

**DATE:** June 23, 2009

**TO:** Mayor and City Council

**FROM:** Development Services Director

**SUBJECT:** Local Economic/Incentives Stimulus Package to Encourage Green Building and New Development

**RECOMMENDATION**

That the City Council reviews and comments on this report.

**SUMMARY**

In 2008, during meetings associated with development of the Green Building Ordinance for Private Development (GBO), some Council members expressed a desire to develop an economic stimulus/incentives package that would encourage developers, who were not required to “build green” in accordance with the ordinance, to do so. As the economy and housing markets have dramatically slowed, it becomes necessary to offer similar incentives to all developers until the economy recovers. The number of building permits issued and finalized for new residential units during the past three and one-half fiscal years is shown below, reflecting the depressed housing market and building activity levels:

|   | 2006 | 2007 | 2008 | 2009<br>(through<br>5/31) |
|---|------|------|------|---------------------------|
| No. of Single-Family Units for Which Permits Were Issued    | 200  | 130  | 88   | 116                       |
| No. of Single-Family Units for Which Permits Were Finalized | 102  | 136  | 137  | 93                        |
| No. of Multi-Family Units for Which Permits Were Issued     | 90   | 4    | 2    | 3                         |
| No. of Multi-Family Units for Which Permits Were Finalized  | 69   | 9    | 15   | 2                         |

In response, staff has developed a preliminary set of recommendations for Council’s review and feedback that would be applicable to any project that is exempt from, but complies with, the City’s Green Building Ordinance for Private Development; to any development project, including those required to build green, for which permits are issued or final inspections conducted through now and June 30, 2012; and might exclude those projects having prior specific, negotiated agreements

with the City. It is hoped that such measures would encourage some of the approximately 1,500 entitled units that are exempt from the Green Building Ordinance regulations to be built “green” and would assist developers during this depressed housing market to be better able to absorb/carry costs until the housing market rebounds and sales activity returns to more normal levels.

Staff is also recommending the following sets of actions for discussion, as detailed later in this report:

1. Deferral of payment of certain development impact fees from time of issuance of certificate of occupancy (CO) to close of escrow or one year after CO issuance;
2. Revisions to Hayward’s Inclusionary Housing Ordinance to allow payment of in-lieu fees for a temporary period of time to meet inclusionary housing obligations;
3. Extension of initial approval period for discretionary approvals;
4. Enhancements to internal procedures related to development review processing

## BACKGROUND

During deliberations at last year’s October 21 and November 25 City Council public hearings involving discussion and consideration of Hayward’s Green Building Ordinance (GBO) for private development, several Council members expressed a desire to have a set of incentives developed to encourage green building in Hayward. Subsequently, in response to lethargic housing activity and a depressed housing market, some Council members have requested that the City Manager develop incentives to stimulate new housing construction activity.

Related to direction at the GBO hearings, staff met with a group of local developers and the local Homebuilders Association of Northern California representative on January 15, 2009, and received suggestions on what types of incentives could be helpful to them. The notes from that meeting are included as Exhibit A. Generally, there were three types of suggestions:

1. Deferral of payment of fees, including possibly deferral of payment of all building permit fees from time of permit issuance to final inspection/certificate of occupancy;
2. Allow payment of affordable housing in-lieu fees by right; and
3. Miscellaneous incentives, such as allowing plastic piping for plumbing projects , extending time by which utility connection fees are required to be paid, and extending life of discretionary approvals and building permits.

## DISCUSSION

Deferral of Payment of Certain Development Impact Fees – Staff is recommending that for any residential unit for which a final inspection is requested prior to June 30, 2012, and for projects that are built at any time in the future in accordance with the City’s Green Building Ordinance that are not required to be (see list of major entitled projects that are exempt from the Ordinance provisions, Exhibit C), that payment of the park dedication in-lieu fee and supplemental building construction improvement tax be allowed to be deferred until close of escrow or to a year past issuance of certificate of occupancy, whichever occurs sooner.

In meetings with developers, several attendees expressed a desire to have payment of development impact fees deferred until close of escrow, or within some established time frame after issuance of certificate of occupancy. Although Hayward would not be obligated to do so, such deferral is allowed by 2008 State legislation (AB 2604 – Torrico). Currently, Hayward requires payment of development impact fees, such as park dedication in-lieu fees, utility connection fees, supplemental building construction improvement tax, etc., at time of final inspection/issuance of certificate of occupancy. Few cities have allowed deferral of payment of such fees to close of escrow, as summarized below and as shown in an October, 2008 table from Paul Campos of the Homebuilders Association of Northern California (Exhibit B).

The two payments proposed for consideration of deferral are 1) the park dedication in-lieu fee (nearly \$12,000 for each new single-family ownership unit) and 2) the supplemental building construction and improvement tax (\$1,200 per single family unit, \$960 per multi-family unit). As a general tax, the supplemental building construction and improvement tax goes to the City's General Fund. Approximately 80% of General Fund revenues are used for public safety. Since it was initiated in 1990, a portion of the supplemental building construction and improvement tax revenue has gone into the Transportation System Improvement Fund in the City's Capital Improvement Program and typically is used for various improvements, such as new traffic signals or some intersection improvements.

Regarding deferral of the park dedication in-lieu fee, impacts to parks would not occur until units are actually occupied (e.g., soon after close of escrow). Staff from the Hayward Area Recreation and Park District has expressed some concerns with such deferral, but City staff believes that with a recommended maximum time-frame of one year beyond the date of certificate of occupancy, funds to support mitigation of park impacts will be collected in a timely manner to allow improvements to be constructed or land to be acquired.

These two "fees," along with the utility connection fees, represent the largest development impact fees the City imposes on new residential developments. Allowing payment deferral until not later than a year after close of escrow will minimize carrying costs of developers on units for which they have received certificates of occupancy, but which they cannot sell. A local developer has indicated that these two fees represent approximately 5.5% of the fixed development costs (including vertical construction, site improvements, and impact fees, but excluding land and affordable housing costs) for a 1,500 square foot single-family unit. To address situations where close of escrow does not occur within a reasonable time period after a permit is finalized, staff is recommending that such fees would be required to be paid within one year of issuance of certificate of occupancy, regardless of sale of property.

