# CITY OF HAYWARD
# AGENDA REPORT

AGENDA DATE 06/03/02
AGENDA ITEM 5
WORK SESSION ITEM _____

**TO:** Mayor and City Council

**FROM:** Director of Community and Economic Development

**SUBJECT:** Inclusionary Housing Ordinance

**RECOMMENDATION:**

It is recommended that the City Council adopt the attached resolution adopting the Negative Declaration and introduce the attached Inclusionary Housing Ordinance.

**DISCUSSION:**

In the mid-1990's, Hayward was identified as one of the most affordable cities in the inner Bay Area by the Southern Alameda County Association of Realtors (now Bay East Association of Realtors). Change in the real estate market came later to Hayward than it did to many other cities in the inner Bay Area. However, in the last four years housing costs have changed dramatically. Between 1999 and 2000, there was a 24% jump in rents in buildings of 50 units or more and an even larger percentage increase in sales prices of new and existing homes.

There are many ways that the need for very low, low- and moderate-income housing can be met. In areas of California where housing costs are in more reasonable relationship to median incomes than in the Bay Area, market rate apartments are affordable to households that qualify as low income and existing homes and condominiums are affordable to moderate income households. In those areas, only the production of very low income housing requires some type of governmental support. Generally, this support consists of assisting nonprofit housing developers obtain local, state and federal housing subsidies and/or financing. However, in high cost areas, such as the San Francisco Bay Area, local governments have to utilize as many strategies as possible to increase the supply of affordable housing, since market-rate housing is barely affordable to a household whose income is $75,000 or above which is defined as above moderate income for a household of two by the U.S. Department of Housing and Urban Development for the Oakland Primary Metropolitan Statistical Area (PMSA).

State law requires that every local jurisdiction provide its "fair share" of affordable housing. These units must be an addition to the existing housing stock. The number of new units of affordable housing that the Association of Bay Area Governments (ABAG) has identified as Hayward's fair share, to be produced in the City of Hayward by 2006, is shown in the chart below.

**Table 1: Regional Housing Needs Determination: 1999-2006**

| | Total Projected Unit Need | Very Low Income | Low Income | Moderate Income | Above Moderate Income | Average Annual Need 1999-2006 |
|---|---|---|---|---|---|---|
| **Hayward** | 2,835 | 625 | 344 | 834 | 1,032 | 378 |

Currently, the City uses several different strategies to encourage affordable housing. The City operates a first-time homebuyer program for households up to 120% of area median income adjusted for household size; issues multifamily mortgage bonds for new developments and acquisition and rehabilitation projects; works with Eden Housing to identify sites and provides gap financing for new affordable multifamily rental housing developments; and the City has adopted a Plan for the Cannery Redevelopment Area that includes a 15% requirement for affordable housing. However, these strategies will not be able to produce the 969 affordable units the State requires the City to commit to developing in the Housing Element.

In the ten-year period from 1990 to 2000, Hayward produced a total of 59 units affordable to very low income households and 105 units of housing affordable to low-income households for a total of 164 new units, or about 16 units per year. During the ten-year period, there were approximately 356 units of multifamily rental residential development constructed.

Adoption of an inclusionary ordinance is one of the strategies for increasing the supply of affordable housing strongly encouraged by State Housing and Community Development. Inclusionary housing requirements can take many forms, but the basic concept is that development proposals are required to include a certain percentage of affordable housing. In Alameda County, Emeryville, Fremont, Union City, and Livermore have such ordinances. Pleasanton and Alameda County are considering inclusionary housing ordinances.

The redevelopment standard of 15% affordable units has been utilized so that there would be a single standard throughout the City. The ordinance applies only to developments of ten or more units. Developers of multifamily rental projects must provide half of the required units at a cost affordable to very low-income households and half at a cost affordable to low income households. Developers of ownership housing must make 15% of the units affordable to moderate income households. The length of time over which the unit must remain affordable is 45 years.

In reviewing the alternative provisions for the proposed ordinance, staff attempted to evaluate the ability of the market and existing programs to respond to housing demand from various income groups. The provision of rental housing for very low and low income households is less expensive than, and more readily subsidized than, the provision of for-sale housing for moderate income households. The availability of tax-based incentives for rental housing development, such as multifamily mortgage revenue bonds and low income housing tax credits, provides considerable support to developers seeking to build rental properties. Consequently, staff is proposing that rental developments be required to provide the affordable units for very low and low income households.

There are several methods described in the ordinance to provide additional consideration to developers in exchange for the provision of affordable units. Some, such as density bonuses and allowance for mixed use, are required under State law. Others such as off-site development or in-lieu fees are locally designed.

Density Bonus. Developers may request a density bonus that increases the number of units on a development site, thereby decreasing the per unit costs of that development. If requested by the developer, localities are required to provide a density bonus that, at a minimum, meets the requirements of State law, if the developer provides a certain percentage of units that are affordable to very low-, low, or moderate income units or there are a certain percentage of units restricted to occupancy by senior citizens. Briefly, state law requires that--

A jurisdiction must grant a density increase of at least 25 percent over the maximum allowable residential density under the zoning ordinance and at least one concession or incentive if a development of at least five units meets the following criteria. Affordable unit set-aside requirements are as follows:

- 20% of the total units are made affordable to lower income households;
- 10% of the total units are made affordable to very low income households;
- 20% of the total units in a condominium project are made affordable to moderate-income households. (Density bonus of 10% awarded for this type of project.)
- 50% of the total units are reserved for senior citizens at least 62 years of age.

State law defines "concession or incentive" as any of the following:

- A reduction in site development standards or a modification of zoning code or architectural design requirements that exceed the minimum building standards including, but not limited to, a reduction in setback and square footage requirements and in the ratio of parking spaces that would otherwise be required;.
- Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located; and
- Other regulatory incentives or concessions proposed by the developer or the jurisdiction that result in identifiable and actual cost reductions.

Although there are many residential developments in Southern California that have utilized the State's density bonus law, there are relatively few developments in the Alameda County that have done so. Over the past fifteen years, the City has had several inquiries from prospective developers; however, none have chosen to utilize density bonuses. In fact, many residential developers have chosen not to develop sites to their maximum density.

Off-Site Development. Although the aim of the ordinance is for developers to build affordable units that are integrated throughout the development, developers may request that Council approve the construction of units off-site, not physically contiguous, to the development. For example, developers of a single family subdivision could propose to finance an affordable multifamily rental project on at a different site instead of build affordable single family homes within the new development. If Council were to find that the off-site construction would further affordable housing opportunities in the City to a greater extent than construction of the required units as part of the proposed residential project, the developer would be allowed to build off-site.

Establishment of In-Lieu Fees. Developers may also request to pay an "in-lieu" fee instead of building the required affordable unit in their developments. Attachment A is a chart showing the in-lieu fees charged by near-by jurisdictions. As can be seen, some jurisdictions charge an in-lieu fee on every market rate unit in the development and some jurisdictions charge an in-lieu fee only on the affordable units. When fees are charged on each unit, the amount of in-lieu fee required seems smaller than when the fees are charged only on each affordable unit; however, this may not actually be the case, as is shown in Attachment A. Emeryville and Fremont have "must build" requirements. Staff is proposing and the ordinance reflects that Hayward have a "must build" requirement for rental projects, as noted earlier in this report, and allow an in-lieu fee for ownership developments.

The goal of this program is to assist very low-, low-, and moderate-income households who currently live or work in Hayward to obtain housing here. It supports the City's Housing Element Policy 4.0 "Ensure that the City's housing stock contains an adequate number of decent and affordable units for households of all income levels." The proposed ordinance requires that 15% of the units in a for-sale development be sold at an affordable price. In return for the affordable price, these units have deed restrictions controlling the resale price. This allows the unit to be re-sold to another moderate-income homebuyer at an affordable price and ensures that no household makes a "windfall" profit from the sale. The type and level of housing anticipated for these homebuyers is the typical "starter" home, which in today's market is likely to be an attached townhouse, a condominium or a small lot detached single-family unit.

