



**CITY OF HAYWARD**  
**AGENDA REPORT**

AGENDA DATE 04/15/03

AGENDA ITEM \_\_\_\_\_

WORK SESSION ITEM WS2

**TO:** Mayor and City Council  
**FROM:** Director of Community and Economic Development  
**SUBJECT:** Inclusionary Housing Ordinance

**RECOMMENDATION:**

It is recommended that City Council review and comment on this report.

**DISCUSSION:**

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

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

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

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

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

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

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

On April 24, 2001, as part of the General Plan Update on Housing Issues, staff discussed with City Council actions the City could take to expand the supply of housing in order to provide a greater mix of housing opportunities for all Hayward residents. One of the actions discussed was the creation of an Inclusionary Housing Ordinance. Creation of such an ordinance was also listed in the Housing Element as a planned activity for the year 2003.

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

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

There are several methods described in the ordinance to provide additional consideration to developers in exchange for the provision of affordable units. Some, such as density bonuses and

allowance for mixed use, are required under State law. Others such as off-site development or in-lieu fees are locally designed.

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

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

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

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

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

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

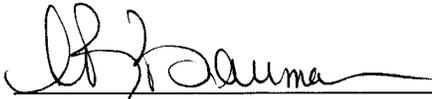
Off-Site Development and/or In-Lieu Fees. Although the aim of the ordinance is for developers to build affordable units that are integrated throughout the development, developers may request

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

Developers may also request to pay an in-lieu fee instead of building the required affordable unit in their development. In Alameda County, in-lieu fees per unit range from \$30,000 in Fremont to \$80,000 in Union City. Emeryville and Livermore have "must build" requirements. Staff is proposing that Hayward's in-lieu fee be sufficient to create a new two bedroom, one-bath multifamily rental unit that is affordable to very low income households. Staff is currently examining various methods to determine an appropriate in-lieu fee. Based on experience with previous affordable housing developments and condominium conversions, it is likely that an in lieu fee in the range of \$100,000 per unit will be necessary. However, staff is continuing its research and plans to return to Council in about a month with recommendations in regard to the amount of the in-lieu fee.

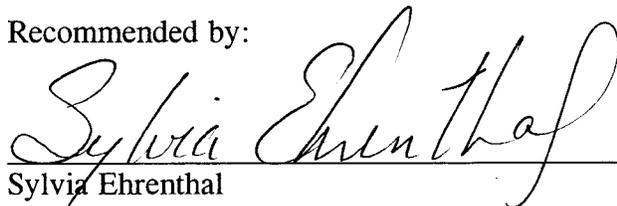
A Housing Trust Fund will be established for the collection of the in-lieu fees. Fees from such a fund can be used to build housing that is permanently affordable.

Prepared by:



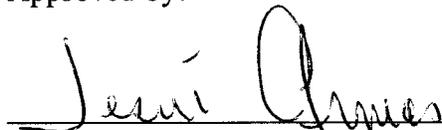
Ann R. Bauman, Neighborhood and Economic  
Development Manager

Recommended by:



Sylvia Ehrenthal  
Director of Community and Economic Development

Approved by:



Jesús Armas, City Manager

Attachment A: Summary of Draft Inclusionary Housing Ordinance

## Attachment A

### SUMMARY OF PROPOSED INCLUSIONARY HOUSING ORDINANCE

#### General requirements.

- The affordability requirements of this ordinance will apply to all new residential development projects consisting of 10 (ten) or more units designed and intended for permanent occupancy located in any zoning district.

#### Rental Residential Development Projects

15% of the Units in any rental residential development must be Affordable Units and be reserved for:	Percentage of Affordable Units	Percentage of Median Income Level used to Determine Housing Costs	Percent of Income used to Determine Affordable Housing Costs
Very Low-Income Occupants	50%	50% of median	30%
Lower-Income Occupants	50%	60% of median	30%
Moderate-Income Occupants			

Example: For a forty (40) unit development, a total of six (6) units would need to be reserved as “affordable” units. Of these, three (3) would need to be made affordable for households earning no more than 50% of the area median income (AMI) and three (3) would need to be made affordable to households earning no more than 60% of the AMI. Monthly housing costs (rent and, if applicable, County Housing Authority utility allowance) for each type of affordable unit could not exceed 30% of one-twelfth of the household’s income. In the case of a family of four that earns 50% of the AMI their income would be \$38,300 and their monthly affordable housing costs would be no more than \$958. In the case of a family of four that earns 60% of the AMI their income would be \$46,000 and their monthly affordable housing costs would be no more than \$1,150.

