

DATE: March 23, 2010

TO: Mayor and City Council

FROM: Development Services Director
City Attorney

SUBJECT: Consideration of Approval of a Non-Purchasing Resident Protection Agreement for the Eden Gardens Mobile Home Park

RECOMMENDATION

That the City Council adopts the attached resolution (Attachment I) authorizing the City Manager to execute the Non-Purchasing Resident Protection Agreement (Attachment II) related to the conversion of the Eden Gardens Mobilehome Park to resident ownership.

DISCUSSION

Eden Gardens Mobilehome Park (see area map, Attachment III), like the other eight mobilehome parks in the City, is currently operated as a rental mobilehome park. On November 5, 2009, the Planning Commission approved Parcel Map 9700 to convert the park's 129 mobilehome rental spaces to "condominiums" (see Attachments IV and V). The Planning Commission action was not appealed and subsequent action by the City Council was not required. The Commission action requires the applicant and residents to enter into a Non-purchasing Resident Protection Agreement in substantially the form set forth in the Tenant Impact Report (TIR).

The applicant, The Loftin Firm, submitted the required TIR on behalf of the park owner, Eden Gardens Mobilehome Park, LLC, pursuant to the California Government Code, with the Parcel Map application. Pursuant to the TIR, and to the Non-Purchasing Resident Protection Agreement negotiated by the applicant and the residents' representatives, protections would be afforded to those residents who elect not to purchase their space. All residents will be afforded the opportunity to either 1) buy the space on which their mobilehome is situated, or 2) continue to rent the space.

Furthermore, if a low-income resident elects to continue to rent his or her space, then the rent increases will be governed by California Government Code Section 66427.5(f), which provides greater protection against rent increases than the City's rent control ordinance. Specifically, based on the State rent control provisions for low-income households, the increase in base rent would be the average percentage increase for the previous four years, not to exceed the consumer price index (CPI) average monthly percentage increase for the most recently reported period. This formula

would provide greater protection than the formula currently in effect under the City's rent control ordinance, in that the annual, permissible rent increase under City law is 60% of CPI or 3%, whichever is greater. Also, under City law, the owner may "pass-through" some qualifying capital improvement costs, among other things, in the form of rent increases. Under the state provisions, there is no minimum amount that can be charged and no pass-throughs are permitted.

In addition, the Eden Gardens owner has agreed to rent protections for non-low-income residents who elect to rent their space, beyond the protection afforded by state law. Under State Government Code Section 66427.5, non-low-income rent may be increased to full market value over the course of four years. The park owner has, in the Non-Purchasing Resident Protection Agreement (Attachment II), agreed to a formula that limits the rent increases for non-low-income renters and extends the rent protection to both the residents who elect not to purchase their space, and, upon their death, to a child of that resident; protections above and beyond the protections provided in the State rent control provisions.

Under the proposed agreement, the base rental increase shall not exceed the CPI average monthly percentage increase for the most recently reported period, plus the percentage difference between the low- and moderate-income levels. Under State law, the non-low-income households would enjoy only temporary protection from an increase in rent for a period of four years as the rent is increased to market level. As set forth in the Non-Purchasing Resident Protection Agreement, the owner, however, has offered rent protection for the life of the non-low-income resident and a child of that resident.

The proposed Non-Purchasing Resident Protection Agreement provides that the City will enforce the terms and conditions of the agreement through its Mobilehome Space Rent Stabilization Ordinance, which contains a comprehensive dispute resolution process. Staff recommends that the City Council consents to the application of the ordinance's dispute resolution processes as provided in the agreement and authorizes execution of the agreement negotiated by the park owner and the residents.

NEXT STEPS

The park owner must file a Final Parcel Map with the City for recordation and then file the required documents with the State Department of Real Estate in order to receive approval to sell the condominium interests in the park.

Prepared by: Richard E. Patenaude, AICP, Planning Manager

Recommended by: Michael Lawson, City Attorney
David Rizk, Development Services Director

Approved by:



Gregory T. Jones, City Manager

Attachments:

- Attachment I (Resolution Authorizing the City Manager to Execute the Non-Purchasing Resident Protection Agreement)
- Attachment II (Non-Purchasing Resident Protection Agreement)
- Attachment III (Area Map)
- Attachment IV (Planning Commission Report, November 5, 2009)
- Attachment V (Planning Commission Minutes, November 5, 2009)

HAYWARD CITY COUNCIL

RESOLUTION NO. 10-

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO
EXECUTE THE EDEN GARDEN ESTATES MOBILEHOME
COMMUNITY NON-PURCHASING RESIDENT PROTECTION
AGREEMENT

BE IT RESOLVED by the City Council of the City of Hayward that the City Manager is hereby authorized and directed to execute the proposed Eden Garden Estates Mobilehome Community Non-Purchasing Resident Protection Agreement, consenting to enforcement of the provisions of the Agreement through the dispute resolution procedures of the City's Mobilehome Space Rent Stabilization Ordinance.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2010

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

**EDEN GARDEN ESTATES MOBILEHOME COMMUNITY
NON-PURCHASING RESIDENT PROTECTION AGREEMENT**

This NON-PURCHASING RESIDENT PROTECTION AGREEMENT (the "Agreement") is entered into as of January 29, 2009 by and among the Eden Garden Estates Residents' Club (the "Association"), an unincorporated association; and Eden Gardens MHP, LLC, a California Limited Liability Corporation (the "Owner"); and the City of Hayward, a governmental subdivision of the State of California (the "City")(collectively when referring to the Association, the Owner and the City they shall be referred to as the "Parties"; when referring to only one the reference shall be to the "Party")

RECITALS

A. The Association represents the mobilehome owners who rent spaces (the "Residents") in Eden Garden Estates Mobilehome Park (the "Park") located at 1150 West Winton Avenue, Hayward, CA 94545 from the Owners of the Park.

B. The Owners of the Park are desirous of converting the Park from a rental mobilehome park to a resident owned mobilehome park in the form of a *single family manufactured housing condominium project* ("Resident Ownership" or "Resident Owned Park").

C. To obtain the necessary governmental permits to convert the Park to Resident Ownership, the City must approve the application.

D. In the event that the City approves the Owner's application to convert the Park to Resident Ownership, the Parties desire to protect the Residents who do not purchase their lots and who elect to continue renting the space on which their mobilehome is located. (the "Non-Purchasing Residents")

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the Parties hereby agree as follows:

1. **INCORPORATION OF RECITALS.** The parties hereby incorporate the Recitals as though fully set forth at this point.
2. **SENIOR/OLDER PERSON DESIGNATED PROPERTY.**
 - a. **Owner's Obligation to Withdraw Notice of Intent to Change Age Rule.** On or about May 8, 2008, the Owner delivered a notice of intent to change the Rules of the Park (the "Notice of Intent") to eliminate the age requirements applicable to

Residents of the Park. Upon execution of this Agreement by the Parties, the Owner will withdraw the Notice of Intent and will continue to require that at least one resident of each mobilehome is a Qualified Resident (as defined below), except as set forth herein or as would conflict with California Civil Code § 798.76 or the Federal Fair Housing Act, as amended by Public Law 104-76, as may either be amended from time to time.

b. **After Conversion Deed Restriction to Protect "Senior" Status.** In the event that the City approves the application to convert the Park to Resident ownership, the Owner shall place a deed restriction on all lots (units) in the Park to ensure that at least one resident of each mobilehome is a Qualified Resident (as defined below), except as set forth herein or as would conflict with California Civil Code § 798.76 or the Federal Fair Housing Act, as amended by Public Law 104-76, as may either be amended from time to time.

c. **Definitions of Permitted Persons:**

i. **Qualifying (Qualified) Resident or Senior Citizen** means a person 55 years of age or older, who is, also, on title to the mobilehome, and has either executed a rental/lease agreement with the Owners or own the lot (unit).

ii. **Housing Limited to Qualified Resident:** At least one person who will be residing in the mobilehome must be a Qualified Resident.

iii. **Qualified Permanent Resident** shall mean a person 45 years or older who regularly resides with the Qualified Resident, or any person who is between 18 and 45 years of age and who (1) resided in the Park, is listed on the rental/lease agreement and is on the title to the mobilehome as of the date hereof and (2) resided in the Park at the specific unit for at least a 90 day period prior to December 31, 2008. All other Residents of the mobilehome located on a rented space must be a Qualified Permanent Resident, except as set forth in section 1.d.

d. **Caretaker for Qualified Resident Exception:**

i. In addition to Qualified Residents and Qualified Permanent Residents, a person administering live-in health care, supportive care or supervision to the Qualified Resident (each, a **Caretaker**) shall be permitted to reside in the Park, so long as (A) the Caretaker is required pursuant to a written treatment plan prepared by a physician and such plan is provided to the Owner or to the subdivision homeowners' association (the "Homeowners" Association), which ever is applicable, and (B) the Caretaker submits an application to and is approved by the Owner or Homeowners' Association, which ever is applicable.

ii. The Caregiver cannot be disapproved on the basis of the age of the Caretaker, if the proposed Caretaker is 18 years of age or older.

Limitation on Rights of Approved Caregiver: The Approved Caregiver shall have no rights of tenancy in, and shall comply with the rules and regulations of the Park and/or Homeowners' Association and all other Operating Documents. The right to occupy the housing unit shall terminate upon the vacation of the housing unit for ninety (90) days or more by the Qualified Resident.

e. **Qualified Resident as Caretaker Exception.** If a Qualified Resident is providing live-in health care, supportive care or supervision to a parent, sibling, child, or grandchild who is over the age of 18 (each, a "Dependent"), pursuant to a written treatment plan prepared by a physician, such Dependent shall be permitted to reside in the Park.

f. **Persons Permitted on Title:**

i. Each title to a mobilehome (a "Title") must include the name of a Qualified Resident or the name of a trust, duly created and organized under applicable law [, created by or for the benefit of a Qualified Resident] (a "Trust").

ii. In addition to a Qualified Resident or a Trust, a Qualified Permanent Resident may be included on a Title. If a Qualified Permanent Resident is included on a Title and the Qualified Resident vacates the property, the Qualified Permanent Resident may continue to occupy the mobilehome.

iii. In addition to a Qualified Resident or a Trust, a family member or any other person may be included on the Title for estate planning purposes. If such family member or other person is included on the Title and is not a Qualified Permanent Resident and the Qualified Resident vacates the mobilehome, such person must proceed through the Park's standard application process and meet all qualification requirements, including the requirement that one person residing in the mobilehome be a Qualified Resident, in order to continue occupying the mobilehome.

3. OCCUPANCY RIGHTS.

If Resident Ownership is approved, the occupancy rights of the Non-Purchasing Residents shall continue to be governed by the Mobilehome Residency Law, *Civil Code §§ 798 et seq.* and the Mobilehome Parks Act, *Health & Safety Code §§ 18200 et seq.*, both statutes as amended from time to time, among others.

The Mobilehome Residency Law sets forth, among other things, the reasons for which a resident may be required to move from the Park, for example, failure to pay space rent and utility charges. If a Non-Purchasing Resident is evicted from the Park, the protections set forth in this Agreement shall no longer apply to such Non-Purchasing Resident, subject to Section 7 below.

Non-Purchasing Residents who rent a space shall have the right to input regarding the rules applicable to Park residents. See *Civil Code* § 798.25.

4. ASSIGNMENT OF RIGHTS UNDER THIS AGREEMENT UPON DEATH:

a. Upon the death of a Qualified Resident, a Permanent Qualified Resident will have the same rights as the Qualified Resident under this Agreement.

b. Upon the death of a Qualified Resident or a Qualified Permanent Resident, the child, natural or adopted, of such Qualified Resident may continue to reside in, or may move into, the mobilehome without purchasing the space; provided that such child is either (i) a Qualified Resident, or (ii) was residing in the mobilehome under the care of the Qualified Resident or Qualified Permanent Resident pursuant to Section 2(c) of this Agreement. If the child remains in the mobilehome pursuant to clause (ii), a replacement caretaker shall be permitted to live with such child. The child of a deceased Qualified Resident or Qualified Permanent Resident shall have the same rights as the deceased under this Agreement, except that the right provided by this subsection 4(b) may only be exercised once.

c. Without being deemed an assignment of rights under this Agreement, a Qualified Resident has the limited right under the Mobilehome Residency Law to (a) rent their mobilehome and sublease their space for up to one year if the Qualified Resident must be absent from the mobilehome for medical reasons (*See, Civil Code* § 798.23.5(a)(2)) and (b) rent a room in their mobilehome if the Qualified Resident is a single person (*See, Civil Code* § 798.34(b)).

