

**DATE:** September 14, 2010  
**TO:** Mayor and City Council  
**FROM:** R edevelopment Director  
**SUBJECT:** Inclusionary Housing Interim Relief Ordinance

### **RECOMMENDATION**

That the City Council conducts a public hearing and adopts the attached resolution finding that enactment of the Ordinance Providing Interim Relief from Certain Inclusionary Housing Provisions is exempt from CEQA because the Relief Ordinance does not have the potential for causing a significant effect on the environment (CEQA Guidelines Section 15061(b)(3), and introduces the attached Relief Ordinance .

It is further recommended that the City Council provides direction to staff concerning the level of Inclusionary Housing In-Lieu Fees and Rental Housing Impact Fees.

### **SUMMARY**

At Council's request, staff initiated a process to review the City's Inclusionary Housing Ordinance and in-lieu fee, and to consider potential developer relief measures. A number of proposed interim relief measures were discussed during a City Council work session on June 29, 2010, along with a Residential Nexus Analysis and review of current financial feasibility of residential development types. In addition, staff generated three inclusionary housing percentage and fee options for the Council's consideration. The staff report for the June 29 work session can be accessed on the City's web-site<sup>1</sup>.

City Council comments that were generated during the June work session are addressed in this staff report. In response to Council's request, staff has also prepared three additional inclusionary housing fee options for consideration. Based on the Council's input at this meeting, staff will return on September 21 with proposed resolutions to adopt new inclusionary housing in-lieu fees and rental housing impact fees. At this time, it is proposed that the City Council introduce the attached Inclusionary Housing Relief Ordinance which would: 1) create a separate rental housing impact fee for market-rate rental housing development; 2) allow payment of inclusionary fees "by right" with respect to for-sale housing development; 3); adjust the affordable housing percentages required for

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<sup>1</sup>: <http://www.hayward-ca.gov/citygov/meetings/cca/rp/2010/rp062910-01.pdf>

townhomes and condominium developments to 13%; and, 4) allow payment of both in-lieu and impact fees to be deferred in a manner consistent with other deferred fees that the Council recently adopted. The adoption of a rental housing impact fee (#1 above) would be a permanent modification of the Ordinance. However, all other measures would be approved only until December 31, 2012, at which time Council could reconsider fee levels and relief measures.

## **BACKGROUND**

The City of Hayward adopted an Inclusionary Housing Ordinance and an inclusionary housing in-lieu fee by separate resolution, in June 2003. In general, this existing Ordinance requires that builders of new “for-sale” residential developments of twenty or more units must set aside 15% of the total number of units for purchase by households of moderate-income (incomes up to 120% of area median income). New rental developments of twenty units or more also have a 15% affordable housing requirement, which is to be split 50/50 between units that are affordable to very-low and low-income households at 50% to 80% of area median income. The existing Ordinance requires forty-five years of re-sale or rent controls on for-sale and rental units, which, in the case of for-sale units, provides needed credits for the production of affordable housing units pursuant to State redevelopment law.

The Ordinance also allows for alternative methods of satisfying the inclusionary housing requirement, including: 1) provision of affordable units off-site, 2) conveyance of land to the City/Redevelopment Agency for affordable housing purposes, 3) payment of in-lieu affordable housing fees, or 4) a combination of alternatives. These alternative methods of satisfying the Ordinance currently require discretionary approval by the City, and have been used in two of the four Inclusionary Housing Agreements that the City has thus far approved.<sup>2</sup>

June 29, 2010 City Council Work Session: The report for the June 29 work session discussed the implications of recent court cases for the City’s Inclusionary Housing Ordinance. Pursuant to the Court of Appeal’s decision in *Palmer v. City of Los Angeles*, the City’s special counsel has advised that the Inclusionary Housing Ordinance should be revised to exempt unassisted market-rate rental housing from the requirement to set aside affordable units. Instead, market rate rental housing could be subject to paying a Rental Housing Impact Fee that is supported by a residential nexus analysis.

