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September 21, 2016

VIA U.S. REGULAR MAIL AND
REQUESTED EMAIL TO: epant@contracosta.courts.ca.gov

Michael Simmons, Foreperson
Civil Grand Jury 2015-16, Contra Costa County
725 Court Street
P O Box 431
Martinez, CA 94553-0091

Re: City Response to Civil Grand Jury Report No. 1614

Dear Mr. Simmons:

Pursuant to a letter dated June 24, 2016 addressed to members of the Clayton City Council pertaining to Civil Grand Jury Report No. 1614, "Where Will We Live?", attached is the City of Clayton's official response as required by applicable law.

We thank the Civil Grand Jury for highlighting this matter of statewide concern.

Sincerely,


Howard Geller
Mayor

Attachment: 1. City Reply to Civil Grand Jury Report No. 1614 [7 pp.]

cc: Honorable Clayton City Council Members



**CITY OF CLAYTON RESPONSE TO
CIVIL GRAND JURY REPORT NO. 1614**

“Where Will We Live? – The Affordable Housing Waiting List is Closed.”

2015-16 CONTRA COSTA COUNTY CIVIL GRAND JURY

The City of Clayton, California provides the following response to Civil Grand Jury Report No. 1614, “Where Will We Live? – The Affordable Housing Waiting List is Closed”, issued on June 24, 2016 by the 2015-16 Civil Grand Jury of Contra Costa County. Pursuant to page 24 of the Report, this City is required to respond to Findings No. 1-3, 5, 6, and 8-13 plus Recommendations No. 1-3, 5-8, 11, 13, and 15, adhering to format guidelines prescribed by the California Penal Code (Section 933.05).

FINDING

1. *PDA's recognize the importance of housing near transportation and jobs for developing prosperous communities.*

City Response

The respondent agrees with the finding.

2. *Plan Bay Area 2040 seeks to combine transportation, jobs, and housing as a solution to the needs of our growing population.*

City Response

The respondent agrees with the finding.

3. *While State law mandates that ABAG conduct the RHNA process, a city is not required to subsidize and/or build the units; it is only required to demonstrate that local zoning will not impede development.*

City Response

The respondent agrees with the finding.

5. *Inclusionary zoning programs provide incentives and regulatory waivers to builders and developers who produce both affordable and market rate homes within the same project.*

City Response

The respondent partially disagrees with the finding.

Not all inclusionary zoning programs provide incentives or regulatory waivers to builders and developers to produce affordable and market rate homes within the same

project. Inclusionary zoning programs, depending on how they are structured, can automatically require builders and developers to produce affordable housing, pay an in-lieu fee, develop affordable housing units off-site, or make a land dedication to the jurisdiction for the construction of affordable housing without incentives or waivers being granted.

In the City of Clayton, incentives and regulatory waivers would be considered on a case by case basis through the Affordable Housing Plan as required by the City's 2015-2023 Housing Element.

In addition, the State density bonus law which Clayton has adopted allows builders and developers to increase the density onsite for the construction of affordable housing units. The Density Bonus law also allows for incentives and regulatory waivers such as reduced setbacks or onsite parking for constructing affordable housing units.

6. *The city's Inclusionary Housing Ordinance helps to provide AH in that city.*

City Response

The respondent agrees with the finding.

8. *Inclusionary Housing Ordinances sometimes include the option for the developer to pay in lieu fees instead of constructing AH units.*

City Response

The respondent agrees with the finding.

9. *The city supplements the shortage of funds for AH by requiring builders to pay impact fees, in lieu fees, or other construction and remodeling fees.*

City Response

The respondent partially disagrees with the finding.

This City's Inclusionary Housing Ordinance provides developers with the opportunity to pay an in lieu fee rather than constructing the required affordable housing. Also, the construction of affordable housing units or the payment of the in lieu fee is not required for every project, only those over ten units.