5. RENTAL RIGHTS.

Should Resident Ownership be approved, the Non-Purchasing Residents shall receive the following rental rights based upon, in part, the income level of each household.

a. **City of Hayward's Rent Control Ordinance and Board.** The enforcing agency for the terms and conditions of this Agreement shall be the City through its Rent Control Ordinance and Board.

b. **Persons entitled to Receive the Protections Provided in This Agreement.** The following categories of persons are protected by the rental increase restrictions provided herein:

i. **Residents of the Park on the Date of Conversion.** Anyone who is a Qualified or Qualified Permanent Resident of the Park or an approved extended guest is protected, including without limitation, spouse, significant others and legally protected persons (“Protected Resident”).

ii. **Rent Control for “Protected Persons” After Death of Qualified or Qualified Permanent Resident.** Upon the death of a Qualified or Qualified Permanent Resident, the following persons hereinafter referenced as the “Protected Persons” may assume all of the rights granted under this Agreement: Children, natural or adopted children of the Qualified Resident. For a child to move into the mobilehome, that child must be 55 years or older, except that a child who is younger and has been under the care of the Qualified or Qualified Permanent Resident, that child and a replacement caregiver, if required, may remain in the mobilehome without purchasing the under the protection of this Agreement. (See, Paragraph 1. Senior/Older persons above.)

c. **Rent Control on Annual Rent Increases.**

i. **Low-Income Households:** The Low Income Households receive a guarantee of reduced rental increases beyond that which the City, or any local jurisdiction, can enact under the current rent control cases and laws of California. Low income is defined in Section 66427.5 by referencing California Health & Safety Code Section 50079.5, which in turn defines Low Income Households as persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937. The other qualifying requirements, including, without limitation, asset limitations, shall be as defined in the United States Housing Act of 1937, as amended from time to time. Low Income Households are protected for the entire term of their tenancy. To qualify as Low-Income, the maximum income levels are as follows;

Income Must be at or Below ¹ :				
Household Size # of Persons	1	2	3	4
Lower Income	\$46,350	\$53,000	\$59,600	\$66,250

ii. **Rent Increase Formula:** The increase on base rent is the average percentage increase for the previous four (4) years but shall not exceed the consumer price index (“CPI”) average monthly percentage increase for the most recently reported period. Examples of the application of this rental formula are attached as Exhibit “A”.

iii. **Application Process:** The Resident must provide the same information and confirmation of the Resident’s income and permanent residence status at the Park as though that Resident were applying for a State of California, Mobilehome Park Ownership Program (“MPROP”) loan each year. In the event that program is no longer in

¹ Income limits obtained from the California Department of Housing and Community Development, Housing Policy Development: “Official State Income Limits for 2007” from www.hcd.ca.gov

existence, the last application documents will become the permanent documents, and the qualifying income levels will be those established by either the State of California Housing and Community Development Department (“HCD”) or the United States Housing and Community Development Department (“HUD”), at the election of the owner of the Space.

iv. **Comparison:** Based on these State rent control provisions, the Low Income Households enjoy greater protection than under the City of Hayward Rent Control Ordinance in that the annual rent increase is 60% of CPI or 3% but the Owner may utilize “pass-through” costs, pursuant to California Civil Code Section 798.49 and apply to the Hayward Rent Control Board for additional increases every twelve (12)-months. Under the Rent Control Program under this Agreement there is no minimum amount that can be charged and there are no pass-throughs. Attached hereto and hereby incorporated as though fully set forth is **Exhibit “B”**, a chart of the low-income rent increase maximums, assuming the project was converted as of May 2007.

d. **ALL OTHER-Income Households:** The Park Owner has further provided for the avoidance of economic displacement of ALL Other-Income household. The ALL Other Income Resident Households, who are permanent residents of the Park, will receive a guarantee of reduced rental increases beyond that which any local jurisdiction can enact under the current rent control cases and laws of California in that there is no provision which authorizes the Owner to pass the costs of expenses through to the Non-Purchasing Household. The Park Owner waives his right to increase space rents to market rate for ALL OTHER-Income Households as provided for in Government Code section 66427.5.

i. **Rent Increase Formula.** The base rental increase shall not exceed the Consumer Price Index (“CPI”) average monthly percentage increase for the most recently reported period plus the percentage difference between the Low and the Moderate income levels adjusted for household size as reported by the Department of Housing and Community Development. Examples of the application of this rental formula are attached as **Exhibit “C”**, which calculated the formula based upon a conversion date of May, 2007. The formula will be recalculated based upon the date of the issuance of the Final Public Report from the California Department of Real Estate.

ii. **Application Process:** The Resident must provide the same information and confirmation of the Resident’s income and permanent residence status at the Park as though that Resident were applying for a State of California, Mobilehome Park Ownership Program (“MPROP”) loan each year. In the event that program is no longer in existence, the last application documents will become the permanent documents, and the qualifying income levels will be those established by either the State of California Housing and Community Development Department (“HCD”) or the United States Housing and Community Development Department (“HUD”), at the election of the Owner of the Space.

iii. **Comparison:** Based on State rent control provisions, the ALL Other Income Households enjoy **no** protection from an increase in rent. This provision has been added by the Park Owner to protect against any economic displacement of ALL Other income Residents who choose not to buy. Based on the City rent control provisions, the ALL other Income Households will **not** be protected from any application for a hardship rent increase.

6. RESTRICTION ON NUMBER OF SPACES (UNITS) WHICH CAN BE OWNED AFTER RESIDENT OWNERSHIP.

In the event that Resident Ownership is approved, those who purchase must buy both the mobilehome and the land and must reside in the Park for at least one year.

7. MISCELLANEOUS PROVISIONS.

a. **Commencement of Rights Under This Agreement.** The rights granted to the Residents and the obligations imposed on the Owner shall not commence until the sale of the first space within the Park, except that the confirmation of senior park shall be effective upon the last date this Agreement is signed by a Party hereto.

b. **Termination of This Agreement.** This Agreement shall terminate if the Park is not approved for Resident Ownership by a Governmental Agency or if the conditions imposed by a Governmental Agency are not acceptable to the Owner, in its sole discretion.

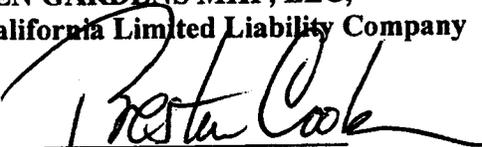
c. **Litigation between City and Owner.** All parties understand and agree that this Agreement may be used as part of an overall settlement agreement between the City and the Owner.

d. **Hardship Program.** The Owner will work with any Qualified or Qualified Permanent Resident who has a hardship in paying any future rent increase.

WE, THE UNDERSIGNED, HEREBY REPRESENT AND WARRANT THAT WE HAVE THE AUTHORITY TO EXECUTE THIS AGREEMENT ON BEHALF OF THE ENTITY WHICH IS A PARTY HERETO.

"OWNER"

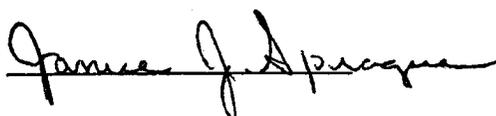
**EDEN GARDENS MHP, LLC,
a California Limited Liability Company**

By: 
Preston Cook, Member
Its: Managing Member
Date: 2/17/09

"ASSOCIATION"

**EDEN GARDEN ESTATES
RESIDENTS' CLUB, an
unincorporated association.**

By: 
Sharon Scheurer
Its: Mayor
Date: 2/6/09

By: 
Janice Sprague

Its: Vice Mayor
Date: 2-6-09

By: J Hendrik
Jay Henderick

Its: Secretary
Date: 2-6-09

By: Barbara Galvan
Barbara Galvan

Its: Treasurer
Date: 2-6-09

By: Philip Benoncourt
Philip Benoncourt

Its: Director
Date: 2/06/09

By: Lucille Cannata
Lucille Cannata

Its: Magazine Editor
Date: 2/6/09

By: _____
Rose Pettis

Its: Director
Date: Rose Pettis 2/06/09

By: Dawn Shepard
Dawn Shepard

Its: Director
Date: 2-06-09

"CITY"

CITY OF HAYWARD

By: _____

Its: _____

EXHIBIT "A"

EXAMPLE OF LOW-INCOME RENTAL INCREASE FORMULA (based upon 2007 information)

This exhibit outlines how the rent protections apply and gives specific examples for each the low income rent protection formulas. Please note all numbers used in this document are for EXAMPLE ONLY.

Income Levels

To qualify for the Low and Moderate Income rent protections provided for in the Tenant Impact Report ("TIR") the household in question must have an annual gross income at or below the following levels for 2008:

Household Size	1 Person	2 Persons	3 Persons	4 Persons
Low Income	\$46,350	\$53,000	\$59,600	\$66,250

These income limits are provided by the California Department of Housing And Community Development, Division of Housing Policy Development, and may be viewed at the following web address: <http://www.hcd.ca.gov/hpd/hrc/rep/state/incNote.html>.

Low Income Rent Formula

The base rental increase under the Low Income Rent Protection formula is the average increase for the previous four (4) years but shall not exceed (limited to) the Consumer Price Index ("CPI") average monthly percentage increase for the most recently reported period.

This means that for those households that qualify as Low-Income Households under the chart above, their rent will be limited to the average rental increase for the previous 4 years prior to the conversion, but in no event greater than the average monthly increase in CPI.

Examples

Past rental amounts:

2002	2003	2004	2005	2006
\$355.00	\$364.00	\$371.50	\$384.00	\$397.00

Past Rental Increases

03 Increase	04 Increase	05 Increase	06 Increase	Total
\$9.00	\$7.50	\$12.50	\$13.00	\$42.00

4-Year average Increase

$\$42.00 \div 4 \text{ (years)} = \10.50 Average **$\$10.50 = \text{Max Rent Increase}$**

CPI Increase

February 2006: **202.5** February 2007: **208.8** **Percentage Increase: 3.11%**

2006 Rent: **$\$397.00$** (x) CPI Increase: **3.11%** = **$\$12.34 \text{ CPI Rent Increase}$**

In the above Example the average of the past 4 rent increases is LOWER than the CPI increase, so the 4 year average would apply. If the CPI increase were LESS than \$10.50 then the CPI increase would cap the amount the rent could be increased even though the 4-year average was higher. Examples of the application of the above formula, where the applicable rent is in bold, would be as follows:

<i>4-Year average</i>	\$10.50	\$17.25	\$12.75	\$8.50
<i>CPI Increase</i>	\$12.34	\$15.05	\$21.08	\$18.02

Application of Rent Limits

The above formulas provide for a cap or limit on the amount one's rent may be increased. The rent may or may not be increased to the full Low Income Limit depending on the rent currently being paid and the market rent levels at the time of conversion.