Pursuant to another court case, *Building Industry Ass’n v. City of Patterson*, a number of cities have recently undertaken nexus studies to determine the impact that market rate residential development has on the demand for affordable housing, thereby justifying their inclusionary housing requirements. The report for the June 29 work session presented a Residential Nexus Analysis by Keyser Marston Associates, which showed that Hayward’s existing 15% affordable housing requirement can be justified for single-family developments, but that a lower affordable housing

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2. The two Inclusionary Housing Agreements (IHA’s) utilizing alternative methods to satisfy the Ordinance are the Citation Homes/Integral Communities IHA for Cannery Place, and the DeSilva Group/KB Homes IHA for the La Vista, Garin Vista, and Eden Point developments. The Cannery Place IHA included dedication of land and funds for development of the 59-unit C & Grand Senior Housing affordable development (completed in 2008), and land for additional senior housing at B and Grand Streets. It also calls for a combination of on-site affordable units and in-lieu fee payments. The DeSilva Group IHA called for provision of land and funding, which resulted in the development of the 77-unit Walker Landing affordable family housing development in 2007.

requirement in the range of 13% to 14% is warranted for other residential ownership products due to the current economic climate. Also, the Nexus Analysis generally supported inclusionary in-lieu fees that are higher than Hayward's existing in-lieu fee amount; however, due to the current housing market, in-lieu fee amounts at existing or higher levels are not currently financially feasible for most residential development types.

During the June 29 work session, three inclusionary housing percentage and in-lieu fee options were presented for Council's consideration. Staff recommended Option Two, which includes affordable housing percentage requirements of 13% for attached ownership housing, and maintains the current 15% requirement for detached single-family housing. Option Two also included an in-lieu fee amount of \$4.00 per square foot of building area for all ownership housing, and a rental housing impact fee of \$3.50 per square foot (see Attachment I-b to this report).

## DISCUSSION

The City Council made a number of comments during the June 29 work session, which are addressed in this report. Pursuant to the City Council's request, three additional in-lieu fee options are also included for consideration. In order to move forward with developer relief measures, and to respond to the recent legal decisions affecting inclusionary housing ordinances, staff and special counsel have prepared a draft Inclusionary Housing Interim Relief Ordinance (see Attachment II). If the City Council approves staff's recommendation and introduces the attached Relief Ordinance at this meeting, the Ordinance will come back to Council for adoption at the meeting of September 21, 2010. In addition, an Inclusionary Housing In-Lieu Fee resolution and a Rental Housing Impact Fee resolution will be prepared for consideration on September 21, 2010.

June 29, 2010 City Council Work Session Comments: During the June 29, 2010 City Council work session, Council members asked staff to explore the following ideas:

- Exempt rental housing developments from Housing Impact Fees
- Exempt condominiums and townhomes from In-Lieu Fees
- Require an In-Lieu Fee *only* for single-family homes
- Repeal the Inclusionary Housing Ordinance
- Create an Affordable Housing Trust Fund
- Explore developer contributions to needs other than Affordable Housing

Response to City Council Work Session Comments:

- 1. Exempt Rental Apartments/Senior Citizen Rental Housing from Housing Impact Fees; Exempt Condominiums and Townhomes from In-Lieu Fees:** At the time of the consultant's research, market-rate rental housing development had not been economically feasible in Hayward for several years. Condominium development was also considered to be infeasible, and townhome development was only marginally feasible. The housing market is now beginning to show signs of slow recovery. While much improvement is needed before the housing market can be considered "healthy," it appears that the economics of small-lot, single-family development and townhome development are slowly

strengthening, and in parts of the San Francisco Bay Area, even rental development economics appear to be strengthening. The real estate industry web-site Builderbytes.com (<http://www.builderbytes.com>) recently noted that: “According to the California Building Industry Association, multifamily permits were up 87 percent from a year ago and were up 17 percent from April's numbers. Earlier this month, the NAHB's Multifamily Market Index reported that the multifamily market was moving towards stability in the first quarter of 2010. Builders are feeling less pessimistic, as they expect to see improvement in rental occupancy over the next six months; yet, doubts still remain due to difficulties in obtaining loans to fund development.”