In order to make such a for-sale unit available at a cost affordable to a moderate-income homebuyer with a household income of 110% of area median income (AMI), staff analyzed the income requirements for a typical family and the prices and sizes of all new single-family homes constructed and sold since 2001. To identify what size household at should be used in the analysis, we looked at the bedroom mix of these units. The average for-sale attached home was a three- bedroom, two-bath unit. The average for-sale detached home was either a four-bedroom, three-bath home or, in the hills, a five-bedroom, four-bath home. Since the three-bedroom, two-bath home is, on average, the smallest home being built, a family of four was identified as the prototype family for the analysis. The following chart shows how the maximum supportable mortgage was determined for the prototype household.

| | |
|---|---|
| Household Size | 4 |
| 110% of AMI | $84,300 |
| 35% of Income Allowed for Housing Cost | 29,505 |
| Monthly Amount Available for Principal, Interest, Taxes And Insurance (PITI) | 2,459 |
| *Less* Monthly Payments For: | |
| Homeowner Dues | (200) |
| Property Taxes @ 1% of Sales Price | (358) |
| Property Insurance | (100) |
| Monthly Amount Available for Mortgage | $1,800 |
| Maximum Supportable Mortgage | $300,294 |

A review of sales prices for new homes being sold since 2001, showed that the average sales price for a single-family attached home was approximately $400,000. The average sales price for detached single-family homes was approximately $600,000. The subsidy or financing gap needed to enable this family of four to move into a single-family attached home is, therefore, approximately $100,000 (or $400,000 minus $300,000, the maximum mortgage the family can afford as shown in the chart above). Using the same formula, the financing gap to enable such a family to move into a new single-family detached home would be approximately $300,000 ($600,000 minus $300,000, the maximum affordable mortgage). Since the purpose of this program is to provide affordable shelter for Hayward families, not necessarily to provide a detached dwelling, it may not be reasonable to assume that the average family would be purchasing a $600,000 home and, therefore, would require a subsidy in the form of an in-lieu fee of $300,000. It is reasonable, however, to recognize some proportionality of in-lieu fee burden on various types of housing developments. There are distinct differences between the detached housing and attached housing developments that bear upon the reasonability of differing in-lieu fees. For example, large, for-sale units are commonly occupied by large households. If the City is to forego the availability of having such larger units constructed and sold at an affordable price, then the developer should be responsible for providing sufficient in-lieu fees to assist in financing attached for-sale units to serve large moderate-income families. This would involve increasing the fee to account for an additional bedroom and bath.

Although the proposed in-lieu fee for detached housing developments is larger than that proposed for attached housing developments, it is considerably less than the actual financing gap and places a smaller relative burden on the more expensive detached housing development. Therefore, staff is proposing the following in-lieu fee for each affordable unit:

- Single-family attached developments: $100,000
- Single-family detached developments: $150,000

A Housing Trust Fund will be established for the collection of the in-lieu fees. Fees from such a fund will be used to create housing that is permanently affordable. Both for-profit and nonprofit developers will be eligible to create affordable projects or to increase the number of affordable units within a market-rate project.

## CITY COUNCIL WORKSESSION

On April 15, 2003 the City Council held a worksession to discuss the elements of the proposed ordinance. Council member comments reaffirmed the importance of maintaining City design standards for quality development in all housing, including inclusionary units. The method of rounding the number of required inclusionary units was also addressed and the ordinance has been revised to allow for rounding in the standard manner. Staff indicated that it would return in early June with a recommended structure for the in-lieu fee, and that recommendation is presented above.

## ENVIRONMENTAL REVIEW

The proposed ordinance is defined as a "project" under the parameters set forth in the California Environmental Quality Act (CEQA) Guidelines. However, no significant environmental impacts are identified. Therefore, a Negative Declaration has been prepared.

**PUBLIC NOTICE**

A Notice of Public Hearing on the proposed Inclusionary Housing Ordinance was published in the Daily Review on May 13, 2003 and mailed to an interested parties list, including the Chamber of Commerce, the Home Builders Association of Northern California, housing organizations, housing advocates and developers active in the Hayward market area.

Prepared by:

for Sylvia Ehrenthal

Ann R. Bauman, Neighborhood and Economic Development Manager

Recommended by:

Sylvia Ehrenthal

Sylvia Ehrenthal
Director of Community and Economic Development

Approved by:

Jesús Armas

Jesús Armas, City Manager

Attachment A: In-Lieu Fees Charged By Nearby Jurisdictions
Resolution
Ordinance

**Attachment A**

# In-Lieu Fees Charged By Nearby Jurisdictions

| City | Year Adopted | Set-Aside Requirements and Target Income Levels | Application | In-Lieu Option and Amount of In-Lieu Fee for the Minimum Project Size |
|---|---|---|---|---|
| Emeryville | Adopted in 1990. | 20% of units affordable to moderate, low or very low income households. | Projects 30 units or more | Must build units. |
| Dublin | Adopted in 1992; recently updated in 2002 | 12.5 % of units must be affordable to very low, low and moderate income households | Projects 20 units or more | Developer may pay in lieu fees on up to 40% of units required.<br><br>Fee is $72,000 per affordable unit. |
| Fremont | Adopted in 2002. | Rental<br>9% of units must be affordable to very low income households and 6% of units affordable to low income households<br><br>Ownership<br>15% of units must be affordable to households at 110% of median income | Project 7 units or more | Must build units -- except for projects in very low or low density designations where average lot sizes are 10,000 square feet or greater.<br><br>Current fee is $30,882 for each market rate unit in the development. For a development of 7 units, fee would be $216,714. |
| Livermore | Adopted in 1983; substantially revised in February 2002. | 10% of units affordable to households at 80% of median income | Less than 10 units and lots of more than one acre are exempt from onsite construction | $12,272 per unit for each market rate unit in the project. |

**Attachment A**

## In-Lieu Fees Charged By Nearby Jurisdictions

| City | Year Adopted | Set-Aside Requirements and Target Income Levels | Application | In-Lieu Option and Amount of In-Lieu Fee for the Minimum Project Size |
|---|---|---|---|---|
| | | | requirements. | Therefore, the minimum in-lieu fee would be $122,720 for a ten unit project. |
| Pleasanton | Adopted November 2000 | Rental<br>15% of units must be affordable to very low and/or low income households<br><br>New Single Family Ownership<br>20% of units must be affordable to households at 80%, 100% and 120% of median income. Mix of affordability approved by City. | Projects of 15 units or more. | $3,160 for each single family home, $1054 for each multifamily unit and $0.54 per square foot for each commercial development. Amounts adjusted annually by CPI. Fee increase currently under review.<br><br>In-lieu fee for a 15 unit single family development would be $47,400. May consider raising fee to $6,000 per single family unit which would be $90,000 for a 15 unit development. |
| Union City | Effective July 2002 | Rental<br>15% of units must be affordable to households at 50% and 80% of median income | All projects required to either pay fee or build units. City can waive requirement if it prevents project from | On developments of 6 units or less, developer may request payment of in-lieu fee or on any fractional units. |

**Attachment A**

## In-Lieu Fees Charged By Nearby Jurisdictions

| City | Year Adopted | Set-Aside Requirements and Target Income Levels | Application | In-Lieu Option and Amount of In-Lieu Fee for the Minimum Project Size |
|---|---|---|---|---|
| | | Ownership<br>15% of units must be affordable to households at 80%, 100% and 120% of median income | proceeding. | Fee is $80,000 per affordable unit. |

- Very Low Income Households = at or below 50% of area median income (AMI)
- Low Income Households = between 51% and 80% of AMI
- Moderate Income Households = between 81% and 120% of AMI

**DEPARTMENT OF**
**COMMUNITY AND ECONOMIC DEVELOPMENT**
**Neighborhood and Economic Development Division**

# NEGATIVE DECLARATION

Notice is hereby given that the City of Hayward finds that no significant effect on the environment as prescribed by the California Environmental Quality Act of 1970, as amended will occur for the following proposed project:

## I. *PROJECT DESCRIPTION*:

Adoption of an Inclusionary Housing Ordinance requiring developments of new residential housing tracts of ten or more units to set aside a certain percentage of units to be sold to moderate income households or, if a rental development, rented at an affordable price to low- and very low-income households. In certain circumstances, developer may pay a fee in-lieu of building the units.