If this idea is supported by Council, staff will return with a detailed summary of the program implementation details, which would include a lien and collection process, and the anticipated administrative costs associated with such a program.

Fees Not Recommended to be Deferred - Staff is not recommending reduction or deferral of building permit and related fees until final inspection, as was suggested by some during the January 15 meeting with developers. To allow for deferral or reduction is not appropriate, in staff's opinion, due to the fiscal emergency associated with the City's General Fund and the fact that the City would

be incurring costs associated with plan check and inspection services. Currently, the time between issuance of building permit to final inspection for single-family homes and multi-family/attached units averages approximately 4 to 6 months and 6 to 8 months, respectively. Staff is also not recommending that utility connection fees be deferred any further, since they are already only paid at the time actual connections are requested and prior to final inspection, rather than when permits are requested.

Revisions to Hayward's Inclusionary Housing Ordinance (IHO) – In response to input from the development community, and assuming a detailed analysis supports such allowance, staff is recommending that payment of in-lieu fees to meet inclusionary housing obligations be allowed by developers of projects that are approved and not built prior to June 30, 2012, and that a nexus study/analysis be conducted to determine what the appropriate fee amount should be to offset the impacts on affordable housing of those projects.

Besides deferral of certain fees, the item that garnered the most comments from the development community is the negative impacts of Hayward's inclusionary housing ordinance (IHO) on development activity. Two suggestions were made:

1. Amend the Ordinance to allow payment of in-lieu fees by right, versus at the discretion of the City Council with certain findings, and
2. Possibly reduce the in-lieu affordable housing fee amounts (currently \$80,000 per unit).

The revised City of Hayward Draft Housing Element submitted to the State indicates that the City will consider revising its fee and will consider allowing payment of such fees by right.

The stated purposes of the IHO are:

- 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.

Amending the IHO in response to some developers' requests to allow for payment of in-lieu fees by right through June 30, 2012 is certainly a policy issue worthy of Council's careful consideration, including in regards to current obligations. Allowing payment of the in-lieu fee by right, an assessment of the appropriateness of the in-lieu fee, and analysis of other ordinance provisions, will be included as part of a comprehensive assessment of the IHO, which is scheduled for the upcoming fiscal year. The in-lieu fee amount is supposed to at least equal the cost of constructing an affordable unit, per the IHO.

The IHO currently allows payment of the in-lieu fee for affordable, for-sale projects, provided the Council determines on a case-by-case basis “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.” Therefore, in order to allow opportunity for developers to pay the fee by right for a specified period of time would require an ordinance amendment, and related study/analysis.

Paul Campos of the Home Builders Association of Northern California recently submitted a letter outlining the benefits of establishing a housing trust fund in developing affordable housing (see attached Exhibit F). Exhibit F indicates a trust fund has several benefits related to leveraging funds, flexibility, efficiency, and sustainability. The City’s IHO currently states that in-lieu fees collected would be deposited in an Affordable Housing Trust Fund.

Allowing payment of in-lieu fees and establishment of a trust fund could provide opportunity for development of “more affordable” units. Currently, the IHO indicates ownership projects must include units affordable to moderate income households, where an in-lieu fee payment and trust fund could be used to support development by non-profit agencies of units affordable to low and very low income households. However, allowing payment of in-lieu fees would reduce the number of affordable units integrated into market rate projects, resulting in affordable projects being stand alone and separated from market rate developments. Also, allowing for payment of in-lieu fees may result in fewer numbers of affordable units that are constructed, dependent on the appropriateness of the established in-lieu fee amount.

If Council is supportive of allowing for a limited period of time the ability of developers to meet their inclusionary housing obligations through payment of in-lieu fees, staff will return to Council with a recommended Code change and associated study/analysis. Such analysis would also determine the appropriate amount of the in-lieu fee, which may increase as a result of such analysis.

Extensions of Initial Approval Period for Discretionary Approvals – Given the difficulty some developers are experiencing in proceeding to construction as a result of the market conditions, staff is recommending that for projects for which discretionary planning approvals granted will expire in 2009 and 2010, that the Code be changed to increase the initial approval period by two years and that such approvals be valid as long as any associated tentative map is valid.

Currently, discretionary planning approvals, such as variances, use permits, and site plan review approvals that are not associated with a tentative map are valid for one year after the approval effective date, unless “(a) either a building permit has been issued or a building permit application has been submitted for processing and said application has not expired; or (b) business operations have commenced in accordance with all applicable conditions of approval.” Approvals associated with a tentative map are valid for two years.

The Zoning Ordinance allows a maximum of two, one-year extensions for such approvals by the Planning Director, or, on appeal, by the Planning Commission or City Council. Factors to be considered when granting an extension are, “(a) the cause for delay in submittal of the building permit; and (b) whether the proposal is in conformance with existing development regulations.”

As shown in Exhibit D, a few project approvals will expire this year or next year if extensions are not granted or building permit applications are not submitted, including the mixed use project at C and Main (one extension already granted), the mixed use project along Mission Boulevard (Mission Paradise), and the South Hayward BART station mixed use project.

Staff would return with recommendations for ordinance amendments, as appropriate, should Council support this recommendation.

Tentative Maps – Staff recommends that Hayward’s Subdivision Ordinance be amended to allow the initial life of tentative maps to be increased from 24 to 36 months, which would require a Code amendment.

The State has recognized the difficulty some developers have experienced in proceeding with developments during depressed economic times through previous amendments to the State Subdivision Map Act (SMA) that granted automatic extensions to tentative maps in the past. The latest such law, Senate Bill 1185 (SB1185), amended the SMA by automatically extending certain tentative maps and vesting tentative maps. Because it was adopted as an urgency bill, SB1185 went into effect the moment Governor Schwarzenegger signed it on July 12, 2008. As a result, all tentative maps and vesting tentative maps that had not expired as of July 15, 2008, and will expire before January 1, 2011, are automatically extended by 12 months from their expiration dates.