In response to this comment, staff has included three new fee options (Options Four, Five, and Six), all of which have no Rental Housing Impact Fees charged to market-rate rental housing developments, including all market-rate rental senior housing and assisted living developments, effective through December 31, 2012. In addition, Option Four includes no in-lieu fee charges for condominium and townhome development, and Option Six calls for reduced fees per square foot for condominiums and townhome development, relative to single-family detached development.

Staff supports the reduced fee and inclusionary percentage requirement for City/Agency-assisted rental projects shown in Option Two, as being the most equitable and appropriate level of fee relief. However, due to the weakness in the market-rate rental market in Hayward, as well as the inherent affordability of this housing type, staff would also support Option Six.

- 2. Require Fee Only for Large-lot, Single-Family Homes:** The argument for a fee-only approach to large-lot, single-family housing developments is that providing affordable housing on-site is an inefficient and expensive way to produce affordable housing. However, small-lot, attached single-family and townhome housing can efficiently be made affordable to moderate-income, first-time homebuyers, and is attractive to growing families.

Staff and special counsel do not recommend an amendment to the existing Inclusionary Housing Ordinance at this time, because extensive changes would be needed in the existing Ordinance, and because the Interim Relief Ordinance provides an opportunity for the Council, development community, and the public to evaluate the proposed changes before making them permanent. The proposed Relief Ordinance accomplishes the Council's objectives on an interim basis, and a permanent change can be considered at the end of the Interim Relief term.

- 3. Repeal the Inclusionary Housing Ordinance:** The City Council could repeal the City's Inclusionary Housing Ordinance by an amendment to the Hayward Municipal Code. However, the City's Inclusionary Housing Ordinance is cited in the City's recently updated and certified Housing Element as one of several programs and resources that provide the City with the means to increase its stock of affordable housing and meet its Regional Housing Needs Allocation (RHNA) goals. The Housing Element currently assumes that some potential future projects will include inclusionary housing units. As a result, the City would need to demonstrate and make findings that other means to achieve the RHNA goals are

available. Amendments to the Housing Element may be needed if the City desires to eliminate the existing Ordinance entirely.

Staff does not recommend repealing the Inclusionary Housing Ordinance because it is an important tool for the City to achieve its affordable housing goals in a way that promotes dispersal of affordable housing units throughout the community. However, if Council desires to explore this further, staff will return at a future meeting in late spring 2011 to discuss any needed Housing Element and municipal code amendments and options to providing affordable housing in lieu of inclusionary housing.

4. **Create an Affordable Housing Trust Fund:** The existing Inclusionary Housing Ordinance established an Affordable Housing Trust Fund to receive all in-lieu fees and monies from other sources, although to date no developer has paid in-lieu fees. The recently amended Cannery Place Inclusionary Housing Agreement will result in the collection of in-lieu fees, which will be deposited in the Affordable Housing Trust Fund. All monies deposited in the Fund must be used to increase and improve the supply of housing affordable to moderate, low, and very low-income households in the City. By adopting the Relief Ordinance, which allows developers to pay in-lieu fees “by right” for a period of time, in-lieu fees will likely be collected and deposited in the Affordable Housing Trust Fund and may be used for a wide variety of affordable housing purposes.
  
5. **Adopt an alternative to Inclusionary Housing Requirements – Provide for Other Community Needs:** If Council wants to consider levying development fees for community needs such as child care centers or community facilities, Council would need to adopt ordinances and/or fees for the specified purposes, based on the nexus - or demand - for each service that is created by housing development. The City may not utilize inclusionary housing in-lieu fees or rental impact fees for purposes other than to provide affordable housing, since those fees are based on the impact of new, market-rate housing on the need for affordable housing, and have no relation to needs for child care facilities and other purposes.

Staff does not recommend adopting new development fees in the current economic climate. However, if Council would like to explore this concept further, staff could undertake additional research and report back to the City Council in a work session in 2011.