EXHIBIT "B"
Low Income Rent Increase Maximums

Space #	2004	2005	2006	2007	Space #	05 Increase	6 Increase	7 Increase	Total 2004-2007	3-Year Average*	CPI Increase
101	\$405.95	\$405.95	\$405.95	\$430.13	101	\$0.00	\$0.00	\$24.18	\$24.18	\$6.05	\$12.47
103	\$405.11	\$417.26	\$428.78	\$454.87	103	\$12.15	\$12.52	\$24.89	\$49.56	\$12.39	\$13.19
105	\$415.48	\$427.94	\$440.78	\$466.00	105	\$12.46	\$12.84	\$25.22	\$50.52	\$12.83	\$13.51
107	\$384.34	\$385.87	\$407.75	\$431.98	107	\$1.53	\$21.88	\$24.23	\$47.64	\$11.91	\$12.53
108	\$422.61	\$435.22	\$448.28	\$473.73	108	\$12.61	\$13.08	\$25.45	\$51.12	\$12.78	\$13.74
109	\$391.41	\$403.15	\$415.24	\$439.70	109	\$11.74	\$12.09	\$24.48	\$48.29	\$12.07	\$12.75
110	\$464.64	\$478.57	\$492.93	\$519.72	110	\$13.93	\$14.36	\$26.79	\$55.08	\$13.77	\$15.07
111	\$451.43	\$464.97	\$478.92	\$505.29	111	\$13.54	\$13.95	\$26.37	\$53.86	\$13.47	\$14.65
112	\$429.74	\$442.63	\$455.91	\$481.59	112	\$12.89	\$13.28	\$25.68	\$51.85	\$12.96	\$13.97
113	\$451.43	\$464.97	\$478.92	\$505.29	113	\$13.54	\$13.95	\$26.37	\$53.86	\$13.47	\$14.65
114	\$429.74	\$442.63	\$455.91	\$481.59	114	\$12.89	\$13.28	\$25.68	\$51.85	\$12.96	\$13.97
115	\$464.64	\$478.57	\$492.93	\$519.72	115	\$13.93	\$14.36	\$26.79	\$55.08	\$13.77	\$15.07
116	\$422.61	\$435.22	\$448.28	\$473.73	116	\$12.61	\$13.08	\$25.45	\$51.12	\$12.78	\$13.74
117	\$429.74	\$442.63	\$455.91	\$481.59	117	\$12.89	\$13.28	\$25.68	\$51.85	\$12.96	\$13.97
118	\$415.48	\$427.94	\$440.78	\$466.00	118	\$12.46	\$12.84	\$25.22	\$50.52	\$12.63	\$13.51
119	\$415.48	\$427.94	\$440.78	\$466.00	119	\$12.46	\$12.84	\$25.22	\$50.52	\$12.63	\$13.51
120	\$438.87	\$452.03	\$465.59	\$491.92	120	\$13.16	\$13.56	\$26.33	\$53.05	\$13.26	\$14.27
121	\$395.63	\$395.63	\$395.63	\$419.50	121	\$0.00	\$0.00	\$23.87	\$23.87	\$5.97	\$12.17
122	\$405.95	\$405.95	\$405.95	\$430.13	122	\$0.00	\$0.00	\$24.18	\$24.18	\$6.05	\$12.47
123	\$377.25	\$388.56	\$400.22	\$424.23	123	\$11.31	\$11.66	\$24.01	\$46.98	\$11.75	\$12.30
124	\$422.61	\$435.22	\$448.28	\$473.73	124	\$12.61	\$13.08	\$25.45	\$51.12	\$12.78	\$13.74
125	\$377.25	\$388.56	\$400.22	\$424.23	125	\$11.31	\$11.66	\$24.01	\$46.98	\$11.75	\$12.30
126	\$393.93	\$393.93	\$393.93	\$417.75	126	\$0.00	\$0.00	\$23.82	\$23.82	\$5.98	\$12.11
127	\$398.64	\$410.59	\$422.91	\$447.80	127	\$11.95	\$12.32	\$24.69	\$48.96	\$12.24	\$12.98
128	\$422.61	\$435.22	\$448.28	\$473.73	128	\$12.61	\$13.08	\$25.45	\$51.12	\$12.78	\$13.74
129	\$384.34	\$395.87	\$407.75	\$431.98	129	\$11.53	\$11.88	\$24.23	\$47.84	\$11.91	\$12.53
130	\$422.61	\$435.22	\$448.28	\$473.73	130	\$12.61	\$13.08	\$25.45	\$51.12	\$12.78	\$13.74
131	\$347.80	\$347.80	\$347.80	\$370.23	131	\$0.00	\$0.00	\$22.43	\$22.43	\$5.61	\$10.74
132	\$422.61	\$435.22	\$448.28	\$473.73	132	\$12.61	\$13.08	\$25.45	\$51.12	\$12.78	\$13.74
133	\$405.11	\$417.26	\$428.78	\$454.87	133	\$12.15	\$11.52	\$25.89	\$49.56	\$12.39	\$13.19
134	\$393.92	\$393.92	\$393.92	\$417.74	134	\$0.00	\$0.00	\$23.82	\$23.82	\$5.98	\$12.11
135	\$415.48	\$427.94	\$440.78	\$466.00	135	\$12.46	\$12.84	\$25.22	\$50.52	\$12.63	\$13.51
136	\$477.59	\$491.91	\$506.67	\$533.87	136	\$14.32	\$14.76	\$27.20	\$56.28	\$14.07	\$15.48
200	\$415.48	\$427.94	\$440.78	\$466.00	200	\$12.46	\$12.84	\$25.22	\$50.52	\$12.63	\$13.51
202	\$385.31	\$385.31	\$385.31	\$408.87	202	\$0.00	\$0.00	\$23.56	\$23.56	\$5.89	\$11.86
204	\$384.34	\$395.87	\$407.75	\$431.98	204	\$11.53	\$11.88	\$24.00	\$47.41	\$11.85	\$12.52
206	\$415.48	\$427.94	\$440.78	\$466.00	206	\$12.46	\$12.84	\$25.22	\$50.52	\$12.63	\$13.51
207	\$384.34	\$395.87	\$407.75	\$431.98	207	\$11.53	\$11.88	\$24.23	\$47.64	\$11.91	\$12.53
208	\$415.48	\$427.94	\$440.78	\$466.00	208	\$12.46	\$12.84	\$25.22	\$50.52	\$12.63	\$13.51
209	\$415.48	\$427.94	\$440.78	\$466.00	209	\$12.46	\$12.84	\$25.22	\$50.52	\$12.63	\$13.51
210	\$422.61	\$435.22	\$448.34	\$473.79	210	\$12.67	\$13.06	\$25.45	\$51.18	\$12.80	\$13.74
211	\$415.48	\$427.94	\$440.78	\$466.00	211	\$12.46	\$12.84	\$25.22	\$50.52	\$12.63	\$13.51
212	\$398.38	\$410.58	\$422.90	\$447.59	212	\$12.22	\$12.32	\$24.69	\$49.23	\$12.31	\$12.98
213	\$415.48	\$427.94	\$440.78	\$466.00	213	\$12.46	\$12.84	\$25.22	\$50.52	\$12.63	\$13.51
214	\$398.63	\$410.58	\$422.90	\$447.59	214	\$11.95	\$12.32	\$24.69	\$48.96	\$12.24	\$12.98
215	\$422.61	\$435.22	\$448.34	\$473.79	215	\$12.67	\$13.06	\$25.45	\$51.18	\$12.80	\$13.74
216	\$375.91	\$387.18	\$398.80	\$422.78	216	\$11.27	\$11.62	\$23.96	\$46.85	\$11.71	\$12.26
217	\$415.48	\$427.94	\$440.78	\$466.00	217	\$12.46	\$12.84	\$25.22	\$50.52	\$12.63	\$13.51

EXHIBIT "B"
Low Income Rent Increase Maximums

Space #	2004	2005	2006	2007	Space #	05 Increase	6 Increase	7 Increase	Total 2004-2007	3-Year Average*	CPI Increase
218	\$391.47	\$403.21	\$415.31	\$439.77	218	\$11.74	\$12.10	\$24.46	\$48.30	\$12.08	\$12.75
219	\$422.61	\$435.28	\$448.34	\$473.79	219	\$12.67	\$13.06	\$25.45	\$51.18	\$12.80	\$13.74
220	\$451.42	\$464.96	\$478.91	\$505.28	220	\$13.54	\$13.95	\$26.37	\$53.86	\$13.47	\$14.65
221	\$422.61	\$435.28	\$448.34	\$473.79	221	\$12.67	\$13.06	\$25.45	\$51.18	\$12.80	\$13.74
222	\$422.61	\$435.28	\$448.34	\$473.79	222	\$12.67	\$13.06	\$25.45	\$51.18	\$12.80	\$13.74
223	\$422.61	\$435.28	\$448.34	\$473.79	223	\$12.67	\$13.06	\$25.45	\$51.18	\$12.80	\$13.74
224	\$429.00	\$442.61	\$455.89	\$481.57	224	\$13.61	\$13.28	\$25.68	\$52.57	\$13.14	\$13.97
225	\$464.64	\$478.57	\$492.93	\$519.72	225	\$13.93	\$14.36	\$26.79	\$55.08	\$13.77	\$15.07
228	\$415.48	\$427.94	\$440.78	\$466.00	226	\$12.46	\$12.84	\$25.22	\$50.52	\$12.63	\$13.51
227	\$415.48	\$427.94	\$440.78	\$466.00	227	\$12.46	\$12.84	\$25.22	\$50.52	\$12.63	\$13.51
228	\$422.61	\$435.28	\$448.34	\$473.79	228	\$12.67	\$13.06	\$25.45	\$51.18	\$12.80	\$13.74
229	\$391.47	\$403.21	\$415.31	\$439.77	229	\$11.74	\$12.10	\$24.46	\$48.30	\$12.08	\$12.75
230	\$405.08	\$417.23	\$429.75	\$454.64	230	\$12.15	\$12.52	\$115.89	\$140.56	\$35.14	\$15.82
231	\$422.61	\$435.28	\$448.34	\$473.79	231	\$12.67	\$13.06	\$25.45	\$51.18	\$12.80	\$13.74
232	\$422.61	\$435.28	\$448.34	\$473.79	232	\$12.67	\$13.06	\$25.45	\$51.18	\$12.80	\$13.74
233	\$464.64	\$478.57	\$492.93	\$516.93	233	\$13.93	\$14.36	\$24.00	\$52.29	\$13.07	\$14.99
235	\$477.59	\$491.91	\$506.67	\$533.67	235	\$14.32	\$14.76	\$27.20	\$56.28	\$14.07	\$15.48
448	\$422.61	\$435.28	\$448.34	\$473.79	448	\$12.67	\$13.06	\$25.45	\$51.18	\$12.80	\$13.74
450	\$422.61	\$435.28	\$448.34	\$473.79	450	\$12.67	\$13.06	\$25.45	\$51.18	\$12.80	\$13.74
452	\$422.61	\$435.28	\$448.34	\$473.79	452	\$12.67	\$13.06	\$25.45	\$51.18	\$12.80	\$13.74
454	\$422.61	\$435.28	\$448.34	\$473.79	454	\$12.67	\$13.06	\$25.45	\$51.18	\$12.80	\$13.74
456	\$395.63	\$395.63	\$395.63	\$419.50	456	\$0.00	\$0.00	\$23.87	\$23.87	\$5.97	\$12.17
458	\$436.85	\$448.95	\$463.45	\$489.35	458	\$13.10	\$13.50	\$25.90	\$52.50	\$13.13	\$14.19
460	\$464.64	\$478.57	\$492.93	\$519.72	460	\$13.93	\$14.36	\$26.79	\$55.08	\$13.77	\$15.07
462	\$384.34	\$395.87	\$407.75	\$431.98	462	\$11.53	\$11.88	\$24.23	\$47.64	\$11.91	\$12.53
464	\$384.34	\$395.87	\$407.75	\$431.98	464	\$11.53	\$11.88	\$24.23	\$47.64	\$11.91	\$12.53
466	\$391.47	\$403.21	\$415.31	\$439.77	466	\$11.74	\$12.10	\$24.46	\$48.30	\$12.08	\$12.75
468	\$391.47	\$403.21	\$415.31	\$439.77	468	\$11.74	\$12.10	\$24.46	\$48.30	\$12.08	\$12.75
470	\$463.55	\$477.45	\$491.77	\$518.52	470	\$13.90	\$14.32	\$26.75	\$54.97	\$13.74	\$15.04
501	\$422.61	\$435.28	\$448.34	\$473.79	501	\$12.67	\$13.06	\$25.45	\$51.18	\$12.80	\$13.74
503	\$440.66	\$453.87	\$467.49	\$493.51	503	\$13.21	\$13.82	\$28.02	\$52.85	\$13.21	\$14.31
505	\$415.48	\$427.94	\$440.78	\$466.00	505	\$12.46	\$12.84	\$25.22	\$50.52	\$12.63	\$13.51
507	\$422.61	\$435.28	\$448.34	\$473.79	507	\$12.67	\$13.06	\$25.45	\$51.18	\$12.80	\$13.74
508	\$395.63	\$395.63	\$395.63	\$419.50	508	\$0.00	\$0.00	\$23.87	\$23.87	\$5.97	\$12.17
510	\$398.63	\$410.58	\$422.90	\$447.59	510	\$11.95	\$12.32	\$24.69	\$48.96	\$12.24	\$12.98
512	\$370.07	\$381.17	\$405.46	\$429.62	512	\$11.10	\$24.29	\$24.16	\$59.55	\$14.89	\$12.46
514	\$375.91	\$387.18	\$398.80	\$422.76	514	\$11.27	\$11.62	\$23.96	\$46.85	\$11.71	\$12.26
515	\$384.34	\$384.34	\$384.34	\$407.87	515	\$0.00	\$0.00	\$23.53	\$23.53	\$5.88	\$11.83
517	\$395.63	\$395.63	\$395.63	\$419.50	517	\$0.00	\$0.00	\$23.87	\$23.87	\$5.97	\$12.17
519	\$384.34	\$395.87	\$407.75	\$431.98	519	\$11.53	\$11.88	\$24.23	\$47.64	\$11.91	\$12.53
520	\$396.63	\$410.58	\$422.90	\$447.59	520	\$11.95	\$12.32	\$24.69	\$48.96	\$12.24	\$12.98
521	\$438.87	\$452.03	\$465.59	\$491.56	521	\$13.16	\$13.56	\$25.97	\$52.69	\$13.17	\$14.26
522	\$451.42	\$464.96	\$478.91	\$505.28	522	\$13.54	\$13.95	\$26.37	\$53.86	\$13.47	\$14.65
523	\$431.98	\$444.91	\$458.26	\$484.01	523	\$12.95	\$13.35	\$25.75	\$52.05	\$13.01	\$14.04
524	\$405.08	\$417.23	\$429.75	\$454.64	524	\$12.15	\$12.52	\$24.89	\$49.56	\$12.39	\$13.18
525	\$395.63	\$395.63	\$395.63	\$419.50	525	\$0.00	\$0.00	\$23.87	\$23.87	\$5.97	\$12.17
526	\$451.42	\$464.96	\$478.91	\$505.28	526	\$13.54	\$13.95	\$26.37	\$53.86	\$13.47	\$14.65
527	\$415.48	\$427.94	\$440.78	\$466.00	527	\$12.46	\$12.84	\$25.22	\$50.52	\$12.63	\$13.51