Below is a summary of the life of tentative maps, per the SMA, including those associated with projects entailing substantial off-site improvements.

|  | For projects entailing<br><\$178,000 in off-site public<br>improvements (in 2005 dollars) | For projects entailing<br>≥\$178,000 in off-site public<br>improvements (in 2005 dollars) |
|--|---|---|
| Initial life   | 2 years   | 2 years   |
| Automatic extension (if<br>allowed by local ordinance) | Up to 1 year*   | Up to 1 year*   |
| Local agency extensions                                | Up to 6 years   | Up to 6 years   |
| Automatic Extensions, per the<br>State Map Act         | n.a.  | Up to 7 years   |
| Allowed via SB1185                                     | 1 year  | 1 year  |
| <b>TOTAL:</b>  | <b>Up to 10 years</b>   | <b>Up to 17 years</b>   |

\*extension recommended by staff that requires a Code amendment

As indicated above, the SMA allows an initial 12-month extension as prescribed by local ordinance, for a total initial “life” for tentative maps of 36 months. As shown in Exhibit E, some tentative maps associated with approved projects are going to expire in 2010 and 2011, unless extensions are granted.

Enhancements to Internal Procedures Related to Development Review Processing - Based on input from local developers, staff has amended its procedures regarding processing certain projects.

Specifically, associated with Planned Development (PD) Zoning District projects, staff will no longer require submittal and approval of Precise Plans, typically associated with building architecture and design and landscaping, prior to submittal of Improvement Plans, which typically address infrastructure and common area landscaping improvements. Instead, staff will allow submittal of both plans for concurrent processing. This will reduce the time (and cost to developers) of the development review process between approval of a tentative map and approval of a final map and improvement plans.

Staff will also be revising handouts and checklists, which will reduce the number of planning reviews and re-submittals from applicants, with the goal of having projects ready for decision in a shorter period of time, which will further help reduce costs to developers.

## **FISCAL AND ECONOMIC IMPACT**

The deferral of the park dedication in-lieu fee and supplemental building construction improvement tax to close of escrow or within one year after issuance of certificate of occupancy, whichever is sooner, will result in a delay in the collection of such fees, which could negatively impact projects that are supported by such funds, such as parkland acquisition or park improvements. However, staff is of the opinion such delays would be unlikely to do so, given the limited amount of time such fees could be delayed (maximum of one year after certificate of occupancy issuance) and given impacts on parks associated with those new developments would typically not occur until units are actually occupied.

The more impacting fiscal effect is the staff time that would be required to establish a process that would allow deferral of payment of such fees to close of escrow, while ensuring such fees would be paid. Such process would likely entail establishing a lien or special assessment on the property and, if necessary, collecting such fees through that process. Staff will provide more details of such cost at a future meeting, should Council indicate support for such process.

The fiscal impacts on the general fund of allowing payment of affordable housing in-lieu fees by right would be expected to be minimal, since staff would not be required to process inclusionary housing agreements, though some staff time would be required to administer the housing trust fund. More importantly, the outcome of such Code amendment could be a reduction in the number of affordable housing units built in the City, and certainly a reduction in the number of such units integrated into developments.

Direct fiscal impacts to the City's funds related to extensions of initial approval period for discretionary approvals and revisions to the internal development review processes would be negligible, though savings would be realized by developers, due to the elimination of the need to pay for processing extension requests and due to reduced processing timeframes for certain projects.

## **PUBLIC NOTICE**

A notice of this work session was sent to the developers group who participated in discussions in January of this year, to Eden Housing, Inc. staff, to Paul Campos, as well as to the Hayward Area Recreation and Park District staff.

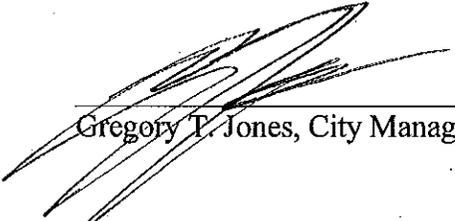
## NEXT STEPS

Per Council's feedback, staff will return in the fall with a set of recommendations for Council's consideration for adoption, which may entail ordinance amendments and analyses.

Prepared by:

  
\_\_\_\_\_  
David Rizk, AICP  
Development Services Director

Approved by:

  
\_\_\_\_\_  
Gregory T. Jones, City Manager

### Attachments:

- Exhibit A: Summary of comments from January 15, 2009 meeting with developers
- Exhibit B: Local impact fee deferral matrix from Paul Campos of the Homebuilders Association of Northern California, dated October 27, 2008
- Exhibit C: Summary table of status of major entitled residential projects in Hayward
- Exhibit D: Projects for which planning approvals will expire in 2009 and 2010
- Exhibit E: Projects for which tentative map approvals will expire in 2010 and 2011
- Exhibit F: Potential City of Hayward Housing Trust Fund: Issue Paper

**Summary of Comments from January 15, 2009 Meeting  
With Developers Regarding Incentives**

There were generally three areas proposed for the City to consider:

**1. Deferral of Fees**

- a. Deferral of development impact fees (park dedication in-lieu fee and supplemental building construction improvement tax ) to close of escrow (versus current point of final occupancy/certificate of occupancy), with an end date identified
- b. Deferral of building permit fees from issuance of permit to final inspection/certificate of occupancy

**2. Allow Payment of Affordable Housing In-Lieu Fees by Right**

- Points were raised that the current market has resulted in market rates being affordable to moderate (or less) incomers, which is more effective than any ordinance (it was indicated that the median sales price in Hayward in December was \$327,000)
- Some expressed an opinion that allowing for processes other than existing ones, such as paying in-lieu fees, gets the City more affordable units than does the current inclusionary ordinance (ownership projects don't result in units for very and low income households, which is a result of the current inclusionary housing ordinance); pros and cons were discussed about having stand alone affordable projects (e.g., Eden Housing) versus having affordable units integrated into projects