## II. *FINDING PROJECT WILL NOT SIGNIFICANTLY AFFECT ENVIRONMENT*:

The proposed project will have no significant effect on the area's resources, cumulative or otherwise.

## III. *FINDINGS SUPPORTING DECLARATION*:

1. The project application has been reviewed according to the standards and requirements of the California Environmental Quality Act (CEQA) and an Initial Study Environmental Checklist Form has been completed for the proposed project. The Initial Study has determined that the proposed project could not result in significant effects on the environment.

2. The proposed Ordinance establishes a requirement that new residential development include a specified number of units affordable to households of very-low, low and moderate income in order to meet the need for affordable housing for residents of Hayward. This ordinance is in keeping with the goals and policies of the General Plan of the City to encourage the development of housing affordable to all segments of the community.

3. The proposed Ordinance is consistent with the goals and policies of the Housing Element of the City in that it encourages the provision of an adequate supply of housing units in a variety of housing types that accommodate the diverse housing needs of those who live or wish to live in the City.

4. The ordinance encourages the integration of affordable and market-rate units. This is in keeping with the Housing Element policy to ensure that the City's housing stock contains and adequate number of decent and affordable for-sale and rental units for households of all income levels.

5. The ordinance encourages the development of affordable for-sale housing. This is in keeping with the Housing Element policy of encouraging ownership housing and assisting tenants to become homeowners in order to attain a 70% owner-occupancy rate.

**IV. *PERSON WHO PREPARED INITIAL STUDY*: Ann Bauman, AICP, Neighborhood and Economic Development Manager, City of Hayward**

Dated: May 13, 2003

**V. *COPY OF INITIAL STUDY IS ATTACHED***

For additional information, please contact the City of Hayward Neighborhood and Economic Development Division, 777 B Street, Hayward, CA 94541-5007 or telephone (510) 583-4250

**DISTRIBUTION/POSTING**

- Provide copies to all organizations and individuals requesting it in writing.
- Reference in all public hearing notices to be distributed 20 days in advance of initial public hearing and/or published once in Daily Review 20 days prior to hearing.
- Project file.
- Post immediately upon receipt at the City Clerk's Office, the Main City Hall bulletin board, and in all City library branches, and do not remove until the date after the public hearing.

# Environmental Checklist Form

1. Project title:
   ***Inclusionary Housing Ordinance***

2. Lead agency name and address:
   **City of Hayward**
   **777 B Street**
   **Hayward, CA 94541**

3. Contact person and phone number and e-mail address:
   **Ann Bauman, AICP, 510.583.4250 ann.bauman@ci.hayward.ca.us**

4. Project location:
   City-wide
5. Project sponsor's name and address:

   City of Hayward Planning Director
   777 B Street
   Hayward, CA 94541

6. General plan designation:
   All General Plan designations where residential development is allowed.

7. Zoning:
   All zoning designations where residential development is allowed.

8. Description of project: (Describe the whole action involved, including but not limited to later phases of the project, and any secondary, support, or off-site features necessary for its implementation. Attach additional sheets if necessary.)

   ***Inclusionary Housing Ordinance. This Ordinance requires that developers of new residential housing in the City of Hayward set aside a certain percentage of units in their developments that will be sold to moderate income households or, if a rental development, rented at an affordable price to low- and very low-income households. In certain circumstances, developers may pay a fee in-lieu of building the units.***

9. Surrounding land uses and setting: Briefly describe the project's surroundings:
   Citywide.

10. Other public agencies whose approval is required (e.g., permits, financing approval, or participation agreement.)
    None

## ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

| | | |
|---|---|---|
| ☐ Aesthetics | ☐ Agriculture Resources | ☐ Air Quality |
| ☐ Biological Resources | ☐ Cultural Resources | ☐ Geology /Soils |
| ☐ Hazards & Hazardous Materials | ☐ Hydrology / Water Quality | ☐ Land Use / Planning |
| ☐ Mineral Resources | ☐ Noise | ☐ Population / Housing |
| ☐ Public Services | ☐ Recreation | ☐ Transportation/Traffic |
| ☐ Utilities / Service Systems | ☐ Mandatory Findings of Significance | |

**DETERMINATION**: (To be completed by the Lead Agency)

On the basis of this initial evaluation:

☒ I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

☐ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.

☐ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

☐ I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.

☐ I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

Ann Bauman by SE
Signature

May 8, 2003
Date

Ann Bauman, AICP
Printed Name

City of Hayward
Agency

## ENVIRONMENTAL ISSUES:

| | *Potentially Significant Impact* | *Potentially Significant Unless Mitigation Incorporation* | *Less Than Significant Impact* | *No Impact* |
|---|---|---|---|---|
| I. **AESTHETICS** -- Would the project: | | | | |
| a) Have a substantial adverse effect on a scenic vista? | ☐ | ☐ | ☐ | ☒ |
| b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway? | ☐ | ☐ | ☐ | ☒ |
| c) Substantially degrade the existing visual character or quality of the site and its surroundings? | ☐ | ☐ | ☐ | ☒ |
| d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area? | ☐ | ☐ | ☐ | ☒ |
| II. **AGRICULTURE RESOURCES**: In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. Would the project: | | | | |
| a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use? | ☐ | ☐ | ☐ | ☒ |
| b) Conflict with existing zoning for agricultural use, or a Williamson Act contract? | ☐ | ☐ | ☐ | ☒ |
| c) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use? | ☐ | ☐ | ☐ | ☒ |
| III. **AIR QUALITY** -- Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project: | | | | |
| a) Conflict with or obstruct implementation of the applicable air quality plan? | ☐ | ☐ | ☐ | ☒ |
| b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation? | ☐ | ☐ | ☐ | ☒ |

| | *Potentially Significant Impact* | *Potentially Significant Unless Mitigation Incorporation* | *Less Than Significant Impact* | *No Impact* |
|---|---|---|---|---|
| c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)? | ☐ | ☐ | ☐ | ☒ |
| d) Expose sensitive receptors to substantial pollutant concentrations? | ☐ | ☐ | ☐ | ☒ |
| e) Create objectionable odors affecting a substantial number of people? | ☐ | ☐ | ☐ | ☒ |
| IV. **BIOLOGICAL RESOURCES** -- Would the project: | | | | |
| a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service? | ☐ | ☐ | ☐ | ☒ |
| b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service? | ☐ | ☐ | ☐ | ☒ |
| c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means? | ☐ | ☐ | ☐ | ☒ |
| d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites? | ☐ | ☐ | ☐ | ☒ |
| e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance? | ☐ | ☐ | ☐ | ☒ |
| f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan? | ☐ | ☐ | ☐ | ☒ |
| V. **CULTURAL RESOURCES** -- Would the project: | | | | |
| a) Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5? | ☐ | ☐ | ☐ | ☒ |
| b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5? | ☐ | ☐ | ☐ | ☒ |

