

**DATE:** September 28, 2010

**TO:** Mayor and City Council

**FROM:** Maret Bartlett, Redevelopment Director

**SUBJECT:** Inclusionary Housing Interim Relief Ordinance and In-Lieu Fee Resolution

### **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 adopts the attached resolution amending Council Resolution 03-089, and adopting a new Affordable Housing In-lieu Fee for detached single-family housing.

### **BACKGROUND**

On June 29, 2010, the City Council held a work session regarding a number of proposed interim relief measures associated with the City's Inclusionary Housing Ordinance, 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>.

On September 14, 2010, the City Council held a public hearing to consider additional fee options and a proposed draft Inclusionary Housing Interim Relief Ordinance. The City Council selected Fee Option Four, which provides an interim exemption from the inclusionary housing requirement for all market-rate rental housing and attached for-sale housing (townhomes and condominiums). Single-family detached housing would continue to have a 15% inclusionary requirement, or in-lieu affordable housing fee of \$3.50 per square foot. The staff report for the September 14 public hearing can also be accessed on the City's web-site<sup>2</sup>.

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

<sup>2</sup> : <http://www.hayward-ca.gov/citygov/meetings/cca/rp/2010/rp091410-13.pdf>

Staff was directed to modify the proposed Ordinance and to draft an inclusionary housing fee resolution in conformance with Option Four. In addition, staff was directed to analyze the impact of the proposed Ordinance and fee on the City's General Plan Housing Element.

## **DISCUSSION**

The attached modified Inclusionary Housing Interim Relief Ordinance would be in effect until December 31, 2012, and includes the following provisions, which were previously discussed at the June 29 work session and the September 14 public hearing:

1. Maintains the existing 15% affordable housing percentage in new detached single-family developments, and exempts attached condominium and townhome developments and market-rate rental housing developments from the inclusionary housing requirement;
2. Allows detached single-family housing development applicants the choice to pay inclusionary housing in-lieu fees (fee "by right") rather than build inclusionary housing. The in-lieu fees would be set by City Council resolution;
3. 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;
4. For units receiving a certificate of occupancy by December 31, 2012, the applicant may elect to defer payment of in-lieu 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.

The attached resolution would set the Inclusionary Housing In-Lieu Fee amount for new single-family detached for-sale housing at \$3.50 per square foot of new habitable residential space.

*Impact on General Plan Housing Element:* The City's recently updated and certified Housing Element is contained in Chapter Five of the Hayward General Plan, and can be accessed from the City's web-site<sup>3</sup>. The Inclusionary Housing Ordinance is described on page Section 5.3, page 5-49, as one of the City's most significant affordable housing policies. Most significantly, on page 5-51 and again on 5-98, the Housing Element calls for a review of the Ordinance in order to evaluate its effectiveness and to respond to the current economic downturn. Specifically, the Plan calls for the City to:

- Review the Ordinance and Affordable Housing In-Lieu Fee Resolution;
- Review best practices for methodology of determining fees;
- Determine the affordable housing cost differential;

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<sup>3</sup> : <http://www.hayward-ca.gov/about/general.shtm>

- Prepare a nexus study to determine the impact of market-rate housing on the need for affordable housing;
- Analyze the financial costs, benefits, and use of incentives and alternatives to produce affordable housing; and
- Consider setting aside a specific percentage of the in-lieu fees for extremely low-income housing.

Based on the results of this study, the Housing Element states that the City will make appropriate temporary and/or permanent adjustments to foster residential development and will specifically determine whether to allow payment of in-lieu fees for all residential projects ("by right"). Goal 4, one of the major Housing Element goals, is to remove constraints on housing development, and Policy 4.1 states that the City will adjust residential development standards that are determined to be a constraint on housing. However, Program 18 notes that the City does intend to continue to implement the Inclusionary Ordinance, and Policy 3.6 calls for the City to implement the Inclusionary Ordinance to require a percentage of low and moderate income housing in new housing development.

Keyser Marston's work fulfilled a major portion of the analysis called for in the Housing Element and included the review of best practices, the affordable housing cost differential, the nexus study, and the cost to private developers of producing affordable housing or paying in-lieu fees. Keyser Marston also reviewed the financial feasibility of various development prototypes in the current market. They concluded that townhouses and condominiums were generally infeasible, whereas single-family detached homes were marginally feasible. While the City's inclusionary requirements were by no means the sole reason that projects were infeasible (the main reason was reductions in sales prices), they did represent an additional cost to the projects.