**3. Other Incentives (most suggested by Paul Campos of the Home Builders Association of Northern CA)**

- Allow PVC pipe
- Extend time when utility connection fees are required to be paid
- Extend life of approvals, both for discretionary approvals and for building permits (State already mandated extension of Tentative Map approvals)

DUE TO THE COLOR OF  
EXHIBITS B AND C,  
THEY HAVE BEEN ATTACHED  
AS SEPARATE LINKS

**PLANNING APPROVALS THAT WILL EXPIRE IN 2009 AND 2010**

**PL-2008-0149 SPR**

**28000 Mission Blvd. (Mission Paradise)**

**Mixed-Use Project with 13,804 Square Feet of Retail Area and 82 Residential Units**

**Expires 6/24/09**

**PL-2007-0225 CUP**

**22696 Main Street @ C Street**

**Mixed-Use Project with 2,000 Square Feet of Retail Area and 44 Residential Units**

**1<sup>st</sup> Extension expires 9/11/09**

**PL-2008-0436 SPR**

**Southeast Corner of Industrial Blvd. /Marina Dr.**

**43,586-square-foot fitness facility operated by 24 Hour Fitness**

**Expires 12/17/09**

**PL-2008-0547 ZC**

**South Hayward BART Station (Witteck-Montana project)**

**PD consisting of 772 residential units, grocery store and 910-space BART parking garage**

**Expires 3/17/10**

**LIST OF PROJECTS FOR WHICH TENTATIVE MAPS WILL EXPIRE IN 2010 OR 2011**

**Approved Tentative Parcel Maps**

|          |              |                                    |               |   |
|----------|--------------|------------------------------------|---------------|---|
| TPM 8976 | PL-2006-0373 | Planning Director approved 5/1/07  | 1842 Hill Ave | Expiration<br>With Extension, expires 4/30/2010 |
| TPM 9412 | PL-2006-0633 | Planning Director approved 5/29/08 | 2707 Tribune  | With Extension, expires 5/28/2011               |

**Approved Tentative Tract Maps**

|          |              |  |                               |                                    |
|----------|--------------|--|-------------------------------|------------------------------------|
| TTM 7699 | PL-2005-0527 | PC approved 12/15/05, extended 3/13/08 | 420 Smalley Ave               | With Extension, expires 3/12/2010  |
| TTM 7893 | PL-2006-0112 | City Council approved 6/26/07          | Ashwood Place, Traynor & Soto | With Extension, expires 6/25/2010  |
| TTM 7873 | PL-2007-0179 | Planning Commission approved 12/15/07  | 475 Berry, 7 Townhomes        | With Extension, expires 12/14/2010 |
| TTM 7478 | PL-2003-0659 | PC denied 6/26/08 CC approved 7/27/08  | Oakhill II                    | With Extension, expires 7/26/2011  |

HOME  
BUILDERS  
ASSOCIATION



OF NORTHERN CALIFORNIA

Potential City of Hayward Housing Trust Fund: Issue Paper

The Home Builders Association supports a progressive and sustainable policy for providing more affordable housing for more needy Hayward families in the most efficient and equitable manner. According to the non-partisan Center for Community Change: "Housing trust funds are the single most impressive advance in the affordable housing field in the United States over the last several decades. Housing trust funds are extremely flexible and can be used to support innovative ways to address many types of housing needs.... These funds are also very efficient. Many trust funds report highly successful track records addressing a wide variety of critical housing needs." (<http://www.communitychange.org>)

The advantage of an affordable housing trust fund is clear:

- ❖ ***A trust fund can leverage significant state and federal dollars.*** Some local trust funds are able to secure \$20 for every \$1 local dollar.
- ❖ ***A trust fund can reach the neediest Hayward households***—including the homeless and extremely low income households. In fact, the federal government's recently created National Housing Trust requires that a substantial portion of its grants go toward serving extremely low income households. A local trust fund will allow Hayward to maximize access to these federal funds.
- ❖ ***A trust fund is flexible so that it can finance a broad range of affordable housing activities to meet a variety of needs.*** A trust fund enables programs such as purchasing and rehabilitating existing foreclosed and blighted properties and making them permanently affordable. Again this meshes well with a new federal program: the Neighborhood Stabilization Program that will make \$4billion available to state and local governments for affordable housing efforts including acquiring foreclosed properties, offering mortgage relief, down payment assistance, and redevelopment assistance.
- ❖ ***A trust fund is efficient.*** As the Center for Community Change confirms, trust funds deliver more units more efficiently and without the need for extensive city overhead to find and qualify buyers for inclusionary units, arrange financing for them, and the large expense of monitoring required prevent the widespread risk of fraud associated with IZ.
- ❖ ***A trust fund is equitable.*** Properly crafted, a trust fund draws on a broad base of funding sources so that a societal obligation—providing adequate housing—is borne by the community at large.
- ❖ ***A trust fund is sustainable.*** By allocating the burden of providing affordable housing across the public and private sectors, a trust fund avoids forcing a narrow sector of the economy—new housing—from bearing a disproportionate and ultimately economically unviable burden. A healthy housing industry is necessary for the local, state, and national economies to be healthy. Especially in the current economic climate—which shows no sign of near- or medium-term recovery.

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# INSTITUTE FOR LOCAL GOVERNMENT

## AFFORDABLE HOUSING TRUSTS IN CALIFORNIA: CLASSIFICATIONS AND BEST PRACTICES<sup>†</sup>

### I. ISSUE SUMMARY

- **Types of Housing Trusts.** Most local agencies have some form of an account or fund that is dedicated to affordable housing. The creation of such funds is a standard practice for commercial linkage fees, inclusionary housing, and redevelopment areas. In addition, some communities are beginning to develop public-private housing trust funds.
- **Best Practices.** Public housing trust funds are managed in a variety of ways, depending on the local programs in each agency. The key is to have a clear set of goals and then tailor the programs that flow from the trust in a way that assures that the goals are met while retaining enough flexibility to adapt to changes.