| | *Potentially Significant Impact* | *Potentially Significant Unless Mitigation Incorporation* | *Less Than Significant Impact* | *No Impact* |
|---|---|---|---|---|
| c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature? | ☐ | ☐ | ☐ | ☒ |
| d) Disturb any human remains, including those interred outside of formal cemeteries? | ☐ | ☐ | ☐ | ☒ |
| VI. **GEOLOGY AND SOILS** -- Would the project: | | | | |
| a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving: | ☐ | ☐ | ☐ | ☒ |
| i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42. | ☐ | ☐ | ☐ | ☒ |
| ii) Strong seismic ground shaking? | ☐ | ☐ | ☐ | ☒ |
| iii) Seismic-related ground failure, including liquefaction? | ☐ | ☐ | ☐ | ☒ |
| iv) Landslides? | ☐ | ☐ | ☐ | ☒ |
| b) Result in substantial soil erosion or the loss of topsoil? | ☐ | ☐ | ☐ | ☒ |
| c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse? | ☐ | ☐ | ☐ | ☒ |
| d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property? | ☐ | ☐ | ☐ | ☒ |
| e) Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater? | ☐ | ☐ | ☐ | ☒ |
| VII. **HAZARDS AND HAZARDOUS MATERIALS** - Would the project: | | | | |
| a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials? | ☐ | ☐ | ☐ | ☒ |
| b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment? | ☐ | ☐ | ☐ | ☒ |
| c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school? | ☐ | ☐ | ☐ | ☒ |

| | *Potentially Significant Impact* | *Potentially Significant Unless Mitigation Incorporation* | *Less Than Significant Impact* | *No Impact* |
|---|---|---|---|---|
| d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment? | ☐ | ☐ | ☐ | ☒ |
| e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area? | ☐ | ☐ | ☐ | ☒ |
| f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area? | ☐ | ☐ | ☐ | ☒ |
| g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan? | ☐ | ☐ | ☐ | ☒ |
| h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands? | ☐ | ☐ | ☐ | ☒ |
| VIII. **HYDROLOGY AND WATER QUALITY** -- Would the project: | | | | |
| a) Violate any water quality standards or waste discharge requirements? | ☐ | ☐ | ☐ | ☒ |
| b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)? | ☐ | ☐ | ☐ | ☒ |
| c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site? | ☐ | ☐ | ☐ | ☒ |
| d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site? | ☐ | ☐ | ☐ | ☒ |
| e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff? | ☐ | ☐ | ☐ | ☒ |
| f) Otherwise substantially degrade water quality? | ☐ | ☐ | ☐ | ☒ |
| g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map? | ☐ | ☐ | ☐ | ☒ |

| | *Potentially Significant Impact* | *Potentially Significant Unless Mitigation Incorporation* | *Less Than Significant Impact* | *No Impact* |
|---|---|---|---|---|
| h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows? | ☐ | ☐ | ☐ | ☒ |
| i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam? | ☐ | ☐ | ☐ | ☒ |
| j) Inundation by seiche, tsunami, or mudflow? | ☐ | ☐ | ☐ | ☒ |
| IX. **LAND USE AND PLANNING** - Would the project: | | | | |
| a) Physically divide an established community? | ☐ | ☐ | ☐ | ☒ |
| b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect? | ☐ | ☐ | ☐ | ☒ |
| *The proposed Ordinance makes no changes to any applicable land use plan, policy, or regulation. Residential developments of 10 or more units that have met all CEQA requirements will, as a result of this Ordinance, be required to make a certain percentage of units in the development affordable to moderate or to low and very low income households. In certain circumstances an in-lieu fee can be paid by the developer instead of constructing the affordable units. This fee will be collected in a Housing Trust Fund that will be utilized for new construction or acquisition and rehabilitation of housing for low and very low income households.* | | | | |
| c) Conflict with any applicable habitat conservation plan or natural community conservation plan? | ☐ | ☐ | ☐ | ☒ |
| X. **MINERAL RESOURCES** -- Would the project: | | | | |
| a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state? | ☐ | ☐ | ☐ | ☒ |
| b) Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan? | ☐ | ☐ | ☐ | ☒ |
| XI. **NOISE** - Would the project result in: | | | | |
| a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies? | ☐ | ☐ | ☐ | ☒ |

| | *Potentially Significant Impact* | *Potentially Significant Unless Mitigation Incorporation* | *Less Than Significant Impact* | *No Impact* |
|---|---|---|---|---|
| b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels? | ☐ | ☐ | ☐ | ☒ |
| c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project? | ☐ | ☐ | ☐ | ☒ |
| d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project? | ☐ | ☐ | ☐ | ☒ |
| e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels? | ☐ | ☐ | ☐ | ☒ |
| f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels? | ☐ | ☐ | ☐ | ☒ |
| XII. **POPULATION AND HOUSING** -- Would the project: | | | | |
| a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)? | ☐ | ☐ | ☒ | ☐ |
| *Developers will be able to utilize the State Density Bonus Law if the proposed development meets its requirements, potentially increasing the number of units by 25%. However, this increase in density is available for* ***any*** *development that meets State requirements, regardless of whether this Ordinance is adopted. In addition, each residential development must comply with CEQA requirements prior to receiving development approvals from the City.* | | | | |
| b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere? | ☐ | ☐ | ☐ | ☒ |
| c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere? | ☐ | ☐ | ☐ | ☒ |
| XIII. **PUBLIC SERVICES** | | | | |
| a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services: | | | | |
| Fire protection? | ☐ | ☐ | ☐ | ☒ |

| | *Potentially Significant Impact* | *Potentially Significant Unless Mitigation Incorporation* | *Less Than Significant Impact* | *No Impact* |
|---|---|---|---|---|
| Police protection? | ☐ | ☐ | ☐ | ☒ |
| Schools? | ☐ | ☐ | ☐ | ☒ |
| Parks? | ☐ | ☐ | ☐ | ☒ |
| Other public facilities? | ☐ | ☐ | ☐ | ☒ |

XIV. **RECREATION** --

| | | | | |
|---|---|---|---|---|
| a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated? | ☐ | ☐ | ☐ | ☒ |
| b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment? | ☐ | ☐ | ☐ | ☒ |

A proposed amendment to the Zoning Ordinance is a correction that clarifies that recreational uses are permitted in the General Commercial zoning district.

XV. **TRANSPORTATION/TRAFFIC** -- Would the project:

| | | | | |
|---|---|---|---|---|
| a) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)? | ☐ | ☐ | ☐ | ☒ |
| b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways? | ☐ | ☐ | ☐ | ☒ |
| c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks? | ☐ | ☐ | ☐ | ☒ |
| d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)? | ☐ | ☐ | ☐ | ☒ |
| e) Result in inadequate emergency access? | ☐ | ☐ | ☐ | ☒ |

| | *Potentially Significant Impact* | *Potentially Significant Unless Mitigation Incorporation* | *Less Than Significant Impact* | *No Impact* |
|---|---|---|---|---|
| f) Result in inadequate parking capacity?<br>A proposed amendment to the Zoning Ordinance more clearly defines a garage so as to clarify when certain residential building permit applications trigger the requirement for a two-car garage in connection with that permit. This amendment is in keeping with the City policy to provide adequate off-street parking for its residential neighborhoods. | ☐ | ☐ | ☐ | ☒ |
| g) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)? | ☐ | ☐ | ☐ | ☒ |
| XVI. **UTILITIES AND SERVICE SYSTEMS** - Would the project: | | | | |
| a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board? | ☐ | ☐ | ☐ | ☒ |
| b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects? | ☐ | ☐ | ☐ | ☒ |
| c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects? | ☐ | ☐ | ☐ | ☒ |
| d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed? | ☐ | ☐ | ☐ | ☒ |
| e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments? | ☐ | ☐ | ☐ | ☒ |
| f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs? | ☐ | ☐ | ☐ | ☒ |
| g) Comply with federal, state, and local statutes and regulations related to solid waste? | ☐ | ☐ | ☐ | ☒ |