*Proposed Inclusionary Housing Interim Relief Ordinance:* The attached proposed and recommended Inclusionary Housing Interim Relief Ordinance would be in effect until December 31, 2012, and includes the following provisions, which were discussed in detail at the June 29 work session:

1. Maintains the existing 15% affordable housing percentage in new detached single-family developments, and reduces the affordable housing percentage for condominium and townhome developments to 13%, as supported by the Residential Nexus Analysis, and in conformance with the recent *Patterson* court decision;
  
2. Allows new ownership housing development applicants the choice to pay inclusionary housing in-lieu fees (fee “by right”) rather than build inclusionary housing. The in-lieu fees

shall be set by City Council resolution. It is anticipated that most developers of ownership housing will choose to pay an in-lieu fee rather than supply moderate-income affordable housing units;

3. For new residential rental developments receiving no assistance, developers would pay rental housing impact fees as recommended in light of the recent *Palmer* decision. No fees would be required for new very low- or low-income affordable housing units subject to a Regulatory Agreement of fifty-five years. Housing Impact fees would be set by City Council resolution;
4. Residential rental developments that receive City assistance (either financial or regulatory, such as a density bonus) may (continue to) be required to supply affordable housing units;
5. For units receiving certificate of occupancy by December 31, 2012, the applicant may elect to defer said fees until the earlier of: a) close of escrow, or b) a one year period following certificate of occupancy. Payment of the deferred fees would be ensured by the recordation of a trust deed against the developed property, which would be released as the fees are paid. This provision is similar to provisions adopted by the City Council in February of this year regarding deferral of payment for Park in-lieu fees and the Supplemental Building Construction Improvement Tax

*In-Lieu Fee Options:* At the June 29 work session, staff generated three Inclusionary Housing percentage and in-lieu fee options for the Council's consideration, and recommended the selection of Option Two as being both reasonable and supportable (see Attachment I-b). Please note that corrections have been made to the proposed affordable housing percentage requirement applicable to townhomes and condominiums; the proposed percentage requirement is 13%, for all attached ownership housing development. This correction is supported by the Nexus Analysis.

In response to City Council's request, staff prepared Options Four, Five, and Six on Attachment I-a entitled "In-Lieu Fee Options – September 14, 2010". In general, all of the new fee options would exempt market rate rental housing from paying a Rental Housing Impact Fee for the interim period, and two of the three impose lower or no in-lieu fees for ownership housing. Staff continues to recommend Option Two as providing the most appropriate level of relief for the interim relief period; however, staff would also support Option Six. Based on City Council direction, staff will return with proposed fee resolutions for Council adoption on September 21.

## **CEQA REVIEW**

The Relief Ordinance is exempt from CEQA because the enactment of the Relief Ordinance does not have any significant effect on the environment. It affects only the affordability of residences constructed in the City and contains no provisions affecting the physical design or development of residences. (CEQA Guidelines Section 15061(b)(3)).

## **ECONOMIC IMPACT**

The Inclusionary Housing Ordinance relief measures discussed in this report are designed to mitigate the effects of a recessionary housing market and stimulate new residential construction and new jobs. By adopting the relief measures proposed in the Ordinance, as well as new Inclusionary In-Lieu Fee and Rental Housing Impact Fee resolutions, developers of marginally feasible residential products will gain additional confidence to proceed. It is expected that the most immediate beneficial effects will be to projects that are poised to move ahead. Condominium and apartment developments are not likely to be rendered immediately feasible as a result of these or other City relief measures, but these measures may assist in stimulating such development within the two-year period, as the economy continues to improve.

## **FISCAL IMPACT**

Fiscal impacts to the City of Hayward could be moderately positive, depending in part on which fee options are adopted. To the extent that residential developments are encouraged to proceed, the City would gain additional fee revenue, transfer taxes, and property taxes from the new development.

## **PUBLIC CONTACT**

Potential measures for relief from Inclusionary Housing Ordinance were generally discussed at a City Council work session held on June 23, 2009<sup>3</sup>, and at a “roundtable” discussion with residential developers on April 1, 2010. On June 29, 2010<sup>4</sup>, the City Council held a work session to consider specific Inclusionary Housing interim relief measures. Also on June 29, 2010, Mr. Paul Campos, Sr. Vice President and General Counsel for the Building Industry Association of the Bay Area, sent an e-mail thanking the City Council for moving proactively to assist the building industry, and strongly supporting staff’s recommended relief measures.

