



Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: July 19, 2018

TO: Joint Subcommittee for the Implementation of State Housing Law

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SUBJECT: Developing an Approach to Streamline Affordable Housing

SUMMARY

At the May 17, 2018 meeting, JSISHL decided to focus efforts on streamlining affordable housing development. Two City Council referrals, one from January 19, 2016, one from December 5, 2017 (see *Attachments 1 and 2*), suggest affordable housing streamlining measures. This report briefly summarizes the two referrals and discusses how they relate to State and local housing regulations. It also includes information on affordable housing streamlining policies enacted by other jurisdictions. In the Discussion section, ideas for local options are introduced and JSISHL is asked to discuss ideas and provide guidance on next steps.

BACKGROUND

The following section summarizes the two Council referrals, draws comparisons to related State housing laws and existing local regulations, and provides some information on approaches of other jurisdictions mentioned in the referrals.

City Council Referrals:

1. Streamline the Permit Process for Housing Projects with a Majority or More Affordable Units (Worthington: January 19, 2016): This referral requests a local ordinance that streamlines the permitting process for housing projects where at least half the units are below market rate (BMR) and 20% of the BMR units are affordable to Very Low-Income (VLI) or Extremely Low-Income (ELI) households¹.

¹ Extremely Low-Income units are for households that make <30% Area Median Income (AMI). Very Low-Income units are for households that make between 30-50% AMI. Low-Income units are for households that make between 50-80% AMI. Moderate-Income units are for households that make between 80-120% AMI.

2. Ministerial Approval of Zoning-Compliant Affordable Housing (Droste, Bartlett, Arreguin, Worthington: December 5, 2017): Similar to the 2016 referral, this referral requests a local ordinance that streamlines the permitting process for projects where at least half the units are below market rate (BMR) and 20% of the BMR units are affordable to Very Low-Income (VLI) or Extremely Low-Income (ELI) households. In addition, this referral specifically calls for ministerial approval as a streamlining measure. It also asks for ministerial approval for project put forward by non-profit developers (e.g. Bridge Housing, Satellite Affordable Housing Associates) and requests a community meeting prior to application submittal and an appeal process. These last two ideas would be difficult to enact since ministerial review does not include neighbor concessions or staff discretion and ministerial decisions cannot be appealed.

State Regulations: SB-35, which came into effect in January 2018, mandates streamlined permitting of qualified projects if a jurisdiction has not made sufficient progress on its share of RHNA. Sufficient progress (for Bay Metro municipalities) is defined by California Department of Housing and Community Development (HCD) as 3/8ths (or 37.5%) of total RHNA units by income category as of December 31, 2017. As shown in Table 1, the City of Berkeley has not made sufficient progress on BMR units. Because of this, Berkeley is obligated to streamline qualifying projects if a developer requests the SB-35 process and if their project is SB-35 compliant².

Table 1: Berkeley's Fifth Cycle Regional Housing Needs Allocation by Income Category

Income Category by Percentage of AMI	Extremely Low	Very Low	Low	Moderate	Above Moderate
	<30%	<50%	<80%	<120%	NA
Actual Units Permitted (by year)					
2017	0	10	0	0	262
2016	0	16	0	0	212
2015	0	59	17	132	326
TOTAL	0	85	17	132	800
Units Required (total)					
Required	0	532	442	584	1401
Remaining	0	447	425	452	601
Percent Permitted	0	16%	3.85%	22.6%	57.1%

Source: HCD's 5th Cycle Annual Progress Report Permit Summary (Updated 6/1/2018)

Local Regulations: Currently, the City's Inclusionary Housing Ordinance is undergoing analysis for changes required by passage of Assembly Bill (AB) 1505³. Without AB 1505

² The requirements for an SB-35 compliant project were presented in the May 18, 2018 JSISHL meeting. See Item 9, Attachment 3, found via the following link:
https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_Commissions/Commission_for_Planning/2018-05-18_AGENDA%20PACKET.pdf

³ AB 1505 restores the authority of cities and counties to require the inclusion of affordable housing in new rental housing projects, thereby superseding the 2009 decision of *Palmer/Sixth Street Properties, L.P., et al. v. City of Los Angeles* (2009).

modifications, the Inclusionary Housing Ordinance requires new, multi-family housing development projects (those with more than four units) set aside 20% of the units for qualified Low-Income (LI) and VLI households. Developers have the option to provide payment in lieu of on-site units; however, if on-site units are provided, half of the affordable units must be provided to LI households and half to VLI households. For more detailed info, see [BMC 23C.12](#).

