

ORDINANCE NO. 23-04

AN ORDINANCE OF THE CITY OF HAYWARD AMENDING CHAPTER 10, ARTICLE 17, OF THE HAYWARD MUNICIPAL CODE REGARDING AFFORDABLE HOUSING REQUIREMENTS FOR NEW HOUSING DEVELOPMENTS

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

Section 1. Chapter 10, Article 17, of the Hayward Municipal Code is hereby amended to read as follows:

ARTICLE 17 - AFFORDABLE HOUSING ORDINANCE

SEC. 10-17