#### Residential Developments for Sale

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

Example: For a ten (10) unit development, a total of two (2) units would need to be reserved as units affordable to households earning no more than 110% of the AMI. Monthly housing costs (PITI) for each type of affordable unit could not exceed 35% of one-twelfth of the household's income. In the case of a family of four that earns 110% of the AMI their income would be \$84,300 and their monthly affordable housing costs would be no more than \$2,458.

- **Design and Distribution of Affordable Units** - All affordable rental units shall reflect the range of numbers of bedrooms provided in the project as a whole, and shall not be distinguished by exterior design, construction, or materials. All affordable rental units shall be reasonably dispersed throughout the project. When affordable ownership housing units are required in residential developments, the units shall be integrated with the development as a whole and may be built with different materials, finishes and amenities than the market-rate units.
- **Other Affordability Restrictions:** In the event that a development subject to this ordinance is constructed either in an area or uses financing with more stringent affordability requirements, the development must comply with the most restrictive requirements.

### **General Procedures**

- **Agreements** - The requirements of the ordinance shall be recorded against parcels having affordable units and shall be effective for a term of at least 45 years. No ownership unit can be rented.
- **Right of First Refusal for Owner-Occupied Units** - It is the responsibility of the seller of a property, subject to the affordability terms of this ordinance, to select a purchaser that meets the income requirements of this ordinance. The resale restrictions shall provide that the City shall have the right to purchase said unit at the maximum price that could be charged to an income-eligible purchaser.

### **Development Incentives and Alternatives**

- **Density Bonus** - The City, upon request, may approve an increase in the number of units per acre permitted in a proposed residential development governed by this chapter, when such an increase in density is consistent with state density bonus law per Section 65915 of the State Government Code.
- **In-Lieu Fees for Affordable Units** - The City Council, upon request by the developer, may waive the requirements to provide affordable units in exchange for the payment of an affordable unit in-lieu fee. The amount of the affordable unit in-lieu fee shall be established by resolution of the City Council.
- **Waiver of Requirements** - The City Council, at its discretion, may waive some or all of the requirements of this ordinance if there are unusual development costs, such as the need to mitigate environmental hazards, that would otherwise prevent the residential project from proceeding. Requirement(s) of local, state and/or federal agencies to mitigate the environmental impacts of development are not grounds for requesting a waiver of the requirements of this ordinance.

**PROPOSED  
CHAPTER 10, ARTICLE 17  
INCLUSIONARY HOUSING ORDINANCE**

**SECTION 10-17.100. GENERAL PROVISIONS**

**SECTION 10-17.105 TITLE**

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

**SECTION 10-17.110 PURPOSE.**

The purpose of this Article is to:

- A. Enhance the public welfare by ensuring that future Residential Development Projects contribute to the attainment of the affordable housing goals set forth in the Housing Element of the General Plan of the City of Hayward;
- B. Increase the production of residential units in Hayward that are affordable to very low, low- and moderate-income households;
- C. Ensure that units affordable to very low, low- and moderate-income households are distributed throughout the City's various neighborhoods.
- D. Comply with the requirements of Health and Safety Code Section 33341.3 (b) within the redevelopment project area and elsewhere in the community as applicable.

**SECTION 10-17.120. FINDINGS.**

The City Council finds and determines that lack of access to affordable housing has a direct impact upon the health, safety and welfare of the residents of the City of Hayward. The housing problem affects a broad range of income groups, including many who would not need public assistance or intervention in the housing market if they lived outside of the San Francisco Bay Area.

- A. According to the 2000 U.S. Census, about 40% of Hayward tenant households (8,669 households) pay more than 30% of their income for rent.
- B. Only 22% of the population of Alameda County can afford to buy a home here, significantly below the national average of 57%.
- C. According to the 2000 U.S. Census, approximately 32% of tenant households pay more than 35% of household income for rent. Forty percent of tenants pay more than 30% of household income for rent.

- D. Because all forms of housing are expensive to build, rent and buy, a variety of housing programs and resources are required to help meet the need for affordable housing.
- E. The California Legislature has required each local government agency to develop a comprehensive, long-term general plan establishing policies for future development. As specified in the Government Code Sections 654300, 65302 (c ), and 65583 (c), the plan must:
  - (i) “encourage the development of a variety of types of housing for all income levels, including multifamily rental housing;” [and]
  - (ii) [assist] “in the development of adequate housing to meet the needs of low- and moderate-income households.”
- F. The City will be limited in its ability to contribute to the attainment of State housing goals and to maintain a thriving mixed-income community without additional affordable housing.