## **NEXT STEPS**

If the City Council introduces the proposed Inclusionary Housing Relief Ordinance, staff will return to City Council on September 21, 2010 for the adoption of the Ordinance and for adoption of resolutions imposing the Inclusionary Housing In-Lieu and Rental Housing Impact Fees. Finally, staff will respond to any additional direction that the Council provides regarding additional changes to the Inclusionary Housing Ordinance, or additional fees that provide for other community needs.

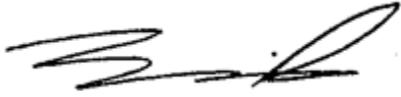
*Prepared by:* Maret Bartlett, Redevelopment Director

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<sup>3</sup> : <http://www.hayward-ca.gov/citygov/meetings/cca/ws/2009/ws062309-02.pdf>

<sup>4</sup> : <http://www.hayward-ca.gov/citygov/meetings/cca/rp/2010/rp062910-01.pdf>

Approved by:



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Fran David, City Manager

Attachments:

- Attachment I – (a) Inclusionary Housing In-Lieu Fee Options – September 14, 2010
- (b) Inclusionary Housing In-Lieu Fee Options – June 29, 2010
- Attachment II – Resolution - Ordinance Providing Interim Relief from Certain  
Inclusionary Housing Provisions

Attachment I-a  
Hayward Inclusionary Housing Ordinance  
In-Lieu Fee Options - September 14, 2010

**Residential Prototypes - 100 unit developments**

<b><u>In-Lieu Fee Options</u></b>	<b>SFD - large lot 2,700 sq. ft.</b>	<b>SFD - small lot* 1,850 sq. ft.</b>	<b>Townhome 1,400 sq. ft.</b>	<b>Condominiums 1,200 sq. ft.</b>	<b>Rental 900 sq. ft.**</b>
<b><u>Existing Ordinance</u></b>	15%	15%	15%	15%	15%
fee/sq. foot	\$4.44	\$6.49	\$8.57	\$10.00	\$13.33
fee/market-rate unit	<b>\$12,000</b>	<b>\$12,000</b>	<b>\$12,000</b>	<b>\$12,000</b>	<b>\$12,000</b>
fee/affordable unit	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000
total fee - 100 units	\$1,200,000	\$1,200,000	\$1,200,000	\$1,200,000	\$1,200,000
<b><u>Nexus Analysis Supported</u></b>	22.3%	18.1%	14.7%	13.4%	12.9%
fee/sq. foot	\$19.26	\$21.62	\$22.14	\$23.33	\$35.56
fee/market-rate unit	<b>\$52,000</b>	<b>\$40,000</b>	<b>\$31,000</b>	<b>\$28,000</b>	<b>\$32,000</b>
fee/affordable unit***	\$236,364	\$222,222	\$206,667	\$215,385	\$246,154
total fee - 100 units	\$5,200,000	\$4,000,000	\$3,100,000	\$2,800,000	\$3,200,000
<b><u>Option Four - Lowest: Fees for Single-family Housing Only</u></b>	15.0%	15.0%	0.0%	0.0%	0.0%
fee/sq. foot	\$3.50	\$3.50	\$0.00	\$0.00	\$0.00
fee/market-rate unit	<b>\$9,450</b>	<b>\$6,475</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
fee/affordable unit***	\$63,000	\$43,167	\$0	\$0	\$0
total fee - 100 units	\$945,000	\$647,500	\$0	\$0	\$0
<b><u>Option Five - Low/No Rental Impact Fee</u></b>	15.0%	15.0%	13.0%	13.0%	0.0%
fee/sq. foot	\$3.50	\$3.50	\$3.50	\$3.50	\$0.00
fee/market-rate unit	<b>\$9,450</b>	<b>\$6,475</b>	<b>\$4,900</b>	<b>\$4,200</b>	<b>\$0</b>
fee/affordable unit***	\$63,000	\$43,167	\$37,692	\$32,308	\$0
total fee - 100 units	\$945,000	\$647,500	\$490,000	\$420,000	\$0
<b><u>Option Six - Mid/No Rental Impact Fee</u></b>	15.0%	15.0%	13.0%	13.0%	0.0%
fee/sq. foot	<b>\$4.00</b>	<b>\$4.00</b>	<b>\$3.50</b>	<b>\$3.50</b>	\$0.00
fee/market-rate unit	<b>\$10,800</b>	<b>\$7,400</b>	<b>\$4,900</b>	<b>\$4,200</b>	<b>\$0</b>
fee/affordable unit***	\$72,000	\$49,333	\$37,692	\$32,308	\$0
total fee - 100 units	\$1,080,000	\$740,000	\$490,000	\$420,000	\$0