### II. TYPES AND TOTAL NUMBER OF HOUSING TRUSTS

The term "local housing trust" is not tightly defined and can mean different things in different communities. There are two types of public agency funds that are generally considered a dedicated account or trust:

- **Dedicated Revenue Funds.** A housing fund or account is merely a public agency fund receiving dedicated revenues for affordable housing. The fund must be dedicated to affordable housing purposes.
- **Local Housing Trust Fund.** Under Proposition 46 a "Local Housing Trust Fund" must (1) receive ongoing, dedicated revenues (such as taxes, fees, loan repayments, or private contributions); and (2) be established by formal act, such as legislation, ordinance or resolution.<sup>1</sup>

<sup>†</sup> Bill Higgins and Shana Graham prepared this issue brief specifically for the League Board of Directors as part of the work program of the Institute for Local Government's *Housing and Land Use Program*. For more information on housing trusts, visit [www.ca-ilg.org/hrc](http://www.ca-ilg.org/hrc).

<sup>1</sup> See Cal. Health & Safety Code § 50843 (c)(3).



| <b>LOCAL HOUSING TRUST FUND PROGRAM (PROP 46) RECIPIENTS:</b>                      |                           |                                  |
|--|---------------------------|----------------------------------|
| • Alameda County   | • City of Oxnard          | • San Mateo County               |
| • City of Berkeley   | • City of Palo Alto       | • Santa Clara County             |
| • City of Citrus Heights   | • City of Pasadena        | • City of Santa Cruz             |
| • City of Livermore  | • City of Sacramento      | • City of Santa Rosa             |
| • City of Los Angeles  | • City of San Diego       | • Sonoma County                  |
| • Town of Mammoth Lakes  | • City of San Jose        | • City of West Hollywood         |
| <b>AGENCIES WITH AFFORDABLE HOUSING LINKAGE FEE PROGRAMS</b>                       |                           |                                  |
| • Alameda County   | * • City of Mountain View | * • City of San Diego            |
| • City of Berkeley   | • Napa County             | * • City/County of San Francisco |
| • City of Corte Madera   | * • City of Oakland       | • City of Santa Monica           |
| * • City of Cupertino  | * • City of Palo Alto     | * • City of Sunnyvale            |
| • City of Livermore  | • City of Petaluma        | • Sonoma County                  |
| • Marin County   | * • City of Pleasanton    | • City of Walnut Creek           |
| * • City of Menlo Park   | • City of Sacramento      | • City of West Hollywood         |
| * • City of Milpitas   | • Sacramento County       |                                  |
| <b>CALIFORNIA HOUSING TRUSTS LISTED BY CENTER FOR COMMUNITY CHANGE<sup>2</sup></b> |                           |                                  |
| • Alameda County   | • City of Morgan Hill     | • San Diego County               |
| • City of Berkeley   | • City of Palo Alto       | • City/County of San Francisco   |
| • City of Cupertino  | • City of Sacramento      | • Santa Clara County (2)         |
| • City of Los Angeles  | • Sacramento County       | • City of Santa Monica           |
| • City of Menlo Park   | • City of San Diego       | • City of West Hollywood         |

Several sources indicate that most agencies in the state have some kind of fund or account that is dedicated to affordable housing:

- **23 Linkage Fees on Commercial Development.** The 23 local agencies (listed above) that impose linkage fees should meet the Proposition 46 definition because the funds are typically included in the establishing ordinance.
- **125 Inclusionary Housing Ordinances.** Most programs allow developers to pay fees into a local housing account in lieu of building affordable units.<sup>3</sup>
- **Approximately 370 Active Redevelopment Agencies.** Redevelopment set-aside funds meet the Proposition 46 definition of local housing trust fund.<sup>4</sup>

In addition, other local agencies have established funds that accept periodic grants or other sources of funding that are dedicated to affordable housing. Staff was not able to locate a central list.

<sup>2</sup> Last updated in 2002.

<sup>3</sup> The most recent formal survey (*30 Years of Inclusionary Housing*, Nonprofit Housing Association, 2002) identifies 107 inclusionary ordinances. Staff conservatively estimates that at least 18 new ordinances have been identified since that publication was released.

<sup>4</sup> These funds are authorized by state legislation; see Cal. Health & Safety Code § 33334.2(a).



### III. PUBLIC-PRIVATE HOUSING TRUSTS

Public-private housing trusts are also eligible under Proposition 46.<sup>5</sup> These trusts are less common. The most successful to date is the Silicon Valley Housing Trust, jointly formed by public agencies, business and advocacy groups, and a foundation. The Trust has raised more than \$30 million.<sup>6</sup> Program successes include the creation of 1,200 rental units and distributing 1,200 grants (at \$6,500 each) to first time homebuyers. Organizers claim they leverage \$40 worth of affordable housing for every grant dollar.<sup>7</sup> While local agencies have made significant contributions to the Trust (often from their own housing trust funds), they share representation on the Trust board of directors with corporations, nonprofit housing developers, and housing advocates.

### IV. BEST PRACTICES FOR MANAGING HOUSING TRUST FUNDS

Housing trusts can be very flexible tools. Trust funds can be used to finance affordable housing development, home purchase assistance, preservation of existing housing stock, supportive housing, land banking, agency capacity, and rehabilitation. The key is to have a clear set of goals and then tailor the procedures and programs that flow from the trust in a way that assures that the goals are met while retaining enough flexibility to assure that the fund can adapt to changes in the market. It is important not to exclude potential uses of funds unless policy goals are clear.<sup>8</sup>

- **Governance Structure.** Governing policies set forth sources of acceptable funding, control, and management conventions. Most funds have a recurring source of funding, but can accept additional or occasional sources. In addition, most cities retain maximum control over their funds. But some elect to cede a degree of control (or create a separate fund) if additional funds may be available by partnering with other organizations. Finally, some agencies impose management limitations on the fund, such as limiting the amount that can be used for administration or specifying specific types of housing in which the funds should be invested.
- **Eligible Beneficiaries.** Cities should define eligible borrowers and grantees based on the targeted use of the funds. Borrowers and grantees often typically include nonprofit affordable housing developers, for-profit affordable housing developers,

<sup>5</sup> See Cal. Health & Safety Code § 50843 (c)(3).

