

ORDINANCE NO. 11-13

AN ORDINANCE PROVIDING INTERIM RELIEF FROM  
CERTAIN INCLUSIONARY HOUSING PROVISIONS

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

Section 1. Purpose. The purpose of this Ordinance is to provide incentives for the construction of residential dwelling units in the City of Hayward during a period in which residential construction has declined in the State of California and in the United States as a whole.

Section 2. Interim Relief Provisions. Notwithstanding the provisions of Chapter 10, Article 17, "Inclusionary Housing Ordinance," of the Hayward Municipal Code, the provisions of this Ordinance shall be applicable to Dwelling Units in Residential Development Projects which have: (a) received all discretionary planning approvals by December 31, 2012; and (b) obtained building permits by December 31, 2014. However, the provisions of this Ordinance do not apply to any Residential Development Projects or Dwelling Units that provided Affordable Units or paid In-Lieu Fees prior to the effective date of this Ordinance.

DEFINITIONS

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

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

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

PROVISIONS APPLICABLE TO RESIDENTIAL OWNERSHIP PROJECTS

(a) Percentage of Affordable Units. In a Residential Ownership Project, ten percent (10%) of all Dwelling Units consisting of detached single-family homes, and seven and one-half percent (7.5%) of those Dwelling Units that consist of attached homes, including but not limited to townhomes and condominiums, shall be Affordable Units that are sold to moderate income households at Affordable Ownership Housing Cost as specified in Section 10-17.210 of the Hayward Municipal Code for "Owner-Occupied Residential Development Projects."

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

(c) Selection of Alternative. An application for the first approval of a Residential Ownership Project subject to subsection (a) shall describe whether the applicant elects to comply with subsection (a) or (b), or a combination of those subsections. If an applicant elects to comply with subsection (a), then all other requirements of Chapter 10, Article 17 apply, including but not limited to the provision of an Inclusionary Housing Plan and Inclusionary Housing Agreement.

#### PROVISIONS APPLICABLE TO RESIDENTIAL RENTAL PROJECTS

(a) No Requirement for Affordable Units. No Affordable Units are required to be included in a Residential Rental Project which does not receive City assistance as described in subsection (b).

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

#### TIME OF PAYMENT OF IN-LIEU FEES

For a Dwelling Unit that obtained a building permit by December 31, 2014, any required In-Lieu Fees for that Dwelling Unit shall be due and payable at the time a certificate of occupancy is issued for that Dwelling Unit or at the time of final inspection should no occupancy permit be required for the Dwelling Unit.

#### AMENDMENTS TO EXISTING INCLUSIONARY HOUSING AGREEMENTS

The City Manager is authorized to execute amendments to existing agreements implementing the City's Inclusionary Housing Ordinance consistent with the provisions of this Ordinance.

#### INCLUSIONARY HOUSING ORDINANCE

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

Section 3. Severance. Should any part of this ordinance be declared by a final decision of a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 4. Effective Date. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective 30 days from and after the date of its adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the 15<sup>th</sup> day of November, 2011, by Council Member Quirk.

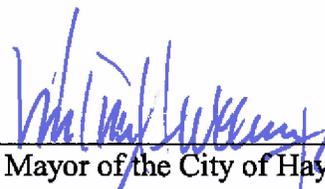
ADOPTED at a regular meeting of the City Council of the City of Hayward, held the 6<sup>th</sup> day of December, 2011, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS: Zermefio, Quirk, Halliday, Peixoto, Salinas, Henson  
MAYOR: Sweeney

NOES: COUNCIL MEMBERS: None

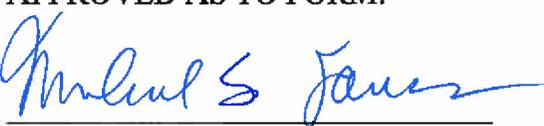
ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

APPROVED:   
Mayor of the City of Hayward

DATE: December 21, 2011

ATTEST:   
City Clerk of the City of Hayward

APPROVED AS TO FORM:  
  
City Attorney of the City of Hayward