#### **SECTION 10-17.125. DEFINITIONS.**

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

- A. “Affordable Unit” is defined as an ownership or rental housing unit whose price is set at an “affordable housing cost” as defined in this Article.
- B. “Affordable Housing Cost,” “Affordable Ownership Housing Costs” and “Affordable Rental Housing Costs” are defined as the percentage of gross income a household spends on housing costs for a given income group as defined in California Health and Safety Code (Section 50052 through 50053).
- C. “Applicant” is defined as any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities who seek real residential property development permits or approvals from the City of Hayward.
- D. “Area Median Income (AMI)” is defined as the median income for the Oakland Primary Metropolitan Statistical Area (PMSA) as defined annually by the U.S. Department of Housing and Urban Development (HUD) and adopted by the California Department of Housing and Community Development (HCD). Income groupings that are subdivisions of AMI, such as Very Low, Low, Lower and Moderate-Income households, are also defined and published by HUD and adopted by HCD.
- E. “Dwelling unit” is defined as a dwelling designed and intended for residential occupancy by one household.
- F. “Household Income” is defined as the gross annual household income adjusted for household size and includes the income of all wage earners, elderly or disabled family members and any other sources of household income.
- G. “Housing costs” are defined for:
  - 1. ownership units, as the monthly mortgage principal and interest, property taxes, homeowner’s insurance, and homeowner association fees (where applicable); and,
  - 2. rental units, the monthly rent plus utility allowance, as defined by the Alameda County Housing Authority.

- H. "Mixed-Use Development Project" is defined as a project that may include a mix of commercial, office, industrial or residential uses.
- I. "Resale controls and/or rent restrictions" are defined as the restrictions, set forth by the City or by state and/or federal law, by which the rents on affordable units are limited to ensure that the unit remains affordable to very-low-, low- or moderate-income households, as applicable, for a term of no less than 45 years. Such resale controls and/or rental restrictions shall generally be consistent with the requirements of Health and Safety Code Section 33334.3 (f) (2). With respect to rental units, such rent restrictions shall generally be in the form of a regulatory agreement recorded against the applicable property. With respect to owner occupied units, such resale controls shall generally be in the form of resale restrictions, deeds of trust and/or other similar documents recorded against the applicable property.
- J. "Residential Development Project" is defined as, detached single-family dwellings, multiple dwelling structures, groups of dwellings, condominium or townhouse developments, condominium conversions, cooperative developments, mixed use developments that include housing units. This definition also includes contiguous or non-contiguous parcels that have one or more applications filed within a twenty-four month period and which are under the same ownership.

## **SECTION 10-17.200. RESIDENTIAL DEVELOPMENT**

### **SECTION 10-17.205 UNIT THRESHOLD FOR AFFORDABLE PROJECTS AND PERCENTAGE OF AFFORDABLE UNITS.**

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

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

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

**SECTION 10-17.210 AFFORDABILITY LEVELS AND INCOME GROUPS.**

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

**Rental Residential Development Projects**

15% of the Units in any rental residential development must be Affordable Units and be reserved for:	Percentage of Affordable Units	Percentage of Median Income Level used to Determine Housing Costs	Percent of Income used to Determine Affordable Housing Costs
Very Low-Income Occupants	50%	50% of median	30%
Low-Income Occupants	50%	60% of median	30%
Moderate-Income Occupants			

In applying these percentage allocations to Residential Development Projects and mixed-use projects with rental units, any fraction of a unit shall be rounded up to the next whole number unit and that unit shall be subject to the affordability requirements for very low-income occupants.

**Owner-Occupied Residential Development Projects**

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

In applying these percentage allocations to ownership type developments, any fraction of a unit shall be rounded up to a whole unit.

**SECTION 10-17.215 DESIGN AND DISTRIBUTION OF AFFORDABLE UNITS**

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

1. Rental Residential Development Projects: All Affordable Units shall reflect the range and numbers of bedrooms provided in the project as a whole, and shall not be distinguished by design, construction, or materials. All Affordable Units shall be reasonably dispersed throughout the project.
2. Owner-occupied Residential Development Projects : When Affordable Units are required in owner-occupied Residential Development Projects, the units should be integrated with the project as a whole. Affordable Units may be smaller in aggregate size and have different interior finishes and features than market-rate units so long as the interior features are durable, of good quality and consistent with contemporary standards for new housing. The number of bedrooms must be the same as those in the market-rate units, except that if the market-rate units provide more than four bedrooms, the Affordable Units need not provide more than four bedrooms.