EXHIBIT "B"
Low Income Rent Increase Maximums

Space #	2004	2005	2006	2007	Space #	05 Increase	6 Increase	7 Increase	Total 2004-2007	3-Year Average*	CPI Increase
528	\$384.33	\$395.87	\$407.75	\$431.98	528	\$11.54	\$11.88	\$24.23	\$47.65	\$11.91	\$12.53
529	\$365.80	\$385.80	\$385.80	\$388.77	529	\$0.00	\$0.00	\$22.97	\$22.97	\$5.74	\$11.27
530	\$451.42	\$464.96	\$478.91	\$505.28	530	\$13.54	\$13.95	\$26.37	\$53.86	\$13.47	\$14.65
531	\$398.83	\$410.58	\$422.90	\$447.59	531	\$11.95	\$12.32	\$24.69	\$48.98	\$12.24	\$12.98
532	\$399.91	\$411.90	\$424.26	\$448.99	532	\$11.99	\$12.36	\$24.73	\$49.08	\$12.27	\$13.02
533	\$384.08	\$395.60	\$407.47	\$431.69	533	\$11.52	\$11.87	\$24.22	\$47.61	\$11.90	\$12.52
534	\$391.47	\$403.21	\$415.31	\$439.77	534	\$11.74	\$12.10	\$24.46	\$48.30	\$12.08	\$12.75
535	\$391.47	\$403.21	\$415.31	\$439.77	535	\$11.74	\$12.10	\$24.46	\$48.30	\$12.08	\$12.75
536	\$415.48	\$427.94	\$440.78	\$466.00	536	\$12.46	\$12.84	\$25.22	\$50.52	\$12.63	\$13.51
537	\$377.25	\$388.56	\$400.22	\$424.23	537	\$11.31	\$11.66	\$24.01	\$46.98	\$11.75	\$12.30
538	\$399.91	\$411.90	\$424.26	\$448.99	538	\$11.99	\$12.36	\$24.73	\$49.08	\$12.27	\$13.02
539	\$391.47	\$403.21	\$415.31	\$439.77	539	\$11.74	\$12.10	\$24.46	\$48.30	\$12.08	\$12.75
540	\$365.80	\$365.80	\$365.80	\$388.77	540	\$0.00	\$0.00	\$22.97	\$22.97	\$5.74	\$11.27
541	\$365.80	\$365.80	\$365.80	\$388.77	541	\$0.00	\$0.00	\$22.97	\$22.97	\$5.74	\$11.27
542	\$399.91	\$411.90	\$424.26	\$448.99	542	\$11.99	\$12.36	\$24.73	\$49.08	\$12.27	\$13.02
543	\$464.84	\$478.57	\$492.93	\$519.72	543	\$13.93	\$14.36	\$26.79	\$55.08	\$13.77	\$15.07
544	\$405.08	\$417.23	\$429.75	\$545.64	544	\$12.15	\$12.52	\$115.89	\$140.58	\$35.14	\$15.82
545	\$405.95			\$430.13	545	(\$405.95)	\$0.00	\$430.13	\$24.18	\$6.05	\$12.47
546	\$404.94	\$417.08	\$429.59	\$545.48	546	\$12.14	\$12.51	\$115.89	\$140.54	\$35.14	\$15.82
547	\$415.48	\$427.94	\$440.78	\$466.00	547	\$12.46	\$12.84	\$25.22	\$50.52	\$12.63	\$13.51
548	\$391.47	\$403.21	\$415.31	\$439.77	548	\$11.74	\$12.10	\$24.46	\$48.30	\$12.08	\$12.75
549	\$427.89	\$440.52	\$453.74	\$479.35	549	\$12.83	\$13.22	\$25.61	\$51.66	\$12.92	\$13.90
550	\$384.34	\$395.87	\$407.75	\$431.98	550	\$11.53	\$11.88	\$24.23	\$47.64	\$11.91	\$12.53
551	\$405.08	\$417.23	\$429.75	\$454.84	551	\$12.15	\$12.52	\$24.89	\$49.56	\$12.39	\$13.18
552	\$377.25	\$388.56	\$400.22	\$424.23	552	\$11.31	\$11.66	\$24.01	\$46.98	\$11.75	\$12.30
554	\$405.08	\$417.23	\$429.75	\$454.84	554	\$12.15	\$12.52	\$24.89	\$49.56	\$12.39	\$13.18
555	\$384.94	\$396.48	\$408.37	\$432.62	555	\$11.54	\$11.89	\$24.25	\$47.68	\$11.92	\$12.55
556	\$405.95	\$405.95	\$405.95	\$430.13	556	\$0.00	\$0.00	\$24.18	\$24.18	\$6.05	\$12.47
557	\$383.93	\$383.93	\$383.93	\$407.45	557	\$0.00	\$0.00	\$23.52	\$23.52	\$5.88	\$11.82
558	\$384.34	\$395.87	\$407.75	\$431.98	558	\$11.53	\$11.88	\$24.23	\$47.64	\$11.91	\$12.53
559	\$384.34	\$395.87	\$407.75	\$431.98	559	\$11.53	\$11.88	\$24.23	\$47.64	\$11.91	\$12.53
560	\$415.48	\$427.94	\$440.78	\$464.78	560	\$12.46	\$12.84	\$24.00	\$49.30	\$12.33	\$13.48

CPI Data - <http://data.bls.gov/cgi-bin/surveymost>

Feb-07 232
 Feb-06 225.4

% change in CPI for 06
 2.9%

*No rent data for 2003

State Rent Control

Limits to CPI but not to exceed past 4 year average and no pass-through's

CPI Data - <http://www.bls.gov>

EXHIBIT "C"

EXAMPLE OF ALL OTHER-INCOME RENTAL INCREASES

The base rental increase shall not exceed the Consumer Price Index ("CPI") average monthly percentage increase for the most recently reported period plus the percentage difference between the Low and the Moderate income levels adjusted for household size as reported by the Department of Housing and Community Development.

For ALL OTHER Income Households the rent increases would be limited by the Yearly CPI increase for the given month, plus the percentage increase in the threshold income limits between low-income and moderate income on the chart above.

Examples

CPI Increase

February 2006: 215 February 2007: 226 Percentage Increase: 3.98%

Percentage Increase in Threshold Income Limits

Household Size	<u>1 Person</u>	<u>2 Persons</u>	<u>3 Persons</u>
Low Income	\$45,150	\$51,600	\$58,050
Moderate Income	\$55,700	\$63,600	\$71,600
% Increase	<u>19%</u>	<u>19%</u>	<u>19%</u>

Moderate Income - Rent Increase Maximum

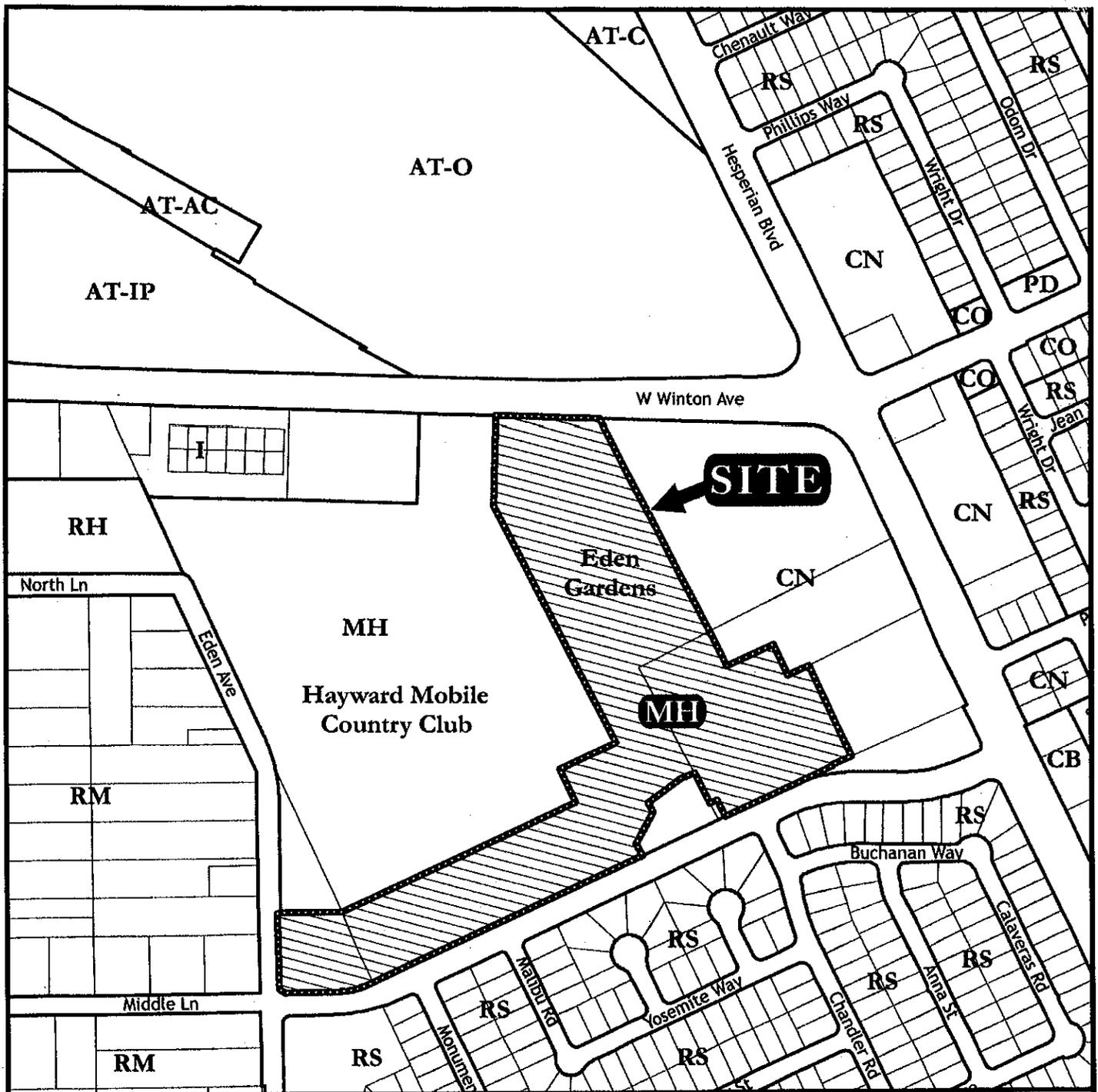
2006 Rent: \$397.00 (x) CPI Increase: 3.98% = \$15.08 CPI Rent Increase
\$15.08 CPI Rent Increase (x) Threshold Increase 19% = \$2.87 Moderate Rent Addition
\$15.08 CPI Rent Increase + \$2.87 Moderate Rent Addition = **\$17.95 Rent Increase**

The ALL OTHER Rent Increase Protection is simply an additional increase over CPI. There is no other alternative formula as in the Low-Income protection, however, the ALL INCOME-Income protection will provide for a "less than market" increase cap.

