions, please contact BIA-LAV Vice President, Diana Coronado, at dcoronado@bialav.org.

Sincerely,

A handwritten signature in black ink, appearing to read "DVC".

Diana Victoria Coronado
Vice President
BIA - Los Angeles/Ventura

Sent via e-mail

CC: Los Angeles County Department of Regional Planning