

Minority Report

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Acknowledgements

Convening the Housing Affordability Task Force was an important first step in identifying the causes and solutions for the City's affordable housing crisis. The Mayor's involvement as a non-voting, but active, Task Force chair was indicative of the importance of the undertaking and reflected the general community concern with maintaining Pasadena as a city proud of its economic, racial/ethnic and cultural diversity. By their loyal participation and hard work, all the members of the Task Force showed they shared that concern.

The City housing and planning staff and the Task Force consultant contributed essential information, history and guidance for our discussions. They deserve our sincere gratitude.

We believe, however, that the "Final Report" of the Task Force does not reflect either the severity of our City's affordable housing crisis or the need for urgent action to both preserve Pasadena's fast diminishing existing affordable housing stock and to take steps that are within the City's power to find the resources to build new affordable dwellings for our existing very low, low and moderate income residents.

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Notwithstanding the hard work and good intentions, the Task Force's reach exceeded its grasp. Although the recommendations in the "Final Report" are, by and large, useful, they are in no way comprehensive or particularized to Pasadena's unique conditions and opportunities.

Task Force's Mission

The Task Force was convened in partial response to the vigorous housing policy debate that took place in 2001 concerning the Housing Element of the General Plan and the Inclusionary Housing ordinance that the Council adopted in September, 2001.

Residential inclusionary zoning was actively supported by the City's low income and housing advocacy communities. The Inclusionary Housing ordinance adopted was recognized by these communities as a needed, but inadequate, first step, because the measure exempted much of the residential and all of the commercial development that was taking place at breakneck speed throughout the City.

Since 2001, the housing crisis has had its most severe impact on African American and Latino low and moderate income renters-families with children,

seniors and others on fixed incomes, and on persons with disabilities seeking to live independently, and grandparents raising grandchildren. Pasadena rents have escalated far beyond the region's overall cost of living. Gentrification has further reduced the City's existing stock of lower cost housing to the point that there is a crisis of monumental proportions affecting our low and very low income residents. It was this crisis that housing advocates asked the City Council to address when the City adopted the Inclusionary Housing ordinance. Instead the Council adopted an ordinance that was primarily targeted at moderate income housing production. The convening of the Task Force was understood by the communities that had criticized the Inclusionary Housing ordinance for not addressing the needs of low and very low residents to be the City's opportunity to address the depletion of the City's affordable housing stock. Instead the City Council convened a "Housing Affordability" Task Force and the primacy of its mission vis-à-vis the preservation and production affordable housing options for low and very low income persons was far from clear.

Lack of Low Income Tenant Participation

Today the large majority of City residents (70+%) are renters. The overwhelming numbers of persons in need of affordable housing are low and very low income African American or Latino renters. Nearly 25% of the City's residents are seniors and/or have disabilities. In addition, low income families with children and single parent households constitute significant segments of those City residents in need of affordable housing.

Nearly 55% of the City's residential units are rentals.

The composition of the Task Force did not reflect these realities. Only 3 of the 15 voting members (20%) were renters, and none of these members were low income. Although a number of low income Latino and African American renters applied to become members of the Task Force, not one was to participate. Only one voting member was an African American renter and no Latino renters were voting members of the Task Force. Only one voting member was identified with the senior community and no voter members self identified as persons with significant disabilities. There was no representation on Task Force of low income families with children or of low income single parent households.

The relative non-inclusion of the stakeholders most affected by the City's housing affordability crisis resulted in a "Final Report" reflecting:

- an appalling lack of urgency
- ineffective or no tenant protections, and
- an absence of Pasadena-specific remedies.

We believe that the Final Report recommendations, while somewhat useful in themselves, are so limited in scope they reflect a squandering of much of the expertise that was convened.

The review of the ongoing City programs and activities consumed an inordinate percentage of the Task Force's time, especially since many of the Task Force members had also participated in the Housing 2000 Summit sessions where much of this information was made available. A comparison of the recommendations and staff activities also reveals that many of the Task Force's proposals are already underway under the direction of Gregory Robinson and his staff.

The Task Force had a golden opportunity to make a difference and chose not to do so.

Final Report Recommendations We Support

We support the following recommendations:

- The setting of numeric production and preservation goals that focus 90% of the City's resources on rental units and limits homeownership expenditures to 10% of resources. The majority also recommended that a priority be established to assist low income persons retain ownership of their homes. (We, however, believe that the production and preservation goals recommended were not ambitious enough, given the commercial and housing

construction boom that Pasadena is currently experiencing and the level the existing and growing need for affordable units.