Given the City's goal to remove constraints on the development of housing and the Keyser Marston analysis, staff believes that the interim relief ordinance is consistent with the Housing Element. It should help to make the development of townhouses and condominiums, which provide lower cost housing, more feasible in the current economic climate, while continuing to require affordable housing-lieu fees for single-family detached homes. The suspension of inclusionary requirements for attached homes will only be in effect for a little more than two years, which should help to achieve the City's overall goal of encouraging housing production, while retaining Hayward's permanent policies of requiring affordable housing when, hopefully, the economy and housing market recover.

To implement the remaining Housing Element policies regarding inclusionary zoning, staff has also surveyed other cities with respect to structuring the fees, and this has resulted in the recommendation to calculate in-lieu fees on a "per square foot" basis. Finally, staff reviewed the use of incentives and alternatives to produce affordable housing at a discussion with developers at the April 2010 roundtable. While Hayward developers have made very effective use of the Ordinance's "alternative" means to satisfy the inclusionary housing requirement, provision for payment of an in-lieu fee "by right" – or at the developers' option – as proposed in the interim ordinance will be the most effective way to provide relief to single-family developers.

In compliance with the Housing Element, the City Council may wish to consider setting aside a specific percentage of the in-lieu fees for extremely low-income housing. No fees have been collected to date, and expectations regarding such inclusionary housing fee revenue are modest over the next two-year period. If Council wishes to allocate a portion of the Inclusionary Housing in-lieu fee revenue for this purpose, staff can prepare a resolution for consideration on October 12, 2010. However, the Housing Element only requires consideration of this provision and does not require Council adoption.

*CEQA Review:* The Relief Ordinance is exempt from CEQA because it can be seen with certainty that the enactment of the Relief Ordinance will 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 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 the new Inclusionary In-Lieu Fee Resolution, 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, to the extent that residential developments are encouraged to proceed. Inclusionary housing in-lieu fees could be expected from the Burbank School residual site, for which a new single-family development of approximately 60 units is currently under consideration. In addition, the City would gain additional building permit fee revenue, transfer taxes, and property taxes from new housing development of all types.

The Cannery Place developer, Taylor Morrison, currently has an Inclusionary Housing Agreement calling for payment of in-lieu fees for seven units. Under the current In-Lieu Fee Resolution, the amount would be \$80,000 per affordable unit, or \$560,000. However, under the proposed Ordinance and Resolution, the developer would be exempt from paying such fees, because the Agreement calls for the developer to pay the fees in effect at the time such fees are due.

## **PUBLIC CONTACT**

Potential measures for relief from Inclusionary Housing Ordinance were generally discussed at a City Council work session held on June 23, 2009, and at a “roundtable” discussion with residential developers on April 1, 2010. On June 29, 2010, the City Council held a work session to consider specific Inclusionary Housing interim relief measures, and on September 14, 2010 the City Council held a public hearing regarding the proposed Inclusionary Housing Interim Relief Ordinance and proposed fee options.

## **NEXT STEPS**

If the City Council introduces the proposed Inclusionary Housing Relief Ordinance, staff will return to City Council on October 12, 2010, for the adoption of the Ordinance.

*Prepared by:* Maret Bartlett, Redevelopment Director

Approved by:



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Fran David, City Manager

Attachments:

- Attachment I Resolution Regarding CEQA Exemption
- Attachment II Draft Ordinance Providing Interim Relief from Certain Inclusionary Housing Provisions
- Attachment III Resolution Modifying the In-Lieu Fee for Affordable Housing Units

HAYWARD CITY COUNCIL

RESOLUTION NO. 10-

RESOLUTION FINDING THAT THE ENACTMENT OF 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, the City Council has reviewed the information contained in the proposed "Ordinance Providing Interim Relief from Certain Inclusionary Housing Provisions" (the "Interim Relief Ordinance") and the accompanying staff report and attachments thereto at a duly noticed meeting on September 28, 2010.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HAYWARD hereby finds that the proposed Inclusionary Housing Interim Relief Ordinance is exempt from CEQA because it can be seen with certainty that there is no possibility that the adoption of the proposed Interim Relief Ordinance may have a significant effect on the environment, in that the Interim Relief Ordinance affects only the affordability of residences constructed in the City of Hayward and contains no provisions modifying the physical design, development, or construction of residences (CEQA Guidelines Section 15061(b)(3)).