EXHIBIT F

Rent Control Settlement Agreement, February 2006

[attached]



Area & Zoning Map

PL-2007-0576 PM 9700

Address: 1150 West Winton Ave

Applicant: Eden Gardens MHP, LLC

Owner: Eden Gardens MHP, LLC

Zoning Classifications

RESIDENTIAL

- MH Mobile Home Park
- RH High Density Residential, min lot size 1250 sqft
- RM Medium Density Residential, min lot size 2500 sqft
- RS Single Family Residential, min lot size 5000 sqft

COMMERCIAL

- CB Central Business
- CN Neighborhood Commercial
- CO Commercial Office

INDUSTRIAL

- I Industrial

AIR TERMINAL

- AT-AC Air Terminal - Aviation Commercial
- AT-C Air Terminal - Commercial
- AT-IP Air Terminal - Industrial Park
- AT-O Air Terminal - Operations

OTHER

- PD Planned Development





DATE: November 5, 2009

TO: Planning Commission

FROM: Richard E. Patenaude, AICP, Planning Manager

SUBJECT: **PL-2007-0576 – PM 9700 – The Loftin Firm (Applicant) / Eden Gardens MHP, LLC (Owner) – Request for a Parcel Map to Convert Eden Gardens Mobilehome Park to Resident Ownership**

The Property is Located at 1150 West Winton Avenue in the Mobilehome Park (RMP) Zoning District

RECOMMENDATION

Staff recommends that the Planning Commission find that the project is exempt from CEQA review and approve the parcel map to convert the Eden Gardens Mobilehome Park to resident ownership, subject to the attached findings and conditions of approval.

SUMMARY

Eden Gardens, like the other eight mobilehome parks in the City, is currently operated as a rental mobilehome park. The owner has submitted this parcel map application, which would provide for resident ownership by converting the park's 129 mobilehome spaces to "condominiums."

The applicant has submitted the required Tenant Impact Report (TIR) pursuant to the State Government Code. Pursuant to the TIR, and to a Non-Purchasing Resident Protection Agreement negotiated by the applicant and the residents' representatives, protections would be afforded to those residents who elect not to purchase their space. All residents will be afforded the opportunity to either 1) buy the space on which their mobilehome is situated, or 2) continue to rent the space. Under state law, if a low-income resident elects to continue to rent their space, rent increases would be regulated. As discussed below, there are only limited rental protections for those residents who are not low income. If this application is approved, the owner has agreed to extend rental protections to both the low- and non-low-income residents who elect not to purchase their space. Upon the death of the original resident, the rental protections would extend to a child of that resident.

BACKGROUND

On May 8, 2007, the City Council adopted an emergency ordinance that placed a moratorium on the conversion of mobilehome parks in Hayward, after becoming aware of the intent of the owners of various mobilehome parks to convert them to resident ownership. The purpose of the moratorium was to provide the City sufficient time to adequately analyze the City's regulations, adopted in 1984, with proper community input and provide opportunity for resolution of proposed State legislation that could impact Hayward's authority to regulate conversions. The proposed legislation has since been vetoed by the governor.

On November 13, 2007, The Loftin Firm, for Eden Gardens MHP, LLC, submitted a tentative parcel map application to convert the park to resident ownership. No action could be taken on this matter until the close of the moratorium on May 8, 2008. In the meantime, the City Council adopted a new Mobilehome Park Conversion Ordinance on April 22, 2008. Subsequently, Planning staff gave notice to The Loftin Firm that its application was incomplete under the requirements of the new ordinance. As the result of a recent court decision, the City is preempted from imposing the requirements of its newly-adopted Mobilehome Park Conversion Ordinance, other than to determine that the application complies with state law. Staff has determined that the application satisfies the state's requirements for a mobilehome park conversion to resident ownership and deemed the application complete on October 15, 2009.

Project Description and Setting –

Eden Gardens Mobilehome Park occupies a 15.13-acre, flat, L-shaped property with vehicular access from West Winton Avenue and Eden Avenue; emergency access is also provided to Middle Lane. The site is located across West Winton Avenue from the Hayward Executive Airport, between Hesperian Boulevard and Clawiter Road. Eden Gardens was constructed circa 1969. There are 129 mobilehome spaces with a shared clubhouse, swimming pool and spa, shuffleboard building, covered car wash area, and an office on site. The subject property is zoned Mobilehome Park (MH) District. Another mobilehome park is to the east (241-space Hayward Mobile Country Club).

Eden Gardens, like the other eight mobilehome parks in the City, is currently operated as a rental mobilehome park; that is, residents own their own mobilehomes but the land upon which the mobilehomes are located is owned by the park owner. Eden Gardens is also a "senior park," meaning that at least one of the residents in a unit must be at least 55 years old.

The map would convert the park's 129 mobilehome spaces to "condominiums." The physical layout of the park would not change. If the application is approved, it would remain a mobilehome park. Those not wishing to purchase, however, would not be required to purchase and would continue to pay rent. Action on this application is not required by the City Council unless the Planning Commission's decision is appealed. The park owner would then file the required documents with the State Department of Real Estate, the same process as is observed for permanent construction subdivisions, in order to receive approval to sell the condominium interests in the park. The condominium conversion would not change the "senior park" status.

DISCUSSION AND STAFF ANALYSIS

The California Government Code sets forth the conditions for mobilehome park conversions. Section 66427.5 of the Government Code states:

At the time of filing a tentative or parcel map for the conversion of a rental mobilehome park to resident ownership, the subdivider is required to avoid the economic displacement of all non-purchasing residents in the following manner:

- (a) The subdivider shall offer each existing tenant an option to either purchase his or her condominium, or to continue residency as a tenant.
- (b) The subdivider is required to file a report on the impact of the conversion upon residents of the mobilehome park.
- (c) The subdivider is required to make a copy of the report available to each resident of the mobilehome park at least 15 days prior to the hearing on the map by the legislative body.
- (d) The subdivider is required to obtain a survey of support of residents of the mobilehome park for the proposed conversion. The survey of support must be conducted in accordance with an agreement between the subdivider and a resident homeowners' association. The survey must be obtained pursuant to a written ballot and shall be conducted so that each occupied mobilehome space has one vote. The results of the survey must be submitted to the local agency upon filing of the tentative or parcel map, to be considered as part of the subdivision map hearing.
- (e) The subdivider is required to be subject to a hearing by a legislative body or advisory agency, which is authorized by local ordinance to approve, conditionally approve, or disapprove the map. The scope of the hearing shall be limited to the issue of compliance with this section.
- (f) The subdivider is required to avoid the economic displacement of all non-purchasing residents in accordance with the following:
 - (1) As to non-purchasing residents who are not lower income households, the monthly rent, including any applicable fees or charges for use of any pre-conversion amenities, may increase from the pre-conversion rent to market levels in equal annual increases over a four-year period.
 - (2) As to non-purchasing residents who are lower income households, the monthly rent, including any applicable fees or charges for use of any pre-conversion amenities, may increase from the pre-conversion rent by an amount equal to the average monthly increase in rent in the four years immediately preceding the conversion, except that in no event shall the monthly rent be increased by an amount greater than the average monthly percentage increase in the Consumer Price Index for the most recently reported period.

Tenant Impact Report -

The applicant has submitted the required Tenant Impact Report (TIR) pursuant to State Government Code Section 66427.5(b) above. The purpose of the TIR is to explain the protections afforded to those residents that elect not to purchase their space. All residents will be afforded the opportunity to either 1) buy the space on which their mobilehome is situated, or 2) continue to rent the space. Further, if a low-income resident elects to continue to rent their space, then the rent increases will be according to State Government Code Section 66427.5(f) above, which provides greater protection against rent increases than the City's rent control ordinance. In addition, the owner has agreed to rent protections for non-low-income residents who elect to rent their space, beyond the protection afforded by state law. Under 66427.5, non-low-income rent may be increased to full market value

over the course of 4 years. The owner has agreed to a formula that limits the rent increases for non-low-income renters and to extend the rent protection to both the residents who elect not to purchase their space, and, upon their death, to a child of that resident.

Based on the state rent control provisions, (f)(2) above, for low-income households, the increase in base rent would be the average percentage increase for the previous four years but shall not exceed the consumer price index (CPI) average monthly percentage increase for the most recently reported period. This would provide greater protection than that under the City's rent control ordinance, in that the annual, permissible rent increase under City law is 60% of CPI or 3%, whichever is greater. In addition, under City law, the owner may "pass-through" some qualifying capital improvement costs, among other things, in the form rent increases. Under the state provisions, there is no minimum amount that can be charged and there are no pass-throughs.

The park owner has, in the Non-Purchasing Resident Protection Agreement, agreed to rent protections for the non-low-income renting residents over and above that provided for in the State rent control provisions, (f)(1) above. The base rental increase shall not exceed the CPI average monthly percentage increase for the most recently reported period, plus the percentage difference between the low- and moderate-income levels. Under state law, the non-low income households would enjoy only temporary protection from an increase in rent for a period of four years as the rent is increased to market level. As set forth in the Non-Purchasing Resident Protection Agreement, the owner, however, has offered rent protection for the life of the non-low-income resident and a child of that resident.

Findings for Parcel Map Application

The scope of the hearing on the application is limited to determining whether the applicant has complied with Section 66427.5 of the State Government Code. This significantly narrows the scope of Planning Commission's authority compared to typical parcel map applications. Staff has listed the requisite findings in bold with staff's response in *italics*.

The subdivider shall file a report on the impact of the conversion upon residents of the mobilehome park to be converted to resident owned subdivided interest, and shall make a copy of the report available to each resident of the mobilehome park at least 15 days prior to the hearing on the map by the advisory agency or, if there is no advisory agency, by the legislative body.

In converting the Eden Gardens Mobilehome Park to resident ownership, Government Code Section 66427.5 requires the park property owner to avoid the economic displacement of all non-purchasing residents. This is accomplished in a number of different ways: limiting the right to evict upon conversion; offering each resident the option to purchase the lot (i.e., condominium unit) or continuing residency as a renter; and as to non-purchasing residents, complying with State law as to how rents are to be calculated, depending on the income level of the resident household. For both low- and non-low-income residents, additional rent protections are provided.

On October 20, 2009, the property owner sent to each resident a Notice of the Planning Commission Hearing and the Tenant Impact Report, a copy of which is attached as Attachment B.