- Creation of a Commission that will “fast track” the approval process for affordable housing projects. (As discussed below, we disagree that the mere addition of such a commission would be adequate to meet the continuing affordable housing development and preservation needs.)
- Increasing the number and kinds of fee waivers to encourage affordable housing development and preservation.
- Adoption of a second unit ordinance. (As set forth below, however, we believe that the ordinance should be more expansive than proposed.)
- City strengthening the capacity of local non-profit affordable housing developers by increased funding and technical support.
- Pasadena positioning itself to be vigorous and proactive force on the local, regional, state and federal levels for affordable housing preservation and development.
- Pasadena continuing to support making affordable housing a priority for the San Gabriel Valley Council of Governments
- Pasadena taking a lead role in the formation of a San Gabriel Valley Affordable Housing Information Clearinghouse
- Attracting and Leveraging New Funding Sources. (However, we believe that the Final Report recommendations inappropriately

single out certain resources currently available. Sources for affordable housing funding change and we believe that the City staff should have the flexibility to pursue those resources that are appropriate to the City's needs. In addition, the list provided, while useful, is not inclusive of all sources even presently available.)

- Have the City Land Bank Publicly Owned Properties and make them available for Affordable Housing Development. The City should, when appropriate, use its condemnation powers to assemble parcels to be used for affordable housing development.

Final Report Recommendations With Which We

Disagree or Find Inadequate

We suggest that many of the Final Report recommendations are vague and overbroad. The Final Report included language requesting additional studies and less than meaningful changes, instead of positive proposals on significant issues.

A. Numeric Goals

The goals set in the Final Report are a reflection of the staff's history of production, plus a "stretch" factor. The Final Report also does not take into account units that could be produced as the result of:

- The adoption of a commercial development linkage fee ordinance.
- The restructuring of existing residential inclusionary ordinance to incentivize the production of units rather the payment of in lieu fees and to make all parts of the City subject to the ordinance. (At present the Ordinance exempts the two planning areas because the City determined, without a study of rents, that even market rate housing in these areas was "affordable." Since that determination, rents have escalated precipitously.)
- Taking advantage of the appreciation in the real estate values created by the publicly-financed Gold Line to strengthen aspects of the Residential Inclusionary ordinance and to adopt a new Commercial Inclusionary ordinance to require a fair share contribution to affordable housing production.

When considering the annual goals of 130 newly constructed units and 260 rehabilitated or preserved units, the majority was comforted by the fact that the goal numbers were close to the regional housing need goals that were set to ensure that persons moving into Pasadena would have adequate housing. What

the Task Force did not consider was the need for housing of existing residents- the numerous existing City residents who are:

- Paying more than 30 % of their income on housing
- Living in substandard housing, and
- Living in overcrowded conditions.

According to the 2000 Census, a total of 17,845 households paid more than 30 percent of their gross income for ownership or rental housing costs in 1999. Of these, 11,553 households were renting. Overpayment, as defined, may occur at all income levels, but it is most common for lower income households. 7813 households identified themselves as having more than one person per room, the definition of overcrowding. Many, perhaps all, of these households are also counted among those that are paying more than 30 percent of gross income for housing costs.

The housing needs of these households are not counted in the Regional Housing Needs Assessment totals.

The Task Force set a standard for meeting the needs of persons migrating into Pasadena and did not consider the housing needs of existing residents; this approach in setting these goals is especially troubling. The Housing 2000 planners stated that unless the City took aggressive steps to preserve and produce affordable housing, the City would be bereft of any low and very low-income residents; the lowest income group would be moderate income persons. By not addressing the needs of existing residents, the Task Force majority appears to accept the inevitability of Pasadena's existing low and very low income families leaving the City forever. Many of these at-risk families are life long residents, persons of color who reside in Pasadena and will be replaced by moderate income (\$64,000/year for a family of four) and higher income White persons. For those of us who value cultural and racial diversity, this substitution is unfortunate. We believe that the City owes a higher duty to preserve housing

for its existing residents than it does to create housing for unknown possible future residents.