## XVII. MANDATORY FINDINGS OF SIGNIFICANCE --

| | | | | |
|---|---|---|---|---|
| a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory? | ☐ | ☐ | ☐ | ☒ |
| b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)? | ☐ | ☐ | ☐ | ☒ |
| c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly? | ☐ | ☐ | ☐ | ☒ |

# DRAFT

mae
5/23/03

HAYWARD CITY COUNCIL

RESOLUTION NO. 03-__

Introduced by Council Member _____

RESOLUTION ADOPTING THE NEGATIVE DECLARATION AND APPROVING THE INCLUSIONARY HOUSING ORDINANCE

WHEREAS, the City Council considered the matter and recommended approval of the Inclusionary Housing Ordinance and its action thereon is on file in the office of the City Clerk and is hereby referred to for further particulars; and

WHEREAS, a negative declaration has been prepared and processed in accordance with City and CEQA guidelines; and

WHEREAS, the City Council of the City of Hayward hereby finds and determines that the Inclusionary Housing Ordinance has been reviewed according to the standards and requirements of the California Environmental Quality Act (CEQA) and an Initial Study Environmental Checklist From has been completed for the proposed project. The Initial Study has determined that the proposed Ordinance could not result in significant effects on the environment.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby approves the Negative Declaration and adopts the companion Inclusionary Housing Ordinance.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2003

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST:_____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

_____
City Attorney of the City of Hayward

# DRAFT

ORDINANCE NO._____

ORDINANCE ADDING ARTICLE 17 TO CHAPTER 10 OF THE HAYWARD MUNICIPAL CODE RELATING TO INCLUSIONARY HOUSING

mte 5/30/03

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1: Article 17 of Chapter 10 is hereby added to the Hayward Municipal Code as follows:

"ARTICLE 17

INCLUSIONARY HOUSING ORDINANCE

Section 10-17.100 GENERAL PROVISIONS

Section 10-17.105 TITLE

This title shall be known and may be cited and referred to as the "Hayward Inclusionary Housing Ordinance."

Section 10-17.110 PURPOSE

The purpose of this Article is to:

A. Enhance the public welfare by ensuring that future Residential Development Projects contribute to the attainment of the affordable housing goals set forth in the Housing Element of the General Plan of the City of Hayward.

B. Increase the productions of residential units in Hayward that are affordable to very low, low-and moderate-income households.

C. Ensure that units affordable to very low, low- and moderate-income households are distributed throughout the City's various neighborhoods.

D. Comply with the requirements of Health and Safety Code section 33341.3(b) within the redevelopment project area and elsewhere in the community as applicable.

Section 10-17.120 FINDINGS

The City Council finds and determines that lack of access to affordable housing has a direct impact upon the health, safety and welfare of the residents of the City of Hayward. The housing problem affects a broad range of income groups, including many who would not need

public assistance or intervention in the housing market if they lived outside of the San Francisco Bay Area.

A. According to the 2000 U.S. Census, about 40% of Hayward tenant households (8,669 households) pay more than 30% of their income for rent.

B. Only 22% of the population of Alameda County can afford to buy a home here, significantly below the national average of 57%.

C. According to the 2000 U.S. Census, approximately 32% of tenant households pay more than 35% of household income for rent. Forty percent of tenants pay more than 30% of household income for rent.

D. Because all forms of housing are expensive to build, rent and buy, a variety of housing programs and resources are required to help meet the need for affordable housing.

E. The California Legislature has required each local government agency to develop a comprehensive, long-term general plan establishing policies for future development. As specified in the Government Code section 654300, 65302 (c), and 65583 ( c ), the plan must (i) :encourage the development of a variety of types of housing for all income levels, including multifamily rental housing; " [and] (ii) [assist] " in the development of adequate housing to meet the needs of low-and moderate-income households."

F. The City will be limited in its ability to contribute to the attainment of State housing goals and top maintain a thriving mixed-income community without additional affordable housing.

G. Rising land prices have been a key factor in preventing development of new affordable housing. New housing construction in the City that does not include affordable units aggravates the existing shortage of affordable housing by absorbing the supply of available residential land. This reduces the supply of land for affordable housing and increases the price of remaining residential land. At the same time new housing contributes to the demand for goods and services in the City, increasing local service employment at wage levels that do not often permit employees to afford housing in the City. Providing the affordable units require by this ordinance will help to ensure that part of the City's remaining developable land is used to provide affordable housing.

Section 10-17.125 DEFINITIONS

As used in this Article, each of the following terms is defined as follows:

A. "Affordable Unit" is defined as an ownership or rental housing unit whose price is set at an "affordable housing cost" as defined in this Article.

B. Affordable Housing Cost," "Affordable Ownership Housing Costs" and "Affordable Rental Housing Costs" are defined as the percentage of gross income a household

spends on housing costs for a given income group as defined in California Health and Safety Code (Section 50052 through 50053).

C. "Applicant" is defined as any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities who seek real residential property development permits or approvals from the City of Hayward.

D. "Area Median Income (AMI)" is defined as the median income for the Oakland Primary Metropolitan Statistical Area (PMSA) as defined annually by the U.S. Department of Housing and Urban Development (HUD) and adopted by the California Department of Housing and Community Development (HCD). Income groupings that are subdivisions of AMI, such as Very Low, Low, Lower and Moderate-Income households, are also defined and published by HUD and adopted by HCD.

E. "Dwelling unit" is defined as a dwelling designed and intended for residential occupancy by one household.

F. "Household Income" is defined as the gross annual household income adjusted for household size and includes the income of all wage earners, elderly or disabled family members and any other sources of household income.

G. "Housing costs" are defined for:

1. ownership units, as the monthly mortgage principal and interest, property taxes, homeowner's insurance, and homeowner/condominium association fees (where applicable); and,

2. rental units, the monthly rent plus utility allowance, as defined by the Alameda County Housing Authority.

H. "Mixed-Use Development Project" is defined as a project that may include a mix of commercial, office, industrial or residential uses.

I. "Presumed Occupancy Levels" shall be used to establish the maximum household income to set rent levels and sales prices and are defined as:

1. One person for a studio unit;

2. Two people for a one bedroom unit;

3. Three people for a two bedroom unit; and

4. One additional person for each additional bedroom thereafter.

J. "Resale controls and/or rent restrictions" are defined as the restrictions, set forth by the City or by state and/or federal law, by which the rents on affordable units are

Rental Residential Development Projects

| 15% of the Units in any Rental Residential Development must be Affordable Units and be reserved for: | Percentage of Affordable Units | Percentage of Median Income Level Used to Determine Housing Costs | Percent of Income Used to Determine Affordable Housing Costs |
|---|---|---|---|
| | | | |
| Very Low-Income Occupants | 50% | 50 % of median | 30% |
| Low-Income Occupants | 50% | 60% of median | 30% |
| Moderate Income-Occupants | | | |

In applying these percentage allocations to Residential Development Project and mixed-use projects with rental units, any fraction of a unit shall be rounded to the next whole number unit and that unit shall be subject to the affordability requirements for very low-income occupants. If the federal or state funds are utilized in a residential rental project, requiring that all of the affordable units be set-aside for very low-income households, then those households can be substituted for the low income households shown in the chart above.