<sup>6</sup> Sue McAllistar, *Housing group halfway to \$10 million Goal*, *San Jose Mercury News* (July 8, 2005).

<sup>7</sup> *Id.* Adobe Systems, Advanced Micro Devices, Applied Materials, Cisco Systems, Hewlett-Packard, Intel and Knight Ridder each contributed \$1 million to the Trust.

<sup>8</sup> This section summarizes a much more detailed report, *City of Long Beach Housing Trust Fund Study: Policy Guidelines, Practices, and Program Administration*, prepared by David Rosen and Associates for the city of Long Beach. The report, in its entirety, is posted on the city's website.



joint ventures between nonprofit and for-profit developers, service providers, individuals, and other government agencies or affiliates

- **Leveraging.** Cities should develop strategies to leverage their housing trust funds in order to increase state, federal and other funds coming into the community.
- **Capital Planning.** A long-term capital plan is a key tool that a city can use to develop housing program priorities and a framework for housing trust fund spending. A capital plan assists in making program decisions based on projected revenues and sources of leverage financing. A capital plan typically provides three- to five-year projections (revised annually) based on revenue projections, program costs, and the number of households to be assisted.
- **Asset management.** Cities must develop asset management systems to ensure that developers and homebuyers meet their obligations. The city must be assured that developers are renting their units at affordable rates, eligible households occupy units, and resale restrictions are managed properly. Procedures should guard against the loss of funds through defaults and assure that the city's regulatory requirements are met.
- **Home Purchase Assistance Programs.** Cities should record documents that protect the agency's equity in the unit. Lending institutions do not always recognize affordability restrictions. Second mortgages, in particular, are a problem because lenders sometimes issue the line of credit on the market value of the unit, not the owner's restricted equity. Cities should consult with an expert real estate attorney to draft resale restrictions (or equity share agreements), disclosure statements, and performance deeds of trust.

10/11/2005



### Menlo Park approves purchasing foreclosed homes

By Mike Rosenberg  
MediaNews

Posted: 05/08/2009 03:27:00 PM PDT

Updated: 05/08/2009 03:27:01 PM PDT

Menlo Park officials will spend \$2 million in developers' fees to help restore neighborhoods ravaged by house foreclosures.

The City Council earlier this week approved spending the money to buy and renovate 10 to 15 foreclosed homes in the city, most of them in the low-income Belle Haven neighborhood east of Highway 101.

The city will then sell the homes to residents on its affordable housing wait list — families who earn 60 to 110 percent of the area's median income. The wait list currently has more than 200 names on it.

In a separate action, the council authorized giving \$500,000 to Habitat for Humanity, which will leverage the money to also buy, renovate and sell foreclosed homes.

That program is expected to acquire five Menlo Park homes, at \$100,000 apiece, and will be aimed at lower-income families on the affordable housing wait list.

To bankroll the two home acquisition programs, the city will withdraw \$2.5 million from its affordable housing fund, which developers pay in lieu of installing below-market rate residential units. The money can only be used for affordable housing projects.



Council members also expressed support for a foreclosure-prevention program designed to lower homeowners' mortgage payments and keep them out of foreclosure, although they will need to approve the plan in July.

Under that plan, the city would invest \$1 million in 10 to 12 homes in danger of being foreclosed. The city essentially would take an equity stake in the homes and be reimbursed when they are sold, allowing it to invest in more houses.

It is still unclear how the foreclosure-prevention proposal would be funded, however, as the city may not be able to legally tap into its affordable housing money for it.

The three programs were modeled after the federal government's Neighborhood Stabilization Program, Housing Manager Douglas Frederick said. The government passed the program in 2008 as part of its economic recovery plan and expanded it as part of the 2009 stimulus bill.

Frederick said there are about 90 properties in Menlo Park in some stage of foreclosure, 21 of them vacant. Council members and city officials said the vacant properties lower surrounding home values, attract crime and vermin, and provide havens for squatters and drug users.

"It's heartbreaking to see a few houses that really are a detriment to the neighborhood, and everybody suffers because of that," Councilman Kelly Fergusson said. "Not just that neighborhood, but Menlo Park as a whole."

The proposals — originally introduced by Councilman Andy Cohen and developed through the city's housing commission — pleased some members of the Belle Haven neighborhood.

Advertisement

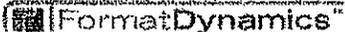


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# Petaluma housing element

- 4.3 Continue to work with non-profit housing organizations to benefit from their expertise in and resources for developing and supporting affordable housing.

*Nearly all of the affordable housing projects in the city have been developed in partnership with non-profit organizations such as Burbank Housing Development Corporation, Eden Housing, and Petaluma Ecumenical Properties. Non-profit projects that have already been completed during the planning period include Salishan Apartments, Vintage Chateau Senior Apartments, Edith Street Senior Apartments, and Old Elm Village. Projects under construction include Lieb Senior Apartments. Approved projects include Downtown River Apartments.*

Responsibility: Housing Division  
Funding: General Fund  
Schedule: January 1, 1999 - June 30, 2006

- Policy 4.2 Assign a share of the responsibility for providing affordable housing to the developers of market-rate housing and non-residential projects.

## Programs

- 4.4 Continue to require residential projects of five or more units to contribute to the provision of below-market rate housing in one of the following ways:
- Provide 15 percent of the units in a rental housing project at rents affordable to very low- and low-income households and 15 percent of the units in a for-sale project at prices affordable to low- and moderate-income households for a minimum period of 30 years.
  - Dedicate a portion of the project site or property elsewhere to the City or a non-profit organization for use as a site for affordable housing. This option is allowed only if the City or a non-profit agency has a pending project.
  - Make an in-lieu payment to the City's Housing Fund. \*
  - Use alternative methods to meet the intent of the inclusionary requirement, subject to approval by the City Council.

Responsibility: Housing Division, City Council  
Funding: Housing Fund  
Schedule: Ongoing

- 4.5 Increase the in-lieu housing fee to a level that generates enough funding to develop affordable units, preserve their affordability, and ensure their sustainability.