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

**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. In a Residential Ownership Project, fifteen percent (15%) of all Dwelling Units consisting of detached single-family homes shall be Affordable Units that are sold to Moderate Income Households at Affordable Ownership Housing Cost. In a Residential Ownership Project, none of those Dwelling Units that consist of attached homes, including but not limited to townhomes and condominiums, are required to be Affordable Units.

(b) Payment of In-Lieu Fees. As an alternative to the provision of Affordable Units as required by 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 subject to subsection (a) 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) No Requirement for Affordable Units. No Affordable Units are required to be included in a Residential Rental Project which does not receive City assistance as described in subsection (b).

(b) Provision of City Assistance. 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

(a) Any required In-Lieu 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 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
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 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:

\_\_\_\_\_  
City Attorney of the City of Hayward

HAYWARD CITY COUNCIL

RESOLUTION NO. 10-

AMENDING CITY COUNCIL RESOLUTION 03-089 ESTABLISHING THE IN-LIEU  
FEE FOR AFFORDABLE HOUSING UNITS

WHEREAS, on June 10, 2010, the City Council adopted the Housing Element of the General Plan in compliance with State law, which Housing Element includes Goal 4, to remove constraints on housing development; Policy 4.1, to adjust residential development standards that are determined to be a constraint on housing; and Program 18, which calls for a review of the Inclusionary Housing Ordinance (Chapter 10, Article 17, of the Municipal Code); and

WHEREAS, to implement Program 18, Keyser Marston Associates prepared a "Residential Nexus Analysis, Inclusionary Housing Ordinance, Hayward, California," dated April 2010 (the "Nexus Study"), which study demonstrated that, to fully mitigate the impacts of new market-rate units in for-sale and rental residential projects on the need for affordable housing, an affordable housing impact fee of \$19.26 to \$32.45 per square foot of new market rate development would be needed; and

WHEREAS, Keyser Marston Associates also prepared a housing feasibility study for the City of Hayward, which study determined that the Inclusionary Housing Ordinance may serve as a constraint on housing development in the current recessionary housing market; and

WHEREAS, the City Council reviewed the Keyser Marston reports at a City Council work session on June 29, 2010, and further reviewed staff reports and attachments thereto at duly noticed meetings held on September 14, 2010, and on September 28, 2010; and

WHEREAS, to implement the goals, policies, and programs of the City's Housing Element and, in particular, to remove constraints on housing development and to adjust residential development standards that may be a constraint on residential housing development in the current recessionary housing market, the City Council has considered and introduced, on this same date, an "Ordinance Providing Interim Relief from Certain Inclusionary Housing Provisions" (the "Interim Relief Ordinance") to modify certain provisions of the City's Inclusionary Housing Ordinance until December 31, 2012; and

WHEREAS, pursuant to Hayward Municipal Code Section 10-17.500, to further remove constraints on housing development and to provide consistency between the Interim Relief Ordinance and In-Lieu Fees, the City Council also wishes to amend Resolution 03-089, which established In-Lieu Fees for affordable housing units, to reduce In-Lieu fees until December 31, 2012; and

WHEREAS, notice of the Council's September 28, 2010, hearing on this resolution was duly published as required by law.

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

1. Until December 31, 2012, In-Lieu Fees for Affordable Housing Units are as follows:
  - a. Detached single-family homes in a Residential Ownership Project: \$3.50/sq. ft. of new habitable space.
  - b. Attached homes, including but not limited to townhouses and condominiums in a Residential Ownership Project: None.
  - c. All dwelling units in a Residential Rental Project: None.
  
2. On January 1, 2013, the fees previously adopted by City Council Resolution No. 03-089 shall resume in full force and effect
  
3. The City Council hereby finds that the adoption of said amendments to the City Council Resolution No. 03-089 are in conformance with the Housing Element of the City of Hayward, because said amendments have been adopted after conducting the appropriate studies and analysis, and because said amendments are intended to remove constraints on residential development and to provide economic relief in the current economic downturn, thus fostering new residential development in the City of Hayward.

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:

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General Counsel