The subdivider shall obtain a survey of support of residents of the mobilehome park for the proposed conversion. The survey of support shall be conducted in accordance with an agreement between the subdivider and a resident homeowners' association, if any, that is independent of the subdivider or mobilehome park owner. (The survey shall be obtained pursuant to a written ballot, the survey shall be conducted so that each occupied mobilehome space has one vote, and that the results of the survey shall be submitted to the local agency upon the filing of the tentative or parcel map, to be considered as part of the subdivision map hearing prescribed by subdivision).

On November 14, 2007, staff received a copy of the survey of residents form and a tally sheet dated July 2, 2007, a part of the first submittal application package. Residents were provided five options: 1) support the conversion, but indicating a desire to remain a tenant under the proposed rent-control provisions; 2) support the conversion, but indicating a desire to remain a tenant with a lifetime lease; 3) decline to respond; 4) not support the conversion; and 5) inability to respond due to lack of information. The survey of support was conducted in accordance with an agreement between the subdivider and a resident homeowners' association. As indicated in the Tenant Impact Report, at the time of the vote, there were 128 occupied spaces and the results of the survey were calculated on July 2, 2007 as follows:

<i># Responses</i>	<i>Support Yes</i>	<i>Support No</i>	<i>Low Income</i>	<i>Other</i>
<i>96</i>	<i>10</i>	<i>86</i>	<i>49</i>	<i>1</i>

Staff has determined that, by providing the Tenant Impact Report and the Resident Survey of Support, the owner is in compliance with the requirements of State Government Code Section 66427.5.

ENVIRONMENTAL REVIEW

The conversion of an existing rental mobilehome park to a residential subdivision, cooperative, or condominium for mobile homes is statutorily exempt [California Environmental Quality Act (CEQA) Guidelines, Section 15282 (e)].

PUBLIC OUTREACH

Notice of this application was sent to all residents of the Park and to property owners within 300 feet of the subject property. The owner has also made a copy of the Tenant Impact Report available to each resident of the mobilehome park at least 15 days prior to this hearing as required by Section 66427.5(c) of the Government Code. At the time this report was prepared, staff had received no comments regarding the condominium conversion.

Prepared and Recommended by:



Richard E. Patenaude, AICP
Planning Manager

- Attachment A: Area and Zoning Map
- Attachment B: Tenant Impact Report, containing summary of Resident Survey of Support and Non-Purchasing Resident Protection Agreement
- Attachment C: Findings
- Attachment D: Conditions of Approval Plans



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MEETING

The regular meeting of the Hayward Planning Commission was called to order at 7:30 p.m. by Chair Mendall.

ROLL CALL

Present:	COMMISSIONERS:	McKillop, Márquez, Loché, Peixoto, Thnay, Lavelle
	CHAIRPERSON:	Mendall
Absent:	COMMISSIONER:	None

Commissioner Thnay led in the Pledge of Allegiance.

Staff Members Present: Camire, Conneely, Cruz, Lawson, Nguyen, Patenaude, Philis

General Public Present: 48

PUBLIC COMMENTS

None

PUBLIC HEARING

2. **PL-2007-0576 – PM 9700 – The Loftin Firm (Applicant) / Eden Gardens MHP, LLC (Owner)** – Request for a Parcel Map to Convert Eden Gardens Mobilehome Park to Resident Ownership - The Property is Located at 1150 West Winton Avenue in the Mobilehome Park

Planning Manager Richard Patenaude provided a synopsis of the report noting an additional staff recommendation to the conditions of approval which states that the applicants and residents shall enter into a Nonpurchasing Resident Protection agreement in substantially the form set forth in Exhibit E to the Tenant Impact Report. Mr. Patenaude also noted that staff has received a letter from Jay Hendrick, on behalf of the Eden Garden Mobilehome Park Residents Club Board of Directors, stating Board support of the application.

Chair Mendall asked Assistant City Attorney Maureen Conneely to comment on the legal statutes governing tonight's decision. Ms. Conneely explained that the Commission is somewhat circumscribed to act on the application because the state has taken over jurisdiction of mobilehome park conversions per Government Code Section 66427.5. The Commission's primary task, she said, is to determine if the application is in compliance with requirements of the state law.

Commissioner Peixoto asked if non-low income, non-purchasing residents are losing rent control under the proposed agreement. Planning Manager Patenaude explained that if the map was

approved without the rental agreement with the owner, the formula cited in the report would be imposed by state law and a base rent of \$397 would jump to \$557 in four years. Commissioner Peixoto asked if residents are going to pay significantly more in four years. Mr. Patenaude indicated that under the conditions of approval and proposed rental agreement with the owner, residents would be paying less than what either the state program or the City's rent control program could provide. Commissioner Peixoto then questioned the findings statement that read residents will "enjoy the security of living in a resident owned controlled and managed park whose motivation is not for profit but rather achieving the best living environment at the most affordable rate." He said that it seemed to him that residents are already living at an affordable rate; he didn't see how the conversion betters their economic position. Mr. Patenaude said the owner's agreement would keep rents lower than even current City or State standards.

Chair Mendall opened the Public Hearing at 7:41 p.m.

Sue Loftin, speaking on behalf of the applicant, acknowledged the numerous communications exchanged between the City and the applicant and thanked the City Attorney's Office for providing assistance in creating the most protective non-purchasing resident program in the state. She also thanked the mobile home park residents for participating in this lengthy process and the owners for recognizing the residents' concerns. Ms. Loftin said the owner has no objection to the additional condition of approval as the owner and residents entered into such an agreement months ago and is now looking for the approval of the Planning Commission. This is about choice, she said, all of the residents are protected by rent control for as long as they live there, and can pass that control on to their heirs. She said because the owner listened to the residents, the parties involved were able to craft a program that protects all residents and provides stability over the years. Ms. Loftin explained that there are purchase programs available at the various economic levels.

Preston Cook, one of two managing members and owners of Eden Garden Estates, explained that two years ago the owners offered the Eden Garden residents a package of conversion protections unsurpassed in the state of California. In the years since, Mr. Cook said he has had the pleasure of meeting with members of the Eden Garden Board of Directors, negotiating additional protections, and discussing the conversion and protection plan with all residents. Using the state's Endprop Financing Program, Mr. Cook said low-income residents wishing to purchase their land will have access to assistance programs and may find their monthly housing costs will actually do down. For non low-income residents wishing to purchase their lot, the park owners are offering seller assistance financing as appropriate and needed. For those who choose to continue to rent, Mr. Cook said they will be provided with protections that far exceed City rent controls and State conversion laws, including life-time leases for them and for their children. Rents will stay the same with the usual annual increase which, he said, will actually be lower than in the past, and rent controls will remain. Eden Gardens will be deed-restricted to remain a community of 55 and older forever, he said. He finished by saying that residents are receiving more protections and benefits with the conversion than without and the agreement is outstanding in its commitment to fairness, involvement, financial assistance, and numerous resident protections. He asked for the Commissioners' affirmation vote for the conversion of Eden Garden Estates to a resident-owned community.

Regarding his statement that some residents who purchase their land will be in a better situation than they are now, Commissioner Peixoto asked Mr. Cook how those residents would qualify for a



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loan. Mr. Cook responded saying there is a state program specifically designed for low-income residents over 55 living in a mobilehome park that is going through a conversion. The state fund of approximately \$8 million is not part of the general California budget, he said, and his attorney, Sue Loftin, has applied for and received more funds than any other attorney in the state of California. Because of her familiarity with the process, he's going to make sure as many residents as possible apply and receive these funds, he said. Commissioner Peixoto asked about the Homeowners Association (HOA) and whether or not the renters will have to pay dues. Mr. Cook said he will be responsible for paying the HOA dues for the renters and all the unsold lots.

Commissioner Márquez asked Mr. Cook if the terms of the Non-Purchasing Resident Protection Agreement would pass to another family member upon the death of current resident and would the heir have to live in the mobilehome. Mr. Cook said the heir would receive the same protections if they are 55 or older. If they qualify, they don't have to live there to receive the protections. Commissioner Márquez asked if the heir died, would the protections pass to the next generation. Mr. Cook indicated that the heirs will outlive him and he's already offering protections that exceed what the City or State can offer.

Angie Bravo, resident next door in a manufactured home at the Hayward Mobile Country Club, explained that when she bought her home three years ago she wanted to be part of a quiet, senior community. She said the number of options for seniors are limited in Hayward and asked if the conversion application was already approved. She said she can't see how this agreement is going to benefit the people who already live there on fixed incomes. She asked how they could possibly afford to purchase their lots, and if they can't, where else can they live that is so centrally located to bus lines and grocery shopping. She said a tract of new homes was recently completed on the other side of her and now she's going to be wedged in between those and the proposed townhomes. Ms. Bravo expressed displeasure that the conversion to ownership is going to create more noise and traffic, both on foot and in cars. Said she is against the application and hopes the conversion doesn't go through.

Planning Manager Patenaude clarified that the proposal is not a replacement of mobile homes with townhomes, but instead allows the mobile home residents to purchase the land. He explained to Ms. Bravo that there will be no visible change to the mobile home park.

Jay Henderick, representing the Board of Directors for the Eden Garden Estate Residents Club, read the letter he sent, dated October 30, 2009 and signed by the entire Board, to enter it into the public record.

Commissioner Peixoto asked Mr. Henderick about a statement in his letter that said residents support the conversion, yet a survey of residents showed 86 out of 96 respondents were opposed to it. Commissioner Peixoto asked if the opposing residents have changed their minds. Mr. Henderick explained that the Board supports the Non-Purchasing Resident Protection Agreement and do not have the authority to make a recommendation to the Commission regarding the conversion so the Board is taking a neutral position.

Ruth Hendricks, Eden Garden resident, said she's attended the meetings to discuss the conversion but she hasn't discussed a thing and nobody seems to know what's going on. She said she doesn't feel like she has equal rights and thinks the conversion agreement is "bullpucky". Ms. Hendricks said her social security check will not cover the rent increases under the proposed agreement, which she claims say one thing and do another. She said that everyone is not cooperating. She went to the meeting to elect the Board of Directors but nobody got elected so after everyone went home the Board nominated themselves. All she wants to do is live in peace and now that peace is gone.

Chair Mendall closed the Public Hearing at 8:08 p.m.

Commissioner Lavelle thanked the residents for attending the meeting and showing their support of the agreement. She said the Planning Commission's role is to make a determination regarding the tenant impact report and conditions of approval.

Commissioner Lavelle made a motion per staff recommendation to find that the project is exempt from CEQA review and approve the parcel map to convert the Eden Gardens Mobilehome Park to resident ownership, subject to the attached findings and conditions of approval including the additional condition presented by staff at the beginning of the meeting. Commissioner Thnay seconded the motion.

Commissioner Lavelle said she is very impressed with the generosity of the agreement both for the residents who wish to become owners and the residents who choose to continue to rent. She said the City wants to maintain the variety of the residents living in Hayward and doesn't want to lose any opportunities for home ownership by senior citizens.

Commissioner McKillop said as a Planning Commissioner they are often faced with very difficult decisions; sometimes it's not easy to know what's right and correct. She explained that the main role of the Commission is to make decisions about proper land use. She said she doesn't think the proposed agreement is the proper use for the parcel's land use designation, and while she fully supports the protections offered in the conversion agreement, she won't be supporting the motion.

Commissioner Thnay said he appreciates the attendance of so many of the residents. He said due to the stability of the agreement, the unparalleled protections, and the choice it provided, he feels the conversion has been well thought out and speaks volumes that what residents wanted has been accomplished. He said the fear of the conversion has been taken care of. Commissioner Thnay thanked Mr. Cook for developing an agreement all the residents can support and indicated that he would be supporting the motion.

Commissioner Loché said he thinks this is a very good plan. He applauded the residents for working with the owner to develop a protection plan that will work for them rather than just sitting by and waiting to see what would happen. Commissioner Loché said a choice is always a good thing to have and that he will be supporting the motion.