Responsibility: Housing Division, City Council  
Funding: Housing Fund  
Schedule: December 31, 2002

# California Coalition for Rural Housing

## Petaluma, Sonoma County

download the full policy: [Petaluma AF Policy.pdf \(0.27 MB pdf\)](#)

### Policy and Jurisdiction Information

|                     |        |              |                 |
|---------------------|--------|--------------|-----------------|
| Population:         | 54,548 | Compliance   | mandatory       |
| Land Area (sq mi.): | 13.8   | Type:        |                 |
| Year Adopted:       | 1984   | Policy Type: | housing element |

### Developer Options

#### Construction Alternatives

- conversion to affordable housing
- credit transfer
- in-lieu fee
- land dedication
- off-site construction

In-Lieu Fee Structure: *formula*

No fee schedule available

#### Incentives

- clustering of IH units
- delayed building of IH units
- density bonus
- fast-track processing
- fee deferral
- fee reduction
- fee waiver
- flexible design standards
- growth control extension
- subsidies
- tax abatement
- (other)

### Requirements

|                         | Rental Units  | Ownership Units   |
|-------------------------|---|---|
| IH Requirement          | 5 units   | 3 units   |
| Threshold               |   |   |
| % Production Required   | variable formula; 15 - 30%  | variable formula; 15 - 30%  |
| Targeted Groups         | <ul style="list-style-type: none"> <li><input type="checkbox"/> extremely low income</li> <li><input checked="" type="checkbox"/> very low income</li> <li><input checked="" type="checkbox"/> low income</li> <li><input type="checkbox"/> moderate income</li> <li><input type="checkbox"/> above-moderate income</li> <li><input type="checkbox"/> senior</li> </ul> | <ul style="list-style-type: none"> <li><input type="checkbox"/> extremely low income</li> <li><input type="checkbox"/> very low income</li> <li><input checked="" type="checkbox"/> low income</li> <li><input checked="" type="checkbox"/> moderate income</li> <li><input type="checkbox"/> above-moderate income</li> <li><input type="checkbox"/> senior</li> </ul> |
| Length of Affordability | 30 years  | 30 years  |

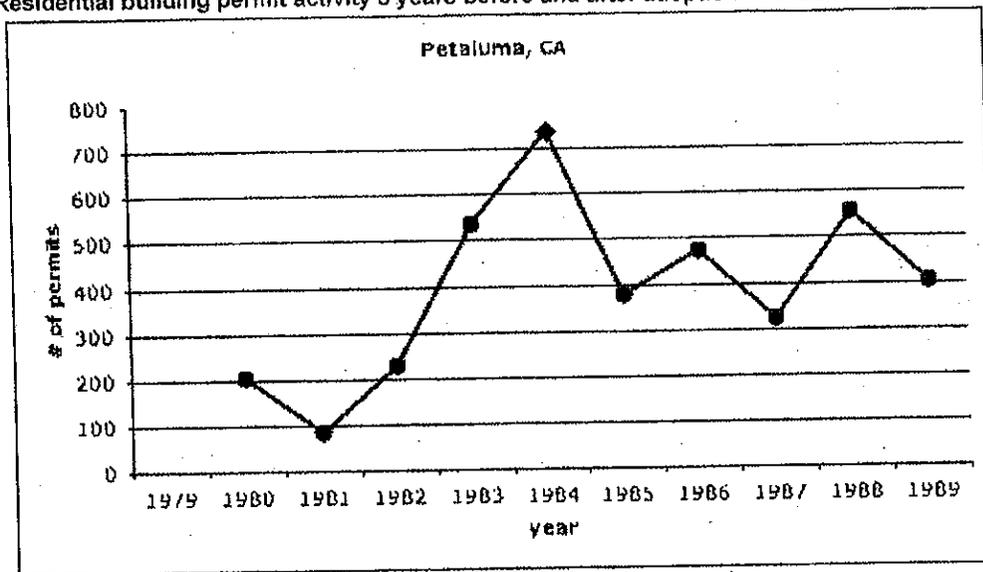
### Production Data

|   |     |
|---|-----|
| Inclusionary Development Units Produced, 1999-2006: | 587 |
| In-Lieu Fee Units Produced, 1999-2006:              | 570 |

} \*

Total Inclusionary Units Produced, 1999-2006: 1,157

Residential building permit activity 5 years before and after adoption of ordinance:

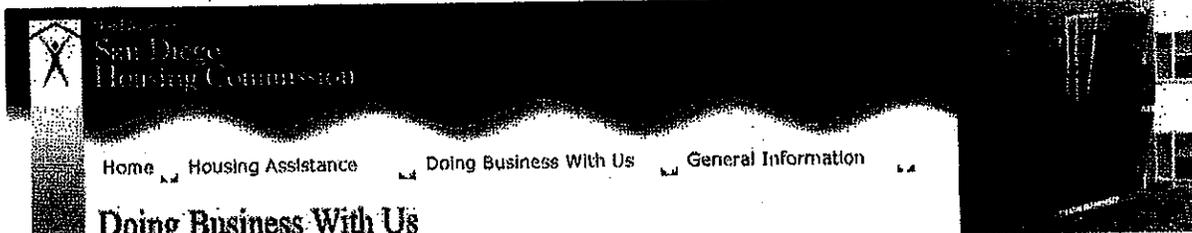


last updated July 5, 2007

**e-mail us about this policy**

California Coalition for Rural Housing  
(916) 443-4448  
717 K Street, Suite 400  
Sacramento, CA, 95814 USA

San Diego



## Doing Business With Us

[Additional Information](#)

### Wanted: housing developers

#### Affordable Housing Fund

The San Diego **Affordable Housing Fund** has two primary sources: the Housing Trust Fund and Inclusionary Housing in-lieu fees. [\(Click here to view Affordable Housing Fund reports.\)](#)

The San Diego **Housing Trust Fund** created by the San Diego City Council in 1990, was one of the first programs of its kind and has become a model for other cities.