Owner-Occupied Residential Development Projects

| 15% of the Units in any owner-occupied Residential Development must be Affordable Units and be reserved for: | Percentage of Affordable Units | Percentage of Median Income Level Used to Determine Housing Costs | Percent of Income Used to Determine Affordable Housing Costs |
|---|---|---|---|
| Very Low-Income Occupants | | | |
| Low-Income Occupants | | | |
| Moderate-Income Occupants | 100% | 110% | 35% |

In applying these percentage allocations to ownership type developments, any fraction of a unit shall be rounded to a whole unit. If a development is built on a condominium map, but the units are placed on the rental market rather than being sold, then the provisions for rental units shall apply. Subsequently, if the units are sold as ownership housing, then the ownership housing provisions of this Article apply.

limited to ensure that the unit remains affordable to very-low-, low- or moderate-income households, as applicable, for a term of no less than 45 years. Such resale controls and/or rental restrictions shall generally be consistent with the requirements of Health and Safety Code Section 33334.3 (f) (2). With respect to rental units, such rent restrictions shall generally be in the form of a regulatory agreement recorded against the applicable property. With respect to owner occupied units, such resale controls shall generally be in the form of resale restrictions, deeds of trust and/or other similar documents recorded against the applicable property.

K. "Residential Development Project" is defined as detached single-family dwellings, multiple dwelling structures, groups of dwellings, condominium or townhouse developments, condominium conversions, cooperative developments, mixed use developments that include housing units. This definition also includes contiguous or non-contiguous parcels that have one or more applications filed within a twenty-four month period and which are under the same ownership.

Section 10-17.200. RESIDENTIAL DEVELOPMENT

Section 10-17.205 UNIT THRESHOLD FOR AFFORDABLE PROJECTS AND PERCENTAGE OF AFFORDABLE UNITS

All Residential Development Projects consisting of 10 (ten) or more dwelling units designed and intended for permanent occupancy located in any zoning district, for which an application for any use permit, site development permit or subdivision map is filed after the effective date of the Article, shall maintain a percentage of the total number of dwelling units or parcels within the development as affordable units, according to the terms of this Article. The foregoing requirement shall be applied no more than once to an approved development, regardless of changes in the character or ownership of the development, provided the total number of units does not change.

At least 15% of the dwelling units of the Residential Development Project shall be set aside as Affordable Units. Where the calculation of the inclusionary requirement results in a fraction of a unit, such fraction shall be rounded to the next whole number and that resulting unit shall be subject to the affordability requirements of this Article. If a change in the subdivision design or site plan results in a change in the total number of units, the number of Affordable Units required will be recalculated to coincide with the final approved project.

For purposes of calculating the number of Affordable Units, any additional units authorized as a density bonus under California Government Code Section 65915 (b)(1) or (b)(2) will not be counted in determining the required number of Affordable Units.

Section 10-17.210 AFFORDABILITY LEVELS AND INCOME GROUPS.

All units provided pursuant to the requirements of this Article shall be made affordable to very-, low- and moderate- income households pursuant to the minimum distributions described in the following table:

Section 10-17.215 DESIGN, DISTRIBUTION AND TIMING OF AFFORDABLE UNITS

The Affordable Units shall be integrated with Residential Development Project as a whole and be comparable in infrastructure (including sewer, water and other utilities), construction quality and exterior design to the market-rate units. Specifically:

1. Rental Residential Development Projects: All Affordable Units shall reflect the range and numbers of bedrooms provided in the project as a whole, and shall not be distinguished by design, construction, or materials. All Affordable Units shall be reasonably dispersed throughout the project.
2. Owner-occupied Residential Development Projects : When Affordable Units are required in owner-occupied Residential Development Projects, the units should be integrated with the project as a whole. Affordable Units may be smaller in aggregate size and have different interior finishes and features than market-rate units so long as the interior features are durable, of good quality and consistent with contemporary standards for new housing. The number of bedrooms must be the same as those in the market-rate units, except that if the market-rate units provide more than four bedrooms, the Affordable Units need not provide more than four bedrooms.
3. No building permits will be issued for market-rate units until permits for all Affordable Units have been obtained, unless Affordable Units are to be constructed in phases pursuant to a plan approved by City Council.
4. Market-rate units will not be inspected for occupancy until all Affordable Units have been constructed, unless Affordable Units are to be constructed in phases pursuant to a plan approved by City Council.

Section 10-17.220 DURATION OF AFFORDABILITY REQUIREMENT.

Affordable Units produced under this Article must be legally restricted to occupancy by households of the income levels for which the units were designated for a minimum of 45 years.

Section 10-17.300. COMPLIANCE PROCEDURES.

Section 10-17.305 GENERAL

The provisions of this Article shall apply to all agents, successors and assignees of an Applicant, developer, builder or property owner proposing a Residential Development Project governed by this Article. No tentative map, use permit, special development permit or occupancy permit shall be issued for any Residential Development Project unless exempt from or in compliance with the terms of this Article.

The City may institute any appropriate legal actions or proceedings necessary to ensure compliance herewith, including but not limited to actions to revoke, deny or suspend any permit or development approval.

Section 10-17.310 INCLUSIONARY HOUSING PLAN.

The Applicant must submit an Inclusionary Housing Plan (IHP) which will be treated as part of the development application. In accordance with the Permit Streamlining Act, and subject to the time limits thereof, the Planning Director shall determine whether the IHP is complete. If the IHP is incomplete, the IHP will be returned to the Applicant with a list of the deficiencies or the information required. No application for a site plan review, tentative map, or building permit to which this Article applies shall be finalized until the IHP is deemed complete by the Planning Director. At any time during the review process, the Planning Director may require from the Applicant additional information reasonably necessary to clarify and supplement the application or determining the consistency of the proposed IHP with the requirements of this Article.

The IHP must be submitted at time of application and include:

1. The location, structure (attached, semi-attached, or detached), proposed tenure (for-sale or rental), and size of the proposed market-rate, commercial space and/or Affordable Units and the basis for calculating the number of Affordable Units;
2. A floor or site plan depicting the location of the Affordable Units;
3. The income levels to which each Affordable Unit will be made affordable;
4. The documents that will be used to assure that the units remain affordable for the desired term, such as resale and rental restrictions, deeds of trust, and rights of first refusal and other documents;
5. For phased Residential Development Projects, a phasing plan that provides for the timely development of the number of Affordable Units proportionate to each proposed phase of development as required by this Article;
6. A description of any incentives that are requested by the Applicant;
7. Any alternative means proposed for the Residential Development Project along with information necessary to support the findings required for approval of such alternatives;
8. A marketing plan that describes how the Applicant will inform the public, and those within the appropriate income groups, of the availability of Affordable Units; and
9. Any other information reasonably requested by the Planning Director to assist with evaluation of the IHP under the standards of this Article.

Inclusionary Housing Plans that meet all of the requirements of this Article shall be approved by the Planning Director. An Inclusionary Housing Plan that requests a waiver of any of the requirements set forth in this Article requires approval of City Council.

Section 10-17.315 INCLUSIONARY HOUSING AGREEMENT.

The form of the Inclusionary Housing Agreement (IHA) will vary, depending on the manner in which the provisions of this Article are satisfied for a particular development. An IHA must include, at minimum, the following:

1. Description of the development, including whether the Affordable Units will be rented or owner-occupied;
2. The number, size and location of Very Low-, Low- or Moderate-Income Units;

3. Inclusionary incentives by the City (if any), including the nature and amount of any local public funding;
4. Provisions and/or documents for resale restrictions, deeds of trust, rights of first refusal or rental restrictions;
5. The Marketing Plan for sale or rental of the Affordable Units;
6. Provisions for monitoring the ongoing affordability of the units, and the process for qualifying prospective resident households for income eligibility; and
7. Any additional obligations relevant to the compliance with this Article.