B. Appointment of Permanent Affordable Housing Commission

The Final Report recommends creating an affordable housing commission with a mandate to expedite specific advisory body approvals. We believe this approach, while needed, is too limited. We recommend, instead, the creation of permanent "Commission on Affordable Housing" that would be responsible for reviewing and making recommendations on the many issues affecting the maintenance and development of the affordable housing stock, including those issues never or only inadequately addressed during the limited life of the Task Force, *e.g.*:

1. Developing solutions designed to address the rapid evaporation of the City's economic and racial diversity. For example, the Commission would review and make recommendations regarding:
 - i. Gentrification that results in the loss of housing options for low income African Americans and Latinos in disproportionately high numbers

- i. The impact of deterioration of housing stock and the manner in which code enforcement is undertaken.
 - ii. The effects of the dramatic escalation of rents throughout the City on low income persons.
 - iii. The CalTrans escalating rent issue.
 - iv. The domino effect of the increase of luxury apartment rents and evaporation of available building opportunities on the rest of the City.
2. Reviewing “livability” issues, such as, humane code enforcement, the visitability/universal design of units and the operation of the City of Gardens and the operation of the City’s land use regulations.
3. Developing additional solutions to the City’s affordability crisis, e.g.:
 - i. Reviewing the effectiveness and administration of the Inclusionary Housing ordinance.
 - ii. Reviewing and making recommendations regarding the creation of additional density bonus categories for:
 - a. Developing units for low income families with children
 - b. Creating accessible units for persons with disabilities
 - iii. Creating incentives for expansion of available affordable housing sites by building mixed-use projects utilizing parking lot air rights and in office buildings

- iv. Permitting owners of one-to-four family dwellings to build affordable housing units over their garages
- 4. Creation of additional ways for the City to fund housing, e.g., floating bonds, diverting a portion of the sales tax, creating a \$25 million trust funded by a continual dedication of specific City income, a linkage fee for commercial development.
- 5. Adoption of an Anti-Section 8/Source of Income Discrimination Ordinance that would prohibit discrimination against tenants attempting to utilize rent subsidies (Section 8 vouchers) in connection with securing units.
- 6. Establishing policies and practices to ensure that by 2005 at least 25% of the Section 8 housing units will be accessible to persons with disabilities, including providing incentives for existing owner participants to make their units accessible.
- 7. Developing policies and practices to ensure that the City's Bad Weather Shelter will become accessible to homeless persons with disabilities by 2005.
- 8. Ensure that the development standards for newly constructed one-to-four family dwellings include accessibility requirements/considerations
- 9. Development of preservation plans for all affordable housing complexes that are at risk of converting to market rate housing. Educate City Council and the public regarding:
 - i. The status of at-risk units and other affordable housing issues generally

ii. Environment-friendly affordable housing alternatives

10. Monitor legislation affecting tenant rights and affordable housing

production and preservation and make recommendations regarding the City's position

11. Proactively identify data analyses and other research to be used to respond to affordable housing concerns

12. Routinely identify City policies and practices that create barriers to affordable housing production and preservation and provide recommendations to mitigate/eliminate these barriers.

We believe that creating a commission that focuses exclusively on all affordable housing issues is appropriate because of the seriousness of Pasadena's affordable housing crisis. Under the current system, the Community Development Committee (CDC) has been assigned affordable housing as one of its numerous responsibilities. We are convinced that Pasadena's affordable housing crisis is so great that it cannot be handled adequately by the CDC. In pursuing its responsibilities, the CDC deals primarily, if not exclusively, with those affordable housing projects seeking City funding. If the CDC had been adequate to the challenge, this Task Force would not have been necessitated.

We recommend the establishment of a permanent Affordable Housing Commission:

- i. Whose membership would be at least 1/3 low income tenants.
- ii. That would address long term planning and policy development designed to preserve and produce affordable housing units, to increase accessibility/livability of units and to preserve the racial and economic diversity of the City.
- iii. That would monitor the potential loss affordable housing units, recommend actions to mitigate or prevent entirely the loss of affordable units and develop one-for-one replacement programs for lost or at-risk units that house low and moderate income families and
- iv. That would recommend affordable housing and tenant protection legislative and other reforms for Council adoption.

B. Rent Control and Other Effective Tenant Protections

We believe that rent control is one of the many methods that should be used to ensure that low and very low income persons continue to live in Pasadena. By rent control, we mean measures by which rents are capped at a rate that allows for a reasonable rate of return for owners (that would include a provision for the pass through of a portion of capital expenditures,) while protecting tenants from expected and precipitous escalations in rents.

A majority of the Task Force withheld making recommendations on rent control measures. The majority members professed that they did not understand the relationship of housing affordability and tenant protections, such as rent control and just cause evictions. Had the Task Force been better reflective of the City's populations in need of affordable housing (*i.e.*, low and moderate income Latinos and African Americans, persons with disabilities, families with children or individuals on fixed incomes- especially seniors,) we believe that the relationship would have not have escaped them.