\* Small Lot SFD includes hybrid types, such as zero lot line units and duets

\*\*Existing Ordinance requires rental developments to price their affordable/inclusionary units at levels very-low affordable to and low income households

\*\*\*Fees per affordable unit are calculated to the nearest "whole unit" number

Attachment I-b  
Hayward Inclusionary Housing Ordinance  
In-Lieu Fee Options - June 29, 2010

**Residential Prototypes - 100 unit developments**

<b><u>In-Lieu Fee Options</u></b>	<b>SFD - large lot 2,700 sq. ft.</b>	<b>SFD - small lot* 1,850 sq. ft.</b>	<b>Townhome 1,400 sq. ft.</b>	<b>Condominiums 1,200 sq. ft.</b>	<b>Rental 900 sq. ft.**</b>
<b><u>Existing Ordinance</u></b>	15%	15%	15%	15%	15%
fee/sq. foot	\$4.44	\$6.49	\$8.57	\$10.00	\$13.33
fee/market-rate unit	<b>\$12,000</b>	<b>\$12,000</b>	<b>\$12,000</b>	<b>\$12,000</b>	<b>\$12,000</b>
fee/affordable unit	\$80,000	\$80,000	\$80,000	\$80,000	\$80,000
total fee - 100 units	\$1,200,000	\$1,200,000	\$1,200,000	\$1,200,000	\$1,200,000
<b><u>Nexus Analysis Supported</u></b>	22.3%	18.1%	14.7%	13.4%	12.9%
fee/sq. foot	\$19.26	\$21.62	\$22.14	\$23.33	\$35.56
fee/market-rate unit	<b>\$52,000</b>	<b>\$40,000</b>	<b>\$31,000</b>	<b>\$28,000</b>	<b>\$32,000</b>
fee/affordable unit***	\$236,364	\$222,222	\$206,667	\$215,385	\$246,154
total fee - 100 units	\$5,200,000	\$4,000,000	\$3,100,000	\$2,800,000	\$3,200,000
<b><u>Option One - Low</u></b>	15.0%	15.0%	13.0%	13.0%	0.0%
fee/sq. foot	\$3.50	\$3.50	\$3.50	\$3.50	\$3.50
fee/market-rate unit	<b>\$9,450</b>	<b>\$6,475</b>	<b>\$4,900</b>	<b>\$4,200</b>	<b>\$3,150</b>
fee/affordable unit***	\$63,000	\$43,167	\$37,692	\$32,308	\$26,250
total fee - 100 units	\$945,000	\$647,500	\$490,000	\$420,000	\$315,000
<b><u>Option Two-Mid (Recommended)</u></b>	15.0%	15.0%	13.0%	13.0%	0.0%
fee/sq. foot	<b>\$4.00</b>	<b>\$4.00</b>	<b>\$4.00</b>	<b>\$4.00</b>	<b>\$3.50</b>
fee/market-rate unit	<b>\$10,800</b>	<b>\$7,400</b>	<b>\$5,600</b>	<b>\$4,800</b>	<b>\$3,150</b>
fee/affordable unit***	\$72,000	\$49,333	\$43,077	\$36,923	\$26,250
total fee - 100 units	\$1,080,000	\$740,000	\$560,000	\$480,000	\$315,000
<b><u>Option Three-High</u></b>	15.0%	15.0%	13.0%	13.0%	0.0%
fee/sq. foot	\$5.00	\$5.00	\$4.50	\$4.50	\$4.00
fee/market-rate unit	<b>\$13,500</b>	<b>\$9,250</b>	<b>\$6,300</b>	<b>\$5,400</b>	<b>\$3,600</b>
fee/affordable unit***	\$90,000	\$61,667	\$48,462	\$41,538	\$30,000
total fee - 100 units	\$1,350,000	\$925,000	\$630,000	\$540,000	\$360,000

