

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
OFFICE OF THE DIRECTOR**

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August 26, 2009

Mr. Stephen D. Madison
Executive Vice President
Building Industry Association
of Central California
1401 F Street, Suite 200
Modesto, CA 95354

Dear Mr. Madison:

Thank you for your recent inquiry regarding inclusionary ordinances. The Department is pleased to provide information on the requirements of State law and its policy. For your information, neither State law nor Department policy requires the adoption of any local inclusionary ordinance in order to secure approval of a jurisdiction's housing element. State law does require incentives for voluntary inclusionary development (State density bonus law), pronounces housing element law neutral relative to enactment of mandatory local inclusionary provisions, and circumscribes the responsibilities of local governments which do enact inclusionary policies. The relevant sections of the Government Code are described below.

Government Code Section 65915-17, State density bonus law, requires local governments to make incentives available to residential developers that voluntarily propose to reserve specified portions of a proposed development for occupancy by low- or moderate-income households, and indicates that local governments are not to undermine implementation of this provision. Every local government is required to adopt an ordinance establishing how it will implement State density bonus law, including setting forth the incentives the local government will provide.

State housing element law requires jurisdictions to plan for their existing and projected housing needs, identify adequate sites to accommodate their share of the regional housing need, and, among other things, analyze local policies, regulations or requirements that have the potential to constrain the development, maintenance or improvement of housing for all income level. The law also requires programs to "assist in the development of adequate housing to meet the needs of low- and moderate-income households".

Many local governments adopt mandatory inclusionary programs as one component of a comprehensive affordable housing strategy and have demonstrated success in increasing the supply of housing affordable to low- and moderate-income households. However, some inclusionary programs may have the potential to negatively impact the overall development of housing. As a result, local governments must analyze mandatory inclusionary policies as potential governmental constraints on housing production when adopting or updating their housing elements, in the same way that other land-use regulations must be evaluated as potential constraints.

For example, local governments must analyze whether inclusionary programs result in cost shifting where the cost of subsidizing the affordable units is underwritten by the purchasers of market-rate units in the form of higher prices. Such increases can be a barrier to some potential homebuyers who already struggle to qualify for a mortgage, and earn too much to qualify for government assistance. Local governments must also analyze their inclusionary policies to evaluate whether sufficient regulatory and financial incentives are offered to facilitate compliance with the requirements.

In addition, it is important to note that the adoption of mandatory inclusionary zoning programs do not address housing element adequate sites requirements to accommodate the regional housing need for lower-income households. Inclusionary programs are not a substitute for designating sufficient sites with appropriate zoning, densities and development standards as required by Government Code Section 65583(c)(1).

Finally, Government Code Section 65589.8 specifies that nothing in housing element law shall be construed to expand or contract the authority of a local government to adopt an ordinance, charter amendment, or policy requiring that any housing development contain a fixed percentage of affordable housing units. It further states that a local government which adopts such a requirement shall permit a developer to satisfy all or a portion of that requirement by constructing rental housing at affordable monthly rents, as determined by the local government.

California has been for many years in the midst of a severe housing crisis; there are simply not enough homes for the number of residents who need them. Continued undersupply of housing threatens the State's economic recovery, its environment, and the quality of life for all residents. Effectively addressing this crisis demands the involvement and cooperation of all levels of government and the private sector. Both the public and private sector must reexamine existing policies, programs and develop new strategies to ensure they operate most effectively and provide an adequate housing supply for all Californians. The Department is committed to working with its public and private sector partners in this effort for the benefit of California's growing population.

If you need additional information, please call me at (916) 445-4775 or Cathy Creswell, Deputy Director, Division of Housing Policy Development, at (916) 323-3177.

Sincerely,

A handwritten signature in black ink, appearing to read "Lynn L. Jacobs". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Lynn L. Jacobs
Director