Other Jurisdictions' Approaches:

Austin, Texas: In April 2000, Austin's City Council passed a resolution creating the S.M.A.R.T. Housing program in order to moderate the trends that made much of the local real estate unaffordable for low and medium income families. The program has a three-pronged approach that provides 1) fee waivers; 2) expedited review; and 3) advocacy for applicants. The program is aimed at developers serving households with incomes 80% or below the area median family income (MFI). Expedited review is not ministerial and applicants are strongly encouraged to design projects that don't require variances and waivers. The S.M.A.R.T Housing Program is part of a larger effort to encourage affordable housing development through developer incentives, project funding and public-private partnerships⁴.

Massachusetts: Massachusetts' Comprehensive Permit Law (Chapter 40B) was passed in 1969 to provide relief from exclusionary zoning that limited development of moderate and low-income housing. Chapter 40B entitles developers to an expedited approval process in municipalities where less than 10% of housing qualifies as affordable to Low-Income households. For projects to be expedited, they must include a certain percentage of affordable housing units. Local zoning boards have discretionary review over projects, but Chapter 40B established a state-level appeal process. Chapter 40B has served as model legislation for many states, including California⁵.

Santa Fe, New Mexico: Santa Fe, New Mexico has adopted several policies that expedite permitting as well as waive, reimburse or reduce various fees for affordable housing projects. Fees that were waived for the development of affordable housing include building permit fees, capital development impact fees, plan submittal fees for annexation, rezoning and subdivisions, and utility expansion fees. The City of Santa Fe accelerated the permitting process for projects that include at least 25% affordable housing⁶.

DISCUSSION

The City of Berkeley is committed to developing policies and programs that encourage development of affordable housing. This can be seen in City Council's referrals and by the establishment of JSISHL. Developers have shared with the City that their challenges stem from high land costs, limited land availability and by the length and complexity of the City's permitting process. The City's ability to affect change for land cost and availability

⁴ <http://uli.org/wp-content/uploads/ULI-Documents/Austin-web1.pdf>

⁵ http://turnercenter.berkeley.edu/uploads/AH_25-2_15Reid.pdf

⁶ http://www.tbrpc.org/resource_center/pdfs/housing/Santa_Fe_NM_AH.PDF

are constrained, but in terms of the permitting process, the City controls zoning and permit approvals.

SB-35 was developed to address issues identified at a State level. It is a start, but SB-35 is not tailored to the specific needs of the Berkeley community. The City, and this Commission, have the opportunity to fine-tune the process by identifying potential areas of need, and developing parallel or local ordinances that achieve City Council's goals. The following questions are intended to start that discussion.

1. SB-35 creates an incentive for developers to include affordable units in housing projects; however, it does not specify a required level of affordability. Berkeley's Inclusionary Housing Ordinance requires multi-family housing projects provide 10% VLI and 10% LI units, but it allows for in-lieu fees in place of on-site units. As a result, Berkeley's production of moderate and market rate housing far exceeds its production of low-income units.

Should COB pursue a parallel streamlining ordinance that incentivizes units at lower levels of affordability? In order to get a developer to opt for an alternative to SB-35, the alternative must provide an incentive different from and competitive with SB-35's incentives. See Table 2 for potential options:

Table 2: Comparison of Requirements/Incentives for Affordable Housing

	Inclusionary	SB-35	Referral	Option A	Option B
Required	Yes	No	No	No	No
Streamlined	No	Yes	Yes	Yes	Yes
Above Mod	80%	50%	50%	75%	65%
BMR: Mod	--	50%	30%	--	--
BMR: LI	10%		--	--	--
BMR: VLI	10%		10%	--	35%
BMR: ELI	--	--	10%	25%	--
BMR TOTAL	20%	50%	50%	25%	35%

2. The requirements for SB-35 compliant projects were developed by the State. If the City chooses to pursue a parallel streamlining ordinance, JSISHL has the opportunity to suggest compliance requirements that reflect the City's priorities. Item 1 (above) concerns the City's goals for affordability levels, but other Berkeley-specific requirements could be added. For example, appeals and community input forums could be explored. Other ideas for project compliance include, but are not limited to, RHNA progress, labor agreements, historic preservation, green building, and TDM.

What project compliance requirements should be considered in a parallel streamlining ordinance that meets the needs of the Berkeley community?

NEXT STEPS

JSISHL is asked to consider the questions in the Discussion section in order to guide staff's future efforts. Other areas of research that will be shared with JSISHL at future meetings are objective standards and SB-35 guidance documents. Complimentary work in the Planning Department is underway that will help advance JSISHL's goals, such as work on Density Bonus, discussions about density standards, and research on development fees. As this work moves forward, staff will update JSISHL on status as it relates to this Commission's goals.

ATTACHMENTS

1. Referral on Streamlining Affordable Housing (January 19, 2016)
2. Referral on Ministerial Approval of Zoning Compliant Projects (December 5, 2017)