\* Small Lot SFD includes hybrid types, such as zero lot line units and duets

\*\*Existing Ordinance requires rental developments to price their affordable/inclusionary units at levels very-low affordable to and low income households

\*\*\*Fees per affordable unit are calculated to the nearest "whole unit" number

HAYWARD CITY COUNCIL

RESOLUTION NO. 10-

RESOLUTION FINDING THAT THE ENACTMENT AN ORDINANCE PROVIDING INTERIM RELIEF FROM CERTAIN INCLUSIONARY HOUSING PROVISIONS IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

WHEREAS, the City Council of the City of Hayward has reviewed the provisions of Hayward Municipal Code Chapter 10, Article 17, the Inclusionary Housing Ordinance, and the provisions of City Council Resolution 03-089, adopting an In-Lieu Fee for affordable housing units, in order to consider economic relief measures and to stimulate appropriate housing development in the City of Hayward; and

WHEREAS, a Residential Nexus Analysis dated April 2010, was prepared for the City of Hayward by Keyser Marston Associates, Inc. in connection with the Hayward Inclusionary Housing Ordinance, and was reviewed by the City Council at a City Council work session on June 29, 2010; and

WHEREAS, the City Council has reviewed the information contained in the proposed "Ordinance Providing Interim Relief from Certain Inclusionary Housing Provisions" and the accompanying staff report and attachments thereto at a duly noticed meeting on September 14, 2010.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HAYWARD as follows:

1. The proposed Inclusionary Housing Interim Relief Ordinance is exempt from CEQA because there is no possibility that the adoption of the proposed Relief Ordinance may have a significant effect on the environment, in that it affects only the affordability of residences constructed in the City of Hayward and contains no provisions affecting the physical design or development of residences (CEQA Guidelines Section 15061(b)(3)).
2. The proposed Relief Ordinance will promote the public health, safety, convenience and general welfare of the residents of Hayward in that the Ordinance is designed to provide a stimulus package encouraging developers to build in Hayward, particularly during a depressed economic period. Development would stimulate growth while improving neighborhoods by developing underutilized properties.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2010

ADOPTED BY THE FOLLOWING VOTE:

AYES:            AGENCY MEMBERS:

                    MAYOR:

NOES:            AGENCY MEMBERS:

ABSTAIN:        AGENCY MEMBERS:

ABSENT:         AGENCY MEMBERS:

ATTEST: \_\_\_\_\_

Secretary of the Redevelopment Agency  
of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_

General Counsel

ORDINANCE NO. 10-\_\_\_\_\_

AN ORDINANCE PROVIDING INTERIM RELIEF FROM CERTAIN INCLUSIONARY HOUSING PROVISIONS

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

Section 1. Interim Relief Provisions. Notwithstanding the provisions of Chapter 10, Article 17, "Inclusionary Housing Ordinance," of the Hayward Municipal Code, the following provisions shall be applicable to Residential Development Projects which have received all discretionary planning approvals prior to December 31, 2012:

DEFINITIONS

The capitalized terms set forth in this Ordinance shall have the same meaning as in Chapter 10, Article 17, "Inclusionary Housing Ordinance," of the Hayward Municipal Code, except that the following terms are additionally defined for the purposes of this Ordinance:

(a) "Residential Ownership Project" is defined as a Residential Development Project that includes the creation of twenty (20) or more Dwelling Units that may be sold individually, including but not limited to condominiums, townhomes, stock cooperatives, community apartments, and attached or detached single-family homes. A Residential Ownership Project also includes a condominium conversion.