The form of the IHA resale and rental restrictions, deeds of trust, rights of first refusal and other documents authorized by this subsection must be approved by the City Manager or his or her designee prior to being executed with respect to any Residential Development Project.

Approval of an IHA and implementation of an approved IHA is a condition of any tentative map or building permit for any Residential Development Project for which this Article applies.

Section 10-17.400. EXEMPTIONS.

The requirements of this Article do not apply to the reconstruction of any structures that have been destroyed by fire, flood, earthquake or other act of nature, provided that the reconstruction of the site does not increase the number of residential units by more than five.

Section 10-17.500. AFFORDABLE UNIT IN-LIEU FEE.

The primary purpose of this Article is to increase the supply of Affordable Housing Units throughout the City. Affordable Units shall be integrated within Residential Development Projects as much as possible. In Residential Development Projects consisting solely of for-sale units, the Applicant may request a waiver of the requirement to build Affordable Units in exchange for the payment of an Affordable Unit In-Lieu Fee.

The Applicant shall furnish a report identifying all overriding conditions impacting the for-sale Residential Development Project that prevent the Applicant from meeting the requirement to construct the Affordable Units and provide sufficient independent data, including appropriate financial information, to support the Applicant's claim that it is not feasible to construct the required Affordable Units. A detailed analysis of why the various concessions and incentives identified cannot mitigate the identified conditions that are preventing the Applicant from constructing the Affordable Units. The Planning Director shall review all such requests and prepare a recommendation for the City Council.

Such requests shall be considered on a case-by-case basis by the City Council and may be approved, at the City Council sole discretion, if the City Council determines that there are overriding conditions impacting the project that prevent the Applicant from meeting the requirement to construct Affordable Units and that payment of the in-lieu fee will further housing opportunities.

The amount of the Affordable Unit In-Lieu Fee shall be established by resolution of the City Council. The In-Lieu Fee amount will be reviewed annually, or as needed, and adjusted as

necessary and appropriate, at the City Council's discretion. At a minimum, the fee shall be sufficient to construct one unit of affordable housing.

Fees shall be paid prior to issuance of the first building permit for the Residential Development Project or secured at that time by an approved letter of credit. No Certificate of Occupancy will be issued for any dwelling unit in that Residential Development Project unless the fees required under this Article have been paid in full.

The In-Lieu Fee shall be placed in an Affordable Housing Trust Fund and used to develop affordable housing units.

Section 10-17.600 DEVELOPMENT INCENTIVES AND ALTERNATIVES.

This Article confers economic and land use benefits for Applicants of Residential Development Projects that meet the requirements of this Article, as set forth below.

1. Density Bonus. The City Council, upon request, may approve an increase in the number of units per acre permitted in a proposed Residential Development Project governed by this Article, when such an increase in density is consistent with state density bonus law as set forth in Section 65915 of the State Government Code. In calculating the number of affordable units required by this Article, any additional units authorized as a density bonus pursuant to state law shall not be counted as part of the residential project.
2. Off-Site Construction. City policy is that Affordable Units must be integrated within Residential Development Projects as much as possible. Where Affordable Units are required, an Applicant may instead construct units not physically contiguous to the development (off-site) if the City Council determines that:
    a. Off-site construction will further affordable housing opportunities in the City to a greater extent than construction of the required units as part of the proposed residential project;
    b. A schedule for completion of the off-site units concurrently with completion of the related market-rate units is provided and agreed upon as a condition of approval for the project;
    c. The off-site units are at least equal in size and amenities to Affordable Units which would be allowed in the project, or any comparative deficiency in size or amenities is compensated for by additional units, larger units or affordability to households with lower incomes; and
    d. If the original development is located in the redevelopment agency project area and the off-site location is located outside of the redevelopment project area, for every one unit that is required to be built in the original location, two units shall be developed in the off-site location.
3. Modified Development Standards to Increase Density.
    a. In a residential project which contains single family detached homes, Affordable Units may be attached dwelling units rather detached homes. In a residential project that includes attached multi-story dwelling units, Affordable Units may

contain only one story;

b. When a Residential Development Project is on a major transportation route, the Applicant may request that City Council reduce the number of parking spaces required for the development based on the assumption that some households will take public transportation to their jobs. This will allow for increased density within the development.

4. Combination of Alternatives. The City Council may choose to accept any combination of on-site construction, off-site construction, in-lieu fees and land dedication that at least equal the cost of providing the Affordable Units on-site as would otherwise be required by this Article.

5. Expedited Processing. Expedited processing of development approvals and permits will be available for Residential Development Projects with Affordable Units.

6. Technical and Financial Assistance. Upon request, information shall be provided to developers, builders or property owners regarding design guidelines and financial subsidy programs for Residential Development Projects.

Section 10-17.700 IMPLEMENTING THE REGULATORY AGREEMENT OR DEED RESTRICTION.

Section 10-17.705 TERM OF AGREEMENT.

Prior to the issuance of a Certificate of Occupancy, a regulatory agreement shall be recorded against parcels having Affordable Units and shall be effective for a term of at least 45 years. This term shall begin on the date on which the Certificate of Occupancy is issued.

Section 10-17.710 RIGHT OF FIRST REFUSAL FOR OWNER-OCCUPIED UNITS.

It is the responsibility of the seller of a Dwelling Unit, subject to the affordability terms of this Article, to select a purchaser that meets the income requirements of this Article. Information regarding potential purchasers who may meet the income criteria may be obtained from the City of Hayward First-Time Homebuyer Program staff or from similar programs offered by other municipalities, lenders or local housing organizations. The resale restrictions shall provide that in the event of the sale of a unit subject to the requirements of this Article, if the seller is unable to find an eligible and qualified purchaser, the City shall have the right to purchase said unit at the price that could be charged to an income-eligible purchaser.

Section 10-17.715 RECORDING OF AGREEMENT.

An approved Inclusionary Housing Agreement must be recorded against owner-occupied Affordable Units and Residential Development Projects containing rental Affordable Units. Additional rental or resale restrictions, deeds of trust, rights of first refusal and/or other documents acceptable to the City Manager or his designee must also be recorded against owner-

occupied Affordable Units. In cases where the requirements of this Article are satisfied through the development of Off-Site Units, the Inclusionary Housing Agreement must simultaneously be recorded against the Residential Development Project site and the property where the off-site units are to be developed.

Section 10-17.800. ELIGIBILITY FOR AFFORDABLE UNITS.

Section 10-17.805 SELECTION CRITERIA.

No household shall be permitted to occupy an Affordable Unit unless the City Manager or his designee has first approved the household's income eligibility. Income-eligible occupants of Affordable Units will be qualified on the basis of household income adjusted for household size in accordance with California Health and Safety Code 50052 and 50053, or any successor statute. The developer, property owner or property manager shall use an equitable selection method established in compliance with the terms of this Article and approved by the City Manager or his designee. If qualified, persons shall be selected for occupancy of an Affordable Unit governed by this Article based on the following criteria:

1. First Priority: Persons who live or work within the City of Hayward.
2. Second Priority: All other eligible households.

Section 10-17.810 CONFLICT OF INTEREST.

The following individuals are ineligible to purchase or rent an Affordable Unit: City employees and officials (and their immediate family members) who have policy-making authority or influence regarding City housing programs and do not qualify as having a remote interest as provided by California Government Code; the Applicant and its officers and employees (and their immediate family members); and the Owner and its officers and employees (and their immediate family members).

Section 10-17.815 OCCUPANCY.