Commissioner Peixoto said he studied the issue of condominium conversion for a couple of years and said he will be voting against the motion because he doesn't agree with the finding that states there will be no economic impact. He explained that he also has a problem with the process;



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according to the survey, 86 out of 96 respondents disapproved of the agreement. The state law (that did not pass) said that the manager must demonstrate a survey that shows the support of the residents. Commissioner Peixoto said he doesn't get the feeling that the majority of residents want the conversion so regardless of what the Board has said, he will not be supporting the motion.

Commissioner Márquez said she will be supporting the motion because the applicant is in compliance with the state requirement and she acknowledges that he has tried to accommodate the residents by creating additional rental protections.

Chair Mendall echoed the sentiments of the other commissioners indicating that he thinks the agreement is a good one and he applauds Mr. Cook for providing more than what was required. Whether or not the conversion is a good idea, he explained, state law doesn't give him the discretion to state an opinion. What the Planning Commission is voting on, he said, is whether the owner has complied with state law and it is clear that he has. Chair Mendall said he would be supporting the motion.

There being no other comments, the motion passed with the following vote:

AYES:	Commissioners Márquez, Loché, Thnay, Lavelle Chair Mendall
NOES:	Commissioner McKillop, Peixoto
ABSENT:	None
ABSTAINED:	None

- Text Amendment Application No. PL-2009-0454 – Starzz Management Services, Inc. (Applicant) – Request to Amend Hayward Municipal Code Section 10-1.2735(b) to Delete the Restriction on On-Sale Alcohol-Related Commercial Activities on Properties which Front B Street Between Watkins Street and Foothill Boulevard, or Main Street Between A and C Streets, in Respect to Proximity to any School, Public Park, Library, Playground, Recreational Center, Day Care Center, or Other Similar Use**

Conditional Use Permit Application No. PL-2009-0201 - Starzz Management Services, Inc. (Applicant)/Dinesh Shah (Owner) - Request to Operate a Restaurant and Night Club Within the Downtown Entertainment District - The Property is Located at 926 B Street

Commissioner Márquez explained that her family owns a restaurant on C Street, Los Compadres, so she will not be participating in the discussion.

Commissioner McKillop disclosed that she also owns property nearby, but doesn't feel it is a conflict of interest.

Associate Planner Arlyne Camire gave a synopsis of the report indicating that staff has received a letter from CommPre writing against the approval and an email in favor of the project from the

owner of Gary's Donuts, located at B Street and Main. Ms. Camire concluded her report by outlining the conditions of approval that would provide security protections for the City for Club ME's proposed nightclub activities.

Chair Mendall asked if a representative from the Hayward Police Department was in the audience and no one identified themselves as such. He then requested that staff see if a representative could be located in time to answer questions from the Commissioners.

Commissioner Loché asked for clarification on page seven of the report regarding Alcoholic Beverage Control (ABC) and what they say is an over-concentration of off-sale liquor licenses in that census track, yet Buxton's retail report indicates that the downtown area is underserved by drinking establishments. He asked staff to clarify what the landscape for alcohol consumption is in the area.

Planning Manager Patenaude said the formula used by the ABC is based on residential population and since downtown is primarily retail with only a few residents, it skews the results of the survey.

Commissioner Lavelle thanked Associate Planner Camire for the report and asked how much activity would be taking place in the basement of Club ME and whether or not patrons would have an option other than stairs. Mr. Patenaude explained that the primary nightclub activities would happen at the street level, but the basement would be open for activity. The conditions of approval stipulate that the total occupancy is based on the ground floor. He said the basement level would serve as a lounge area with pool tables, video games, and a place patrons could go if they don't want to listen to the music. He said the live entertainment is on main level with restaurant seating remaining for those who wanted to eat. Commissioner Lavelle asked if the fire department has reviewed and approved the plans, including access issues, and Mr. Patenaude said yes.

Commissioner Lavelle asked why the restaurant is described as "family-oriented" and asked what makes it so. Planning Manager Patenaude explained that during the week and weekend days, the club would function as a restaurant only and the intent is to attract families by providing a full menu. On Sunday afternoons, he said, the entertainment would be free and geared toward family members of all ages.

Commissioner Peixoto asked staff if the building is unreinforced masonry and Planning Manager Patenaude said all masonry buildings in the downtown area have been reinforced. Commissioner Peixoto then indicated that if a police representative showed up he had questions for them.

Mr. Patenaude said that staff was unable to locate a police representative who could answer questions, but staff was present during several meetings in which police representatives were present, he said, so Commissioners should go ahead and ask any questions related to security.

Commissioner Peixoto asked staff about Kumbala, a downtown restaurant/nightclub that is now closed, and how Club ME is going to avoid the problems Kumbala experienced during a 1:00 a.m. personnel shift change. Planning Manager Patenaude said that Club ME's nightclub has a shorter operating time so City staff and police are expecting less of an impact on City resources.



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Chair Mendall said one of the conditions of approval require the Conditional Use Permit be reviewed in one year, he asked if the review is a one-time review or ongoing. Planning Manager Patenaude explained that after one year the City should have a general idea of what's going to happen. If there are any "critical incidents" either before or after the one-year review, the City can certainly take action, he said. Mr. Patenaude explained that most of the conditions of approval are based on past experience in regards to operations, safety and management. City staff has met with the applicant and they are confident they can comply with all conditions of approval.

Chair Mendall asked why the Planning Commission should care about the number of pool tables and video games the club intends to have. Planning Manager Patenaude explained that while Hayward doesn't have any stated limits, other cities state limits to ensure an establishment doesn't become anything other than what the applicant indicated they were going to be. Mr. Patenaude said the applicant has not expressed any issue with the limits and has indicated that they want to keep the lounge area a multi-purpose space.

Chair Mendall asked about condition of approval number 39 which limits live entertainment, community talent shows, poetry readings and similar activities, to Sundays up until 9 p.m. Chair Mendall asked why these activities can't happen on a Tuesday, for example. Planning Manager Patenaude explained that the applicant chose the activity times. The City's intent is to keep the various uses separate so the establishment remains primarily a restaurant.

Regarding condition of approval number 26, Chair Mendall asked when alcohol consumption would stop on Friday and Saturday night if the condition states 1:00 a.m., but the club doesn't close until 2:00 a.m. Planning Manager Patenaude confirmed that during the week, alcohol sales would end when the restaurant closes, on Friday and Saturday night sales would end at 1:00 a.m., or one hour prior to closing. Chair Mendall then confirmed with staff that a condition limiting signs on the front of the establishment is to aid in visibility for police. Staff added that entertainment advertisements would be restricted. Then Chair Mendall asked about condition 18i and why the Commission should care about indoor pay phones. Planning Manager Patenaude explained that eliminating pay phones also aids in preventing on-site drug deals.

Finally Chair Mendall asked why conditions 12a and 12b, which discuss the security of areas surrounding the establishment, don't mention Newman Park located next door to the proposed restaurant/club. Chair Mendall asked if Club ME would be responsible for park security on nights other than Friday and Saturday. Planning Manager Patenaude said if a critical incidence occurs at the park, the conditions don't rule out that the incident originated at the club. The conditions also set up the club's primary areas of responsibility. Mr. Patenaude explained that the club's security plan is required to include a patrol of the park during nightclub hours.

Commissioner Lavelle asked staff to review the City's no smoking ordinance. Planning Manager Patenaude explained that City ordinance bans smoking on public property. Commissioner Lavelle confirmed that this would include the road and sidewalk in front of the club, the parking lot behind the club, and the park next door. Staff indicated that she was correct.

Chair Mendall opened the Public Hearing at 8:49 pm.

Chuck Horner, Lyford Street resident, said he would love to see a nice classy restaurant next to the park because it would increase business to the downtown area, but he's "totally confused" why the City would allow two nights to compromise that. He said when the Rotary Club built Newman Park for local children and families he's sure they never intended for a nightclub to move in next door. In the past, the City has denied permits to a number of different establishments including a consignment shop and a church, he asked why the City would bring in an establishment that serves alcohol. He said along with hip hop comes the art, the alcohol, the tagging, etc. In the next week, he said he will ask Rotary members, church members, and task force members what they think of the idea. He said police department resources are already strained. He suggested putting in a good restaurant. Quality not quantity, he said. Alcohol is big business, but Mr. Horner said he doesn't think a nightclub two nights a week is worth the compromise. Don't forget the problems of the past, he said, when an establishment has tried to combine a large group in a small space.

Monica Thompkins, representative of Starzz Management, explained that Starzz Management is an established company that has been around for 18 years with a very successful track record of providing contract services to the government at the state and county levels. Ms. Thompkins said Club ME will be a quality dining and entertainment establishment. With the club, Starzz Management is looking to revitalize the City. She said she's lived in Hayward for over 10 years and sees there is no entertainment venue in Hayward that provides something for all ages and races, not even bowling. Ms. Thompkins said the corporate officers of Starzz Management have already received FBI clearance, are in the security business, and will address all security concerns because they want their customers to be safe. Ms. Thompkins said the restaurant will have fine dining with family-oriented, quality meals (meaning meals parents approve of and kids will eat) at affordable prices. Regarding the family entertainment, Ms. Thompkins explained that Sunday is the only day of the week that working parents can participate in events that interest families, and kids won't be busy with homework and after-school activities. If they need to, she said they will add more times for family entertainment. Regarding Friday and Saturday nights, she said that Club ME is not all about hip hop; the Club will provide a variety of music that appeals to all Hayward residents. Ms. Thompkins said they have already been working with colleges and groups in the area to provide a local venue for all kinds of entertainment and activities. The goal of Club ME and Starzz Management is to bring more vitality to the City and a well established, quality business that everyone will be proud of. Starzz Management will continue to operate their current business—this isn't their only club—so they can't allow anything to happen that will jeopardize their security clearances which is the nature of their primary business. She said that they will be pro-active to eliminate any situations that might compromise security at Club ME.

Commissioner Peixoto asked Ms. Thompkins about the government contracts she mentioned and if her experience on military bases is with officers, or enlisted men's, clubs and she said yes. He pointed out that those are self-contained, self-policing environments. He said he was more interested in her other clubs in Atlanta and Chicago function regarding security. First Ms. Thompkins clarified that military bases are no different from regular clubs and most are open to non-military personnel. Second, she explained that regardless of the club, they have controls in place to check age, maintain the perimeters of the club, proper levels of security both inside and outside of the club, and if a situation starts to occur, it is handled pro-actively. Ms. Thompkins said



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they will use the same methods at Club ME. Commissioner Peixoto asked about their club in Atlanta and what happened there. Ms. Thompkins said the club was very successful, but one of the owners passed away and the family chose to go into another area of service. At the Atlanta club they had a strict dress code, which they will adhere to here in Hayward, as well as a general check as people come into the club. She said that under their watch there were no critical incidences in Atlanta. Ms. Thompkins explained that the biggest issue in Chicago was crowd control at the entrance because of the weather.

Commissioner Loché said that nightclub establishments tend to come and go, he asked Ms. Thompkins how Club ME will be different. Ms. Thompkins agreed that passed clubs have lasted 3-5 years, but it is Starzz Management's intention to stay longer with Club ME. She said she's not starting with short-term plans in mind, and as part of a business that is 18 years-old and a resident of Hayward, she focused on quality and longevity.

Commissioner Lavelle said she read in the report that Starzz Management ran a restaurant at the naval post graduate school in Monterrey, but she wanted to hear specific examples of the company's experience in starting a new restaurant, securing a kitchen, hiring staff, advertising, and how exactly they plan on running the restaurant in Hayward.

Ms. Thompkins explained that in Monterrey the navy contracted out the restaurant service and Starzz Management's responsibility was hiring the staff, including the cooks and the cleaning crew. Ms. Thompkins explained that under the Project Management branch of Starzz that's what they do; they set-up the restaurant, and create and execute innovative business solutions. The employees of Starzz have previous experience with the food industry including restaurant management as a specialty. Starzz Management is also an equipment distributor and working with the architect they have the experience to purchase the appropriate equipment for their meal service needs. Starzz Management also has cash handling experience, including making purchases for government. Ms. Thompkins concluded putting together each of the company's functions including providing security, with the contracts they have handled, that's why they feel they have the skills necessary to operate this restaurant.