(b) "Residential Rental Project" is defined as a Residential Development Project that includes the creation of twenty (20) or more Dwelling Units that cannot be sold individually.

PROVISIONS APPLICABLE TO RESIDENTIAL OWNERSHIP PROJECTS

(a) Percentage of Affordable Units. A percentage of all Dwelling Units in a Residential Ownership Project shall be Affordable Units that are sold to Moderate Income Households at Affordable Ownership Housing Cost, as follows:

1. Detached single-family homes: fifteen percent (15%).
2. Attached homes, including but not limited to townhomes, condominiums, and other common interest developments: thirteen percent (13%).

(b) Payment of In-Lieu Fees. As an alternative to subsection (a), an applicant for a Residential Ownership Project may choose to pay In-Lieu Fees. In-Lieu Fees shall be set by resolution of the City Council from time to time at its sole discretion.

(c) Selection of Alternative. An application for the first approval of a Residential Ownership Project shall describe whether the applicant elects to comply with subsection (a) or (b), or a combination of those subsections.

#### PROVISIONS APPLICABLE TO RESIDENTIAL RENTAL PROJECTS

(a) Rental Housing Impact Fee. For Residential Rental Projects receiving no City assistance, Rental Housing Impact Fees shall be paid to mitigate the impact of the Residential Rental Project on the need for affordable housing in the City, except that no Rental Housing Impact Fee need be paid for Dwelling Units which are subject to a regulatory agreement with a term of at least fifty-five (55) years and which are required to be rented at Affordable Rental Housing Cost to Very Low or Low Income Households. Rental Housing Impact Fees shall be set by resolution of the City Council from time to time at its sole discretion.

(b) Rental Alternative. For Residential Rental Projects for which the applicant requests and receives a direct City financial contribution or any form of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code, Affordable Units may be required by the City pursuant to the terms of that assistance. As a condition of City assistance, the City shall require that the applicant agree by contract with the City to the limitation on rents in consideration for the city's assistance, to ensure compliance with the Costa-Hawkins Act (Chapter 2.7 of Title 5 of Part 4 of Division 3 of the Civil Code).

#### TIME OF PAYMENT OF IN-LIEU FEES AND RENTAL HOUSING IMPACT FEES

(a) All In-Lieu Fees and Rental Housing Impact Fees shall be due and payable at the time a certificate of occupancy is issued for a Dwelling Unit or at the time of final inspection should no occupancy permit be required for the Dwelling Unit.

(b) Notwithstanding subsection (a), for any Dwelling Unit receiving a certificate of occupancy or final inspection by December 31, 2012, the applicant may elect to defer the payment of the In-Lieu Fees and Rental Housing Impact Fees until the earliest of the following to occur:

1. Close of any escrow for the sale of the Dwelling Unit subject to the In-Lieu Fee or Rental Housing Impact Fee, or
2. One year after issuance of the certificate of occupancy for the Dwelling Unit (or one year after final inspection should no occupancy permit be required);

Provided that the property owner enters into a contract with the City to pay the In-Lieu Fee or Rental Housing Impact Fee, as applicable, at the time specified plus all associated administrative and other costs, which contract shall be secured by a recorded lien against the Dwelling Unit.

INCLUSIONARY HOUSING ORDINANCE

All provisions of Chapter 10, Article 17, "Inclusionary Housing Ordinance," Hayward Municipal Code, which do not conflict with this Ordinance shall remain in full force and effect.

Section 2. Severance. Should any part of this ordinance be declared by a final decision of a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 3. Effective Date. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective 30 days from and after the date of its adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the \_\_\_\_ day of \_\_\_\_, 2010, by Council Member \_\_\_\_\_.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the \_\_\_\_ day of \_\_\_\_, 2010, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: \_\_\_\_\_  
Mayor of the City of Hayward

DATE: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

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City Attorney of the City of Hayward