10. *Infill costs less to service than new development because it takes advantage of the existing infrastructure.*

City Response

The respondent agrees with the finding.

11. *The elimination of redevelopment agencies resulted in a reduction of the number of AH units constructed in the city by eliminating a major source of funding for affordable development projects.*

City Response

The respondent agrees with the finding.

12. *The city delegates to the builder, owner, or management company of AH properties the responsibility for gathering and validating AH clientele information, as well as maintaining lists of potentially interested buyers.*

City Response

The respondent agrees with the finding.

13. *There is no accessible centralized information source for available AH, which compounds the problems created by the AH shortage for those who are searching for affordable housing.*

City Response

The respondent agrees with the finding.

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RECOMMENDATIONS

1. *The city should consider increasing AH in PDAs.*

City Response

The recommendation will not be implemented because it is not warranted.

The City of Clayton does not have a PDA; therefore it would not be able to implement this recommendation.

2. *The city should consider adopting an Inclusionary Housing Ordinance.*

City Response

The recommendation has been implemented.

The City's 2015-2023 Housing Element certified by the State HCD prior to issuance of this Report, identified an implementation measure to require residential projects of ten or more units to develop an Affordable Housing Plan, requiring a minimum of ten percent of the units built or created as affordable units.

In order to establish procedures and standards for the development and availability of affordable housing as well as codify the aforementioned Housing Element implementation measure, the City Council, on August 16, 2016, adopted its ordinance implementing an Inclusionary Housing Ordinance.

3. *The city should explore rehabilitating existing housing stock as AH for purchase or rental, and identify funding to do so.*

City Response

The recommendation will not be implemented because it is not reasonable.

The City of Clayton does not receive adequate funds to implement this activity nor are there adequate outside funding sources available. The major funding source available to jurisdictions to assist with the development of affordable housing was eliminated when the State of California dissolved the redevelopment agencies in 2011.

5. *The city should explore increasing existing "impact fees" or "linkage fees" or enacting such fees in order to generate revenue with which to assist funding of AH.*

City Response

The recommendation will not be implemented because it is not reasonable.

As the smallest city in Contra Costa County, the City of Clayton does not have excess General Fund monies to undertake a nexus study, as required by the Mitigation Fee Act (AB 1600 - Government Code Section 66000), to determine the amount of "impact fee" or "linkage fee" that would be appropriate to collect beyond the recently adopted Inclusionary Housing Ordinance in lieu fee.

It is not feasible for this City to establish a commercial linkage fee as an available funding source because the City of Clayton is mostly a built out residential community, lacking significant employers and commercial areas. Given the aforementioned existing conditions within the City, linkage fees would not result in the goal of producing affordable housing because an extensive commercial and development climate is necessary for linkage fees to work. For example, if the City were to implement a funding source such as a linkage fee, the amount of money generated due to the small amount of commercial development would not be feasible to purchase units given the high cost of housing within this community or would result in linkage fees so high that it would discourage or prevent development from occurring. These tools only work in communities that have larger commercial and employment generating centers and/or have room to grow and develop. The City of Clayton does not have the conditions and characteristics necessary for an effective commercial linkage fee.

Further, the City of Clayton's Inclusionary Housing Ordinance requires the provision of affordable housing through the actual construction of units or by the payment of an in lieu fee. An affordable housing impact fee in addition to the requirements of the Inclusionary Housing Ordinance would be considered double dipping, therefore is not a plausible action to generate funds.

6. *The city should consider designating an employee within the city's planning or housing department to coordinate with property management to maintain current waiting and interest lists of available AH and ensure information is posted on the city website, and identifying funding to do so.*

City Response

The recommendation will not be implemented because it is not reasonable.