Commissioner Thnay asked if crowd control becomes more of an issue as they night goes on and what policies does Starzz Management have in place when it becomes clear a patron has had more than enough to drink. Ms. Thompkins deferred the question to her security staff.

Security representative, John Taylor, owner of Golden Gate Security, said they have been in business since 1983 with staff consisting of former police and peace officers. Mr. Taylor said that his company has extensive experience with crowd control/management. He said that when Golden Gate Security was in charge at Kumbala the club had zero problems. It was after their contract expired, he explained, that the club started to have problems. Mr. Taylor said his company is proactive in crowd control and staff is trained to keep an eye on patrons to not let someone get too drunk. If they see someone become unruly they immediately notify other club personnel to stop the situation before it escalates.

Commissioner Peixoto asked Ms. Thompkins if customers will be given a hand stamp for in and out privileges or if once they come in that's it. Ms. Thompkins said once they come in that's it. If the patron leaves, she explained, they will have to pay to get back in. Commissioner Peixoto asked where patrons will go to smoke if they aren't allowed to smoke in the club or in most areas downtown. Mr. Taylor said public education is key and because of the park next door security will have to very pro-active to control smoking in the park and the areas around the club.

Chair Mendall asked if people will be banned from the club if they are known trouble-makers and if the club keeps a list. Mr. Taylor said yes, club staff will identify problem patrons, keep a list, and at the end of the week turn the list in to management and the police. Chair Mendall asked Mr. Taylor if the nightclub closes at 2:00 a.m. and 243 people spill out into the streets, does staff go home at 2:01 a.m. Mr. Taylor said the police can attest to the fact that club security will make sure that everyone goes to their car, goes home and does not linger in the area. Mr. Taylor said that staff will make note of license plate numbers of any suspicious vehicles and they keep excellent records. Chair Mendall asked who will be on-site running the day to day operations at Club ME and what their experience is. Ms. Thompkins said Debra Willis will manage Club ME after Starzz completes the initial set-up and Ms. Willis ran the club in Chicago and also holds a security clearance.

Commissioner McKillop said she was trying to familiarize herself with the names on the application and asked who Dinesh Shah is. Ms. Thompkins explained that he is the owner of the building. Commissioner McKillop expressed a desire to meet management staff after the other speakers have an opportunity to address the Commission.

John Cowee, architect for the project, said he is here to answer any questions and hopes the Planning Commission will support the motion because he thinks this is a good project for the City.

Commissioner Lavelle asked Mr. Cowee for details about the restaurant area. Mr. Cowee asked staff to bring up the slide that shows the layout of the club and pointed out the booths along the perimeter of the restaurant area, round table and chairs to the left of the dance floor, and bar stools at the bar area. The dance floor is flush with the rest of the area, but the stage, or DJ platform is raised, Mr. Cowee explained. The lobby area has the registration counter, the bathroom entrances and the stairway to the downstairs area. Commissioner Lavelle asked if there will be an elevator as well as stairs. Mr. Cowee said development will go in phases and an elevator may be added later. Commissioner Lavelle asked if there is a theme or color palette selected yet. Mr. Cowee said the color palette would be submitted with the design review, so it's still under consideration as is the exterior appearance of the club.

Commissioner Loché noted that the location of the bathrooms was moved for safety reasons, and asked if there were any other "safety by design" measures taken. Mr. Cowee said besides meeting all egress requirements, the club also has fire alarms, lights and sprinklers, manned security, and monitored security cameras. Mr. Cowee also mentioned that although the back doors are locked to any incoming traffic during normal business hours, in the case of a fire they automatically open for people to exit the club.

Commissioner McKillop asked him the capacity of the restaurant and dance floor. Mr. Cowee said the capacity is 243 for the club, approximately 78 for the restaurant. Commissioner McKillop asked



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for more information on the color scheme of the club and what is meant by fine dining.

Linda Pratt, program director of CommPre (Community Prevention of Alcohol Related Problems), said her organization believes the findings for approval do not support either amending the conditional use permit ordinance or approving this business application. She said they fully support a high quality, full-service restaurant at this location and think the application should be changed to either be an application for a restaurant or for a nightclub (barring all patrons under 21), but not try to be both. Ms. Pratt pointed out that the City hasn't had much luck with ambiguous, hybrid applications in the past and the primary use stated on this application is to be a leading entertainment venue hosting showcase events for new entertainers. She said that history has shown that when the true desire of an applicant is to run a club, but the City requires a restaurant, the venue will eventually turn into a club. Ms. Pratt said another concern is the neighboring park which should be protected by a 100 foot distance requirement, but nothing in the 65 conditions of approval specifically holds Club ME responsible for protecting and maintaining the park. CommPre believes the park is an asset for the City, she said, and deserves to be protected by the ordinance. She points that queuing is not allowed in front of adjacent businesses or in the rear parking area, so that only leaves the area in front of the park and there will be impacts. Ms. Pratt pointed out that the 65 conditions of approval will create a huge enforcement obligation for the City. She concluded by reading a Daily Review new article from May 2006 regarding two violent attacks in front of the Kumbala club and restaurant. Ms. Pratt asked the Planning Commission if the City is really ready for more "critical incidences" that will come with another nightclub.

Maria Gloria, Pompano Avenue resident, said she opposes the application to change the ordinance saying Club ME's application reminds her of Kumbala's. Ms. Gloria said she attended all the hearings for Kumbala and what she is hearing tonight is that Club ME will primarily be a restaurant for families, that there will be adequate security, that the entertainment will attract families and people who just want to socialize. The reason why Kumbala had so many problems, she explained, is it really was just a nightclub. She pointed out that 63 conditions of approval for Kumbala didn't make it a responsible business. Ms. Gloria said she does not agree with the City's findings and will no longer feel safe walking on B Street at night if the application is approved.

Doug Ligibel, Grand Terrace resident, spoke against approval of the application. He said he disagrees completely with the statement in the report that says the proposed ordinance change will promote the "public health, safety, general welfare of the residents of Hayward". Mr. Ligibel said approval will put the burden on the police department which is already dramatically understaffed citing the ratio of one sworn officer to every 940 residents. He said that both Oakland and San Francisco have ratios of one officer to every 400 residents. Although he is highly in favor of a restaurant at this location, he's looked at Starzz Management's menu and he thinks they would be successful, he said the police don't have enough time to monitor the nightclub's security and compliance issues that are listed in the conditions of approval. Mr. Ligibel said all questions for the police should be answered before the application is approved. He noted that another young lady was killed outside of a San Jose nightclub just two nights ago and concluded that the downtown Hayward area is saturated with alcohol-related establishments.

Gopi Malhotra, Mallard Court resident, said she's thrilled to see a restaurant come into downtown and welcomes them, but she's very concerned about a nightclub downtown. Ms. Malhotra explained that when she lived in San Jose, she and her friends would drive to San Francisco to avoid an unsafe environment. She excited about the revitalization of downtown, but bringing in a nightclub, liquor and young people, is not what Hayward residents are looking for. If a Hayward family is looking for something to do, she said, going to a nightclub is not it. She said she strongly opposes this application.

Pete Simos, San Leandro resident, said there isn't a lot to do in the local community. He and his wife, she's a scientist, he's a teacher, he explained, often go to San Francisco and spend their money there on a hotel and entertainment. He would like to stay local. He and his wife are excited about Club ME and think that if the City is serious about revitalizing downtown, there should be venues that serve residents of all ages and races. He said he was in favor of the application.

Per Commission request Ms. Thompkins then introduced the management staff of Starzz Management Services starting with Chief Operations Officer Joe Thompkins. She said Mr. Thompkins is certified by the Department of Defense, FBI and DOE, and will serve as facilities security officer. Mr. Thompkins, a Hayward resident for 16 years, with the company since 1991 and before that an officer in the US Navy for 12 years, said he found some of the previous speaker comments offensive. He said Starzz Management has a proven track record.

Ms. Thompkins then introduced Tracy Thompkins, event coordinator, who is already working with community outreach and will schedule the Sunday programs. Miss Tompkins explained that most of her experience comes from being active with school activities although she also took classes at College of Alameda in small business management. She said her teacher emphasized finding a niche and knowing what your target audience wants. Miss Tompkins pointed out that not all young people listen to hip-hop or get in trouble. She agreed that nightclubs have nothing to do with children, but pointed out that activities like poetry readings on Sunday will allow young people to contribute to, and be part of, the community.

Ms. Thompkins thanked the commission.

Chair Mendall closed the Public Hearing at 9:41 p.m.

Chair Mendall asked staff for verification that Mr. Taylor's statement that there were no critical incidences under his watch at Kumbala was true. Staff was unable to confirm the claim.

Commissioner McKillop said the main issue is security and without police department representation it's very difficult to make a decision.

Commissioner Thnay said he's not sure if the nightclub hours will generate enough revenue to offset the potential problems and wondered if the nightclub hours were "worth it". Echoing the concerns of Commission McKillop, Commissioner Thnay made a motion to postpone the vote until a police representative can address commission questions. Commissioner Lavelle seconded.

Assistant City Attorney Conneely asked for confirmation whether Commission Thnay was



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continuing or denying the application. Commissioner Thnay said his motion was to continue the public hearing to another time. Commissioner Lavelle confirmed the second.

Planning Manager Patenaude asked the commissioners for a particular date. Chair Mendall asked him to propose one and Mr. Patenaude suggested November 19th.

Commissioner McKillop asked if the continuation could be expedited rather than going through the entire public hearing again. She asked if the police could give a presentation of some type as part of a limited hearing. Chair Mendall expressed similar concerns.

Assistant City Attorney Conneely said they could try to avoid some repetition, but the police will be presenting new evidence and the applicant and public should be able to respond to any new issues or concerns.

In speaking to the motion, Commissioner McKillop said Starzz Management's application is not Kumbala revisited. What she sees, she said, is evidence of a "whole different ballgame" and it is clear that the applicants want to create something different that is good for the City.

Commissioner Thnay said he is excited about the proposal, and only wants to hear what police have to say about the proposed nightclub hours. He applauds their support of the vision for downtown and appreciates that they are Hayward residents.

Chair Mendall agreed with Commissioner McKillop that this is not Kumbala revisited. Of course there are some similarities, he said, but the differences are what he was hoping to see and he'd like to think the club could work for downtown. He said confirmation from the police department that they handled security successfully at Kumbala is a big factor. He said he's looking forward to the next hearing when the Commission can conclude the hearing.

There being no other comments, the motion passed with the following vote:

AYES:	Commissioners McKillop, Loché, Peixoto, Thnay, Lavelle Chair Mendall
NOES:	None
ABSENT:	None
ABSTAINED:	Commissioner Márquez

ADDITIONAL MATTERS

4. Oral Report on Planning and Zoning Matters

Planning Manager Patenaude indicated that in addition to the continuation of the public hearing on November 19th, December 17th is the last meeting of the year.

5. Commissioners' Announcements, Referrals

Chair Mendall inquired about getting a copy of a market analysis conducted for Hayward that listed what businesses would do well and are needed in Hayward. Planning Manager Patenaude said he could make copies available for everyone and reminded the Commissioners that if they ever want to call a work session to discuss various topics they can. Commissioner McKillop said that Economic Development Committee already has the marketing report posted online.

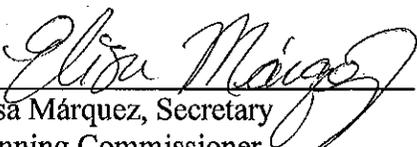
APPROVAL OF MINUTES

6. Minutes from October 15, 2009 were unanimously approved with minor changes from Commissioner Lavelle and Chair Mendall.

ADJOURNMENT

Chair Mendall adjourned the meeting at 9:53 p.m.

APPROVED:


Elisa Márquez, Secretary
Planning Commissioner

ATTEST:


Suzanne Philis, Senior Secretary
Office of the City Clerk