Any household who occupies an Affordable Rental Unit or purchases an Affordable Ownership Unit must occupy that unit as a principal residence. Should the household cease to occupy that unit as their primary residence then the household will be in default of their affordable housing agreement or lease.

Section 10-17.820 OWNER-OCCUPIED UNITS.

The initial and subsequent sales prices of the Affordable Unit must be set at the Affordable Ownership Housing Cost for one, two, three or four bedroom units, as appropriate.

1. Transfer of Restrictions. When the ownership of an owner-occupied Affordable Unit is transferred, prior to the expiration of the 45-year affordability period, each new owner must sign an Inclusionary Housing Agreement to complete the 45-year term.

2. Resale. The maximum sales price permitted on resale of an Affordable Unit designated for owner-occupancy shall be the lower of (1) fair market value or (2) the seller's lawful

purchase price, increased by the lesser of (i) the rate of increase of Area Median Income during the seller's ownership or (ii) the rate at which the consumer price index increased during the seller's ownership. To the extent authorized in any resale restrictions or operative Inclusionary Housing Agreement, seller may recover, at time of sale, the value of capital improvements made by the seller (for which there are receipts) and the seller's necessary and usual costs of sale. The City Manager or his designee may authorize an increase in the maximum allowable sales price to achieve such recovery. Capital improvements are limited to new construction on the house or property. Repairs of any type, including but not limited to roofs, bathrooms and kitchens, are not considered capital improvements.

3. Changes in Title. Title to the Affordable Unit may change due to changes in circumstance, including death, marriage and dissolution of marriage. If the owners are joint tenants with right of surviorship, upon the death of one of the owners, title to the property may transfer to the surviving owner without respect to the income-eligibility of the household.

   If the owners are tenants-in-common, upon the death of a sole owner, all owners or one of the owners, inheritance of the Affordable Unit by a non-income-eligible child, stepchild or other party is not allowed. The Affordable Unit should be sold as soon as feasible; however, there will be a one year compassion period between the death and the time when the Affordable Unit must be sold to an income-eligible household.

   Except as otherwise provided by this section, if a change in title is occasioned by events, such as a marriage or dissolution of a marriage and subsequent remarriage, that change the financial situation of the household so that it is above moderate income, then the property must be sold to an income-eligible household within one year.

Section 10-17.825 RENTAL UNITS.

Affordable Rental Units shall be offered to eligible households at an Affordable Rental Housing Cost. The owner of rental Affordable Units shall certify each tenant's Household Income to the City Manager or his designee at the time of initial rental and annually thereafter. The owner must obtain and review documents that demonstrate the prospective tenant's Household Income, such as income tax returns or W-4's for the previous calendar year, and submit such information on a form approved by the City Manager. The City Manager or his designee will review all income verifications and documents that substantiate the prospective tenant household's total income to determine their completeness and accuracy. No tenant may move into an Affordable Unit prior to authorization by the City Manager or his designee.

Section 10-17.830 MARKETING PLAN.

Owners may fill vacant units by selecting income-eligible households in accordance with the approved Marketing Plan contained in the Inclusionary Housing Agreement.

Section 10-17.835 COMPLIANCE REPORTS.

The owner shall submit quarterly compliance reports summarizing the occupancy of each Affordable Unit. Annually, the owner shall re-certify the tenant for income-eligibility and submit an annual report. The forms and format used will be the same as for the Tax Exempt Multifamily Mortgage Bond Program or its successor.

Section 10-17.840 SUBSEQUENT RENTAL TO INCOME-ELIGIBLE TENANT.

The owner shall apply the same rental terms and conditions to tenants of Affordable Units as are applied to all other tenants, except as required to comply with this Article (e.g., rent levels, occupancy restrictions and income requirements) or with other applicable government subsidy programs. Discrimination against persons receiving housing assistance is prohibited.

Section 10-17.845 CHANGES IN TENANT INCOME.

If, after moving into an Affordable Unit, a tenant's Household Income exceeds the limit for that unit, the tenant household may remain in the unit as long as his or her household income does not exceed 140 percent of the income limit. Once the tenant's income exceeds 140 percent of the income limit, the following shall apply:

1. If the tenant's income does not exceed the income limits of other Affordable Units in the Residential Development Project, the owner may, at the owner's option, allow the tenant to remain in the original unit and re-designate the unit as affordable to households of a higher income level, as long as the next vacant unit is re-designated for the income category previously applicable to the tenant's household. Otherwise, the tenant shall be given one year's notice to vacate the unit. If, during the year, an Affordable Unit becomes available and the tenant meets the income eligibility for that unit, the owner shall allow the tenant to apply for that unit.

2. If there are no dwelling units designated for a higher income category within the Residential Development Project that may be substituted for the original unit, the tenant shall be given one year's notice to vacate the unit. If, within that year, another unit in the Residential Development Project is vacated, the owner may, at the owner's option, allow the tenant to remain in the original unit and raise the tenant's rent to market-rate and designate the newly vacated unit as an Affordable Unit at the income-level previously applicable to the unit converted to market rate. The newly vacated unit must be comparable in size (for example, number of bedrooms, bathrooms, square footage, etc.) as the original unit.

Section 10-17.900 ADJUSTMENTS AND WAIVERS.

If the Applicant demonstrates to the City Council that there is not a reasonable relationship between the impact of a proposed Residential Development Project and the requirements of this Article, or that applying the requirement of this Article would take property in violation of the United States or California Constitutions, the requirements of this Article may be adjusted or waived.

Section 10-17.905 TIMING.

To receive an adjustment or waiver, the Applicant must make a showing of necessity and demonstrate the lack of reasonable relationship or taking of property when making application for the Residential Development Project, and/or as part of any appeal that the City provides as part of the process for the first approval.

Section 10-17.910 CONSIDERATIONS.

In making a determination on an application to adjust or waive the requirements of this Article, the City Council may assume each of the following when applicable: (i) that the Applicant is subject to the inclusionary housing requirement or in- lieu fee; (ii) the extent to which the Applicant will benefit from inclusionary incentives; (iii) that the Applicant will be obligated to provide the most economical Affordable Units feasible in terms of construction, design, location and tenure; and (iv) that the Applicant is likely obtain other housing subsidies where such funds are reasonably available.

Section 10-17.915 MODIFICATION OF PLAN.

If the City Council determines that the application of the provisions of this Article lacks a reasonable relationship between the impact of a proposed residential project and the requirements of this Article, or that applying the requirement of this Article would take property in violation of the United States or California Constitutions, the Inclusionary Housing Plan shall be modified, adjusted or waived to reduce the obligations under this Article to the extent necessary to avoid an unconstitutional result. If the City Council determines no violation of the United States or California Constitutions would occur through application of this Article, the requirements of this Article remain applicable.

Section 10-17.1000 AFFORDABLE HOUSING TRUST FUND.

Section 10-17.1005 TRUST FUND.

There is hereby established a separate Affordable Housing Trust Fund ("Fund"). This Fund shall receive all In-Lieu Fees and may also receive monies from other sources.

Section 10-17.1010 PURPOSE, LIMITATIONS AND ADMINISTRATION.

Monies deposited in the Fund must be used to increase and improve the supply of housing affordable to Moderate-, Low-, and Very Low-Income households in the City. Monies may also be used to cover reasonable administrative or related expenses associated with the administration of this Article.

The Fund shall be administered by the City Manager or his designee who shall develop procedures to implement the purposes of the Fund consistent with the requirements of this Article and any adopted budget of the City."

Section 3: Severance. Should any part of this ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 4. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective 30 days from and after the date of its adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the____day of_____, 2003, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward held the___ day of _____, 2003, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

_____

City Attorney of the City of Hayward