#### **SECTION 10-17.220 DURATION OF AFFORDABILITY REQUIREMENT.**

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

#### **SECTION 10-17.300. COMPLIANCE PROCEDURES.**

##### **SECTION 10-17.305 GENERAL**

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

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

##### **SECTION 10-17.310 INCLUSIONARY HOUSING PLAN.**

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

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

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

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

#### **SECTION 10-17.310 INCLUSIONARY HOUSING AGREEMENT.**

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

1. Description of the development, including whether the Affordable Units will be rented or owner-occupied;
2. The number, size and location of Very Low-, Low- or Moderate-Income Units;
3. Inclusionary incentives by the City (if any), including the nature and amount of any local public funding;
4. Provisions and/or documents for resale restrictions, deeds of trust, rights of first refusal or rental restrictions;
5. The Marketing Plan for sale or rental of the Affordable Units;
6. Provisions for monitoring the ongoing affordability of the units, and the process for qualifying prospective resident households for income eligibility; and
7. Any additional obligations relevant to the compliance with this Article.

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

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

**SECTION 10-17.400. EXEMPTIONS.**

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

**SECTION 10-17.500. AFFORDABLE UNIT IN-LIEU FEE.**

The primary purpose of this Article is to increase the supply of Affordable Housing Units throughout the City. Affordable Units shall be integrated within Residential Development Projects as much as possible. In cases where this is not possible, the Applicant may request a waiver of the requirement to build Affordable Units in exchange for the payment of an Affordable Unit In-Lieu Fee.

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

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

The amount of the Affordable Unit In-Lieu Fee shall be established by resolution of the City Council. The In-Lieu Fee amount will be reviewed annually, or as needed, and adjusted as necessary and appropriate, at the City Council's discretion. At a minimum, the fee shall be sufficient to construct one unit of affordable housing and will be based on a Construction Cost Index for the San Francisco Bay Area.

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

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

**SECTION 10-17.600 DEVELOPMENT INCENTIVES AND ALTERNATIVES**

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

1. **Density Bonus.** The City Council, upon request, may approve an increase in the number of units per acre permitted in a proposed Residential Development Project governed by this Article, when such an increase in density is consistent with state density bonus law as set forth in Section 65915 of the State Government Code.
2. **Off-Site Construction.** City policy is that Affordable Units must be integrated within Residential Development Projects as much as possible. Where Affordable Units are required, an Applicant may instead construct units not physically contiguous to the development (off-site) if the City Council determines that:
  - a. Off-site construction will further affordable housing opportunities in the City to a greater extent than construction of the required units as part of the proposed residential project;
  - b. A schedule for completion of the off-site units concurrently with completion of the related market-rate units is provided and agreed upon as a condition of approval for the project;
  - c. The off-site units are at least equal in size and amenities to affordable units which would be allowed in the project, or any comparative deficiency in size or amenities is compensated for by additional units, larger units or affordability to households with lower incomes; and
  - d. If the original development is located in the redevelopment agency project area and the off-site location is located outside of the redevelopment project area, for every one unit that is required to be built in the original location, two units shall be developed in the off-site location.
3. **Modified Development Standards to Increase Density.** When a Residential Development Project is on a major transportation route, the Applicant may request that City Council reduce the number of parking spaces required for the development based on the assumption that some households will take public transportation to their jobs. This will allow for increased density within the development.
4. **Combination of Alternatives.** The City Council may choose to accept any combination of on-site construction, off-site construction, in-lieu fees and land dedication that at least equal the cost of providing the Affordable Units on-site as would otherwise be required by this Article.
5. **Expedited Processing.** Expedited processing of development approvals and permits will be available for Residential Development Projects with Affordable Units.

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

## **SECTION 10-17.800 IMPLEMENTING THE REGULATORY AGREEMENT OR DEED RESTRICTION**

### **SECTION 10-17.805 TERM OF AGREEMENT.**

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

### **SECTION 10-17.810 RIGHT OF FIRST REFUSAL FOR OWNER-OCCUPIED UNITS.**

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

### **SECTION 10-17.815 RECORDING OF AGREEMENT.**

An approved Inclusionary Housing Agreement must be recorded against owner-occupied Affordable Units and Residential Development Projects containing rental Affordable Units. Additional rental or resale restrictions, deeds of trust, rights of first refusal and/or other documents acceptable to the City Manager or his designee must also be recorded against owner-occupied Affordable Units. In cases where the requirements of this Article are satisfied through the development of Off-Site Units, the Inclusionary Housing Agreement must simultaneously be recorded against the Residential Development Project site and the property where the off-site units are to be developed.

### **SECTION 10-17.600. ELIGIBILITY FOR AFFORDABLE UNITS.**

#### **SECTION 10-17.605 SELECTION CRITERIA.**

No household shall be permitted to occupy an Affordable Unit unless the City Manager or his designee has first approved the household's income eligibility. Income-eligible occupants of Affordable Units will be qualified on the basis of household income adjusted for household size in accordance with California Health and Safety Code 50052 and 50053, or any successor

statute. The developer, property owner or property manager shall use an equitable selection method established in compliance with the terms of this Article and approved by the City Manager or his designee. If qualified, persons shall be selected for occupancy of an Affordable Unit governed by this Article based on the following criteria:

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

#### **SECTION 10-17.610 CONFLICT OF INTEREST.**

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

#### **SECTION 10-17.615 OCCUPANCY.**

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

#### **SECTION 10-17.700 OWNER-OCCUPIED UNITS.**

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

1. Transfer of Restrictions. When the ownership of an owner-occupied Affordable Unit is transferred, prior to the expiration of the 45-year affordability period, each new owner must sign an Inclusionary Housing Agreement with a 45-year term.
2. Resale. The maximum sales price permitted on resale of an Affordable Unit designated for owner-occupancy shall be the *lower* of (1) fair market value or (2) the seller's lawful purchase price, increased by the lesser of (i) the rate of increase of Area Median Income during the seller's ownership or (ii) the rate at which the consumer price index increased during the seller's ownership. To the extent authorized in any resale restrictions or operative Inclusionary Housing Agreement, seller may recover, at time of sale, the value of capital improvements made by the seller (for which there are receipts) and the seller's necessary and usual costs of sale. The City Manager or his designee may authorize an increase in the maximum allowable sales price to achieve such recovery. Capital improvements are limited to new construction on the house or property. Repairs of any type, including but not limited to roofs, bathrooms and kitchens, are not considered capital improvements.

3. Changes in Title. Title to the Affordable Unit may change due to changes in circumstance, including death, marriage and dissolution of marriage. Except as otherwise provided by this section, if a change in title is occasioned by events that change the financial situation of the household so that it is no longer income-eligible, then the property must be sold to an income-eligible household within 180 days.

Upon the death of one of the owners, if they are joint tenants with right of survivorship, title to the property may transfer to the surviving owner without respect to the income-eligibility of the household.

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

#### **SECTION 10-17.800 RENTAL UNITS.**

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

#### **SECTION 10-17.805 MARKETING PLAN.**

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

#### **SECTION 10-17.810 COMPLIANCE REPORTS.**

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

#### **SECTION 10-17.815 SUBSEQUENT RENTAL TO INCOME-ELIGIBLE TENANT**

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

**SECTION 10-17.800 CHANGES IN TENANT INCOME.**

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

1. If the tenant's income does not exceed the income limits of other Affordable Units in the Residential Development Project, the owner may, at the owner's option, allow the tenant to remain in the original unit and re-designate the unit as affordable to households of a higher income level, as long as the next vacant unit is re-designated for the income category previously applicable to the tenant's household. Otherwise, the tenant shall be given one year's notice to vacate the unit. If, during the year, an Affordable Unit becomes available and the tenant meets the income eligibility for that unit, the owner shall allow the tenant to apply for that unit.
2. If there are no dwelling units designated for a higher income category within the Residential Development Project that may be substituted for the original unit, the tenant shall be given one year's notice to vacate the unit. If, within that year, another unit in the Residential Development Project is vacated, the owner may, at the owner's option, allow the tenant to remain in the original unit and raise the tenant's rent to market-rate and designate the newly vacated unit as an Affordable Unit at the income-level previously applicable to the unit converted to market rate. The newly vacated unit must be comparable in size (for example, number of bedrooms, bathrooms, square footage, etc.) as the original unit.

**SECTION 10-17.900 ADJUSTMENTS AND WAIVERS.**

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

**SECTION 10-17.905 TIMING.**

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

**SECTION 10-17.910 CONSIDERATIONS.**

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

**SECTION 10-17.915 MODIFICATION OF PLAN.**

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

**SECTION 10-17.1000 AFFORDABLE HOUSING TRUST FUND.**

**SECTION 10-17.1005 TRUST FUND.**

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

**SECTION 10-17.1010 PURPOSE, LIMITATIONS AND ADMINISTRATION.**

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

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