Historically, the Housing Trust Fund benefited from four primary revenue sources. Currently, its only source is a **City Commercial Linkage Fee** – a fee that is levied on a square foot basis on commercial and industrial buildings. The nexus is that such new buildings or expansions typically generate new jobs, and therefore, the need for housing for individuals who fill those positions.

**Inclusionary housing in-lieu fees** are a source of revenues for the Affordable Housing Fund. In 2003, the City of San Diego enacted a city-wide Inclusionary Housing Ordinance, one which allows developers the option of paying fees in lieu of providing ten percent of the homes in any development at affordable rates for modest income families. These fees are collected by the City and released, on a quarterly basis, to the San Diego Housing Commission to leverage against other funds to help build affordable housing, preferably in the community plan area from which the funds came.

In 2006 the City of San Diego adopted a new in-lieu fee assessment procedure. This new assessment procedure provides developers more certainty as to what the level of their in-lieu fee shall be upon their project's approval. To see how this assessment procedure works, [please click here](#).

#### Affordable Housing Fund key to creating more affordable housing

San Diego's Affordable Housing Fund helps expand affordable housing by assisting developer partners. As developers respond with proposals to the Housing Commission's Notices of Funding Availability (NOFAs), a variety of funding sources, including the Affordable Housing Fund, are explored as options to help subsidize the construction of below-market-rate homes.

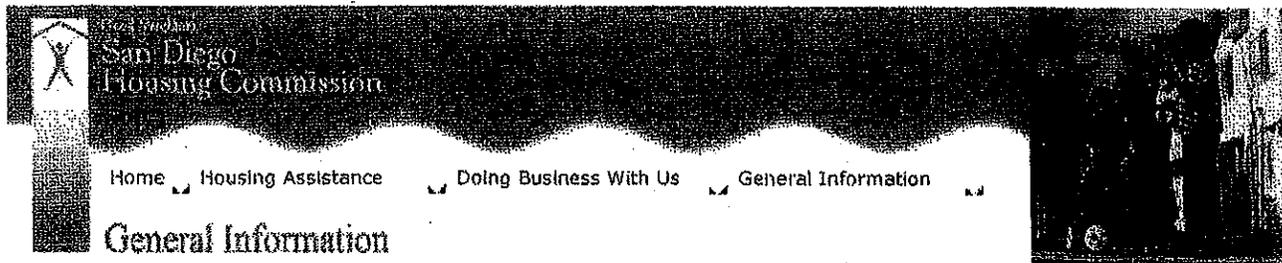
Another key attribute of the Affordable Housing Fund is its flexibility. Because it is designed without state or federal intervention, the fund can be shaped to address local needs, conditions, and priorities.

This flexibility allows the Affordable Housing Fund to provide a variety of housing opportunities in addition to rental housing development. Transitional Housing programs serve the area's most needy – persons in need of shelter and food. Neighborhoods are revitalized and public safety is enhanced through housing rehabilitation loans and grants. The fund also assists first-time homebuyers achieve the American dream of homeownership.

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## General Information

### City of San Diego Housing Impact Fee

#### What is a housing impact fee?

A housing impact fee, also known as a linkage fee, is a city fee assessed on commercial or industrial development.

#### What is the reasoning for such a fee?

Commercial and industrial development usually results in new jobs – and additional jobs often create the need for additional housing, including housing affordable to non-professionals. The fee is used to help produce that affordable housing.

Why should more homes, especially at affordable sales prices or rental rates, be built? Because for years, San Diego has faced a housing crisis, and it is worsening because housing development is not keeping up with job growth. More and more people who fill jobs that keep our economy strong – from new teachers to health clinicians, store clerks, and restaurant workers – are finding it difficult to afford to live here.

The housing impact fee is designed to help address the need for workforce housing. The fees go into the San Diego Housing Trust Fund.

#### What is the San Diego Housing Trust Fund?

Many cities and even states around America have housing trust funds – revenues from linkage fees and other sources that are used to subsidize housing so it can be affordable to lower and moderate-income families. The San Diego Municipal Code that created a Housing Trust Fund was enacted in 1990. Since inception, the Housing Trust Fund has assisted with the development, rehabilitation, or purchase of over 6,500 below-market rate units; and it supports approximately 455 transitional housing beds annually.

As housing impact fees are collected by the City, they are disbursed into the fund, which the San Diego Housing Commission manages. The Commission solicits proposals from private, public, and nonprofit developers for projects that will create new or preserve existing affordable housing, leveraging trust fund dollars against private investment dollars. Annually, the Commission reports on how much money was collected and how it was used.

#### Where does the money go?

The fund is used to build new affordable housing, goes to rehabilitate and preserve older housing, to support first-time homebuyer programs, and to provide transitional housing. By law, at least 60 percent of the fund is used to create housing for lower income households, most with incomes at 50% or less of the median income for San Diego. Other percentages go to those earning less and those earning more than 50% area median income. A portion of the fund is used for administration, and some is used to strengthen the capacity of nonprofit developers.

Housing trust funds are used to augment private investments and loans. This

leverage allows the fund to serve more families.

**Who pays?**

Whether you're building a 20-story hotel or enlarging a five-person laboratory, you are subject to housing impact fees, which are charged for all new commercial or industrial construction, additions, or interior remodeling that changes a structure's use. The current fee schedule is:

- \$1.06 per square foot for office and comparable uses
- 80 cents per square foot for research and development space
- 64 cents per square foot for hotels, retail and manufacturing
- 27 cents per square foot for warehouses

The fee amounts above are supported by a nexus study prepared in 1989 that demonstrated the need for housing based on new jobs associated with commercial development. In December 2004, the nexus study was updated in anticipation of considering updated fee amounts. Click here to read the [2004 Housing Impact Fee Nexus Analysis](#) prepared by Keyser Marston Associates, Inc. for the City of San Diego.

**When to pay:**

When applying for a building permit.

**Where to go for help?**

- For an estimate of the Housing Impact Fee for a specific project, call Facilities Financing at 619.533.5950.
- To determine a fee for a specific project, call 619.236.6270.

For more information on the San Diego Housing Trust Fund, call 619.578.7582.

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