This is not a reasonable request because the City of Clayton does not have the available staffing levels or financial resources to maintain waiting and interest lists for privately owned AH. Statewide, local government finances and staff resources are tighter than ever and additional tasks that are not specifically associated with the City will erode staff time from conducting the City's own business. This task would be more appropriately performed by an AH nonprofit such as the East Bay Housing Organization so that it is centralized in one location. Furthermore, experiences have revealed that such waiting lists antiquate rapidly due to applicants' circumstances (e.g. income fluctuations, work status, residency relocations, changes in telephone, mail, and email addresses) such that considerable public expense and time are wasted trying to re-contact previous applicants.

7. *The city should consider seeking federal, state, and local funding sources for AH.*

City Response

The recommendation has been implemented.

Available funding sources for affordable housing for local governments are limited and are extremely competitive; however as identified in the City's 2015-2023 Housing Element, the City seeks and reviews funding opportunities for affordable housing. Implementation Measure III.1.2 states, "The City shall seek funding to develop and implement a down payment assistance program for first-time homebuyers by working with the County or by developing its own program that can be used with the Mortgage Credit Certificate Program, new inclusionary units or alone." The City has researched funding from CalHome and HOME and no funds are currently available; however City staff routinely monitors funding availability.

Implementation Measure III.1.3 states, "The City shall review potential funding opportunities through County HOME program and apply for funding for applicable projects when development opportunities arise." HOME funds are currently not available; however the City will apply during the next funding cycle if there is an eligible project.

8. *The city should consider partnering with for-profit and not-for-profit builders to secure land suitable for AH, and identify funding to do so.*

City Response

The recommendation has been implemented.

The City has adopted an Inclusionary Housing Ordinance requiring builders to either provide affordable housing units or as an alternative, developers can request to dedicate land to the City or an affordable housing developer that the City Council determines to be equivalent or greater value than is produced by applying the City's in lieu fee. This would be funded by private development.

11. *The city should consider undertaking an education initiative in the earliest phase of affordable planning projects in order to alleviate community concerns regarding AH, and identify funding to do so.*

City Response

This recommendation has been implemented.

The City's 2015-2023 Housing Element identifies Policy IV.2, which states, "The City will provide information on proposed affordable housing projects to the public through the City's public hearing process, in the form of study sessions, public hearings, and public meetings." The funds for this process are provided by the developer of the proposed project to pay for City staff time and materials.

13. *The City should consider identifying all infill and vacant land not in PDAs and encourage use of it for AH through tax incentives, density bonuses, etc.*

City Response

The recommendation has been implemented.

The City's HCD-certified 2015-2023 Housing Element process required it to identify infill, vacant, and underutilized land to ensure the City had adequate sites available to meet the Regional Housing Needs Assessment (RHNA) as assigned by the Association of Bay Area Governments. The RHNA provides a housing allocation for all economic segments, including units that would constitute affordable housing. The City also identified two properties as Affordable Housing Opportunity sites, allowing for an increased density and potential regulatory incentives for the development of affordable housing. The City further provided multifamily zoning designations in compliance with Housing Element law, which action the State of California has generally held as the best way to demonstrate capacity for "affordable" housing to provide sufficient and suitable land zoned for higher-density multi-family housing. The

City has performed all tasks required by State law to encourage and remove all obstacles and impediments for the development of affordable housing.

All of the infill, vacant, and underutilized properties within the City have the ability to be proposed for affordable housing construction as well as be subject to requests for density bonuses per state law.

15. *The city should consider creating an easily accessible, online central repository with all relevant information on deed-restricted housing units to assure that inventory of AH is maintained, and identify funding to do.*

City Response

The recommendation has been implemented.

The City currently maintains a list of deed-restricted housing on its website, which was last updated in April of 2016. In addition to the affordable housing inventory list, the City's housing webpage also contains important links and information pertaining to affordable housing and other housing related topics. The City's housing webpage can be found here: http://ci.clayton.ca.us/?page_id=349.

Funds for this maintenance activity are currently paid for from the Successor Housing Agency fund, which is an account remaining from its former redevelopment agency state dissolution. The only revenue for this account is program income from former Clayton Redevelopment Agency loans for affordable housing units.

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