Rent control advocates seek to cap rent at an equitable level each year, allowing tenants protections against steep (20% and 30%) and unexpected increases in rents and owners a just return on their investments. Advocates also seek the establishment of a "just cause" eviction process in Pasadena. This combined approach would prevent the eviction of responsible low income tenants who have been long time residents of Pasadena, while still allowing landlords to evict tenants who fail to pay their rent, create nuisances and engage in illegal and other objectionable behavior.

Over the last 18-24 months, numerous families, who have been responsible and consistently paid their rent, have been forced out of Pasadena by landlords who have escalated rents on the basis of 30-day notices that have not set forth any reasons for eviction. The Final Report is devoid of recommendations that address the plight of these families, many of whom

have been forced to move out of the Valley entirely. The majority limits its recommendations to the development of units, in essence adopting some form of the “trickle down” theory, *i.e.*, endorsing the concept that by expanding the overall number of housing units the number of very low and low income units will eventually also increase. In response to other Task Force members noting that the majority’s “trickle down” approach would do nothing to benefit existing residents who are *presently* being priced out of Pasadena and that the “trickle down” theory has never been shown to operate in the affordable housing arena, only very weak additional tenant protections are proposed. These less than adequate protections included 90 (instead of 60) days notice when raising rents more than 10% and mediation of rent increases. The majority endorsed tenant protections will do little, if anything, to stem the tide of steep and precipitous rent increases and the loss of low income renters of color.

We, instead, endorse the adoption of:

- A Pasadena rent control ordinance that cap rents, while allowing for a reasonable profit for apartment owners.
- A “just cause” eviction ordinance, thereby limiting evictions to the failure to pay rent, engaging in illegal behavior, disrupting the quiet enjoyment of other tenants, failure to cooperate with inspection and repairs and other serious infractions.

- Relocation benefits for tenants evicted from code deficient dwellings through no fault of their own.

C. Second Unit Ordinance

The Final Report includes a recommendation for the adoption of a second unit ordinance. We believe that additional language should be incorporated to allow for affordable units above garages.

In recognition of the reality that many garages, pool houses, and other non-traditional housing modes are, in fact, used as affordable housing options for Pasadena's low income residents, we also believe that housing quality standards should be developed for such units.

Important Issues Which the Final Report Failed to Address

A. Adoption of a Commercial Development Linkage Fee

At the time the Inclusionary Housing Ordinance was adopted more than 20 months ago, the Council discussed the need for the addition of commercial development. There was general support for such an addition, but agreement was reached to postpone regulation until a nexus study was conducted. We now

have experience with the residential ordinance, *i.e.*, more than \$1,000,000 projected for inclusion in the City's Housing Trust Fund and 359 privately developed affordable housing units in the pipeline.

Since the commercial linkage fee discussions were initiated, developers have continued to construct commercial units, units that increase the pressure on the City's existing affordable housing stock. Our already strained affordable housing stock that has been taxed way beyond capacity trying to serve our existing residents is now being forced to serve newcomers migrating into the City.

The time factor is crucial. By delaying the passage of a linkage fee, the City loses forever the opportunity to have developers of major commercial projects contribute to a solution to Pasadena's affordable housing crisis that they continue to exacerbate. A commercial inclusionary zoning ordinance can be crafted to require a variety of alternatives, including:

- The provision of housing in office buildings and above retail space
- The dedication of air rights for affordable housing sites
- The payment of in-lieu fees.

We urge the City to take action to adopt a commercial inclusion ordinance with all due deliberate speed.

B. The Section 8 Crisis

Recent modifications to the Section 8 program negatively affect the City's most vulnerable residents, i.e., low and very low income renters. Under the previous Section 8 guidelines, a tenant's contribution to rent was limited to 30% of household income. Recent modifications now cap a tenant's contribution at 40% of income, but this cap remains in effect only during the first year of tenancy. After the first year, all increases in rent are paid 100% by the tenant; Section 8 pays no portion of the rental increase.

Through the efforts of City staff, HUD has been convinced to increase the fair market rents for various parts of the City so that Section 8 rents are more competitive with the private market. However, if Section 8 landlords keep pace with the City's inflation, the effect will be to overburden their Section 8 tenants, i.e., require them to pay more than 30% of their income on housing and thereby leave them unable to provide adequately for their families' clothing, food and health needs. Non-profits who rent to low and very low income families are put into a special bind. If they raise their rents then their missions to provide safe and decent at rents affordable to low and very low income persons will be frustrated. If they do not raise their rents to the HUD-established fair market rents, they may well fail to keep pace with the City's galloping inflation and their own fiscal obligations.

The solutions are complicated; they include:

- Ensuring that providers receive a reasonable return to meet escalating costs

- Capping tenants' portion of rents so that they may feed, medicate and clothe their families, and
- Discontinuing the practice of passing 100% of legitimate rent increases on to tenants who cannot afford to absorb them and having Section 8 monies used to fund an appropriate portion of legitimate increases.

C. Adoption and Continuation of Affordable Housing Policies and Practices Without the Benefit of Public Debate

The Final Report included a recommendation that public debate be held on attempts to modify the Roberti Act to allow Pasadena to acquire CalTrans surplus housing, resell this stock of existing affordable housing at market rate and use the proceeds for future affordable projects. This proposal has been criticized by affordable housing advocates because it means that more than 100 units that are destined under existing law to remain in the City's affordable housing stock would be sold at market values. These units are located in areas of the City that presently have very little affordable housing. Because of the increasing housing construction and rehabilitation costs, the likelihood is that the proceeds produced from the sale of these units will be spent producing more affordable units in Northwest Pasadena, where more than 60% of the City's affordable housing units are already located. If the Roberti Act is modified in the

manner proposed, the goals of the City's Inclusionary Housing ordinance, so recently adopted, would be thwarted.

While the Final Report recommendation, if adopted, would provide for public input on the CalTrans surplus housing issue, there are other policies that impede affordable housing development being implemented without public review or debate. Several are discussed below.

1. Requiring Non-Profit Developers to Produce Higher Income Units at the Same Time that Market Rate Developers are Permitted to Buy Their Way Out of Providing Lower Income Units

The Housing Planning and Development officials routinely frustrate the development of low and very low income affordable housing projects unless these complexes also include units for higher income individuals, notwithstanding the fact that the City's most crying housing needs are for very low and low income units. Recently, low and very low income housing developers were advised that they had to include moderate income units to access City funding. Including moderate income units renders some projects less competitive for other funding, thereby sometimes jeopardizing the overall financial support for these projects.

Another argument for not requiring mixed income development in affordable housing projects relates to the rapid gentrification of even the "affordable" sectors

of the City. As noted in Housing 2000 discussions, subsidized housing may soon represent the only housing available to low and very low income residents of the City. Thus, the propriety of requiring non-profit affordable housing developers to reduce the number of low and very low income units they actively seek to produce should be debated fully in an open forum.

2. Continuing to Cap the Affordable Housing Set Aside of
Downtown Redevelopment Area Funds at an \$800,000/year

The Downtown Redevelopment Area produces approximately \$9 million/year in tax increment revenue. Under State law, tax increment monies are to be used to eliminate "blight," such as substandard housing. Under normal circumstances, a minimum of \$1.8 million/year are to be set aside from these tax increment monies for affordable housing production and preservation. However, the City placed a limitation on funding affordable housing from this source to no more than \$800,000/per year. These redevelopment funds continue to be diverted to pay pensions for City staff, normally a general fund obligation.

It is questionable whether the initial diversion of redevelopment funds for this purpose was appropriate or legal. The continued diversion in light of the affordable housing crisis among very low income persons- the individuals for whom redevelopment funds are meant to assist- raises additional and significant policy concerns justifying a review of this method in meeting the City's general fund obligations.

3. Exemption of the "Affordable" Sectors of the City from Affordable Housing Production and In-Lieu Fee Requirements of the Inclusionary Housing Ordinance; Overall Effectiveness of the Existing Inclusionary Ordinance

Considerable questions were raised at the time of the adoption of the ordinance regarding the exemption of the _____ and Northwest Pasadena areas from the provisions of the Inclusionary Housing ordinance. As predicted, these areas have been the targets of significant gentrification that has resulted in the displacement of numerous African American and Latino families who have traditionally lived in these communities. Although it was promised that the effectiveness of the ordinance would be routinely reviewed and the Pasadena housing market has been vigorous, there have not been any changes in the operation of the ordinance during the 20 months since its adoption. The fact that most developers have opted to make in-lieu payments rather than building additional affordable units raises the question of the adequacy of the schedule of in-lieu fees exacted. Under the existing schedule it is cheaper to pay the fee than to build the units in question. The existing in-lieu fee schedule is inadequate to construct the units that the developers chose to forego building. The disparate impact resulting in the disproportionately high number of families of color being displaced also raises fair housing concerns.

Conclusion

The signatories to this report are disappointed that the Task Force toiled so long and hard to produce so few meaningful recommendations that will improve the affordable housing options for the City's existing low and very low income residents, *i.e.*, those persons most disparately in need of adequate housing. We believe Pasadena must and can do more to meet its affordable housing challenge. We have included additional recommendations that we trust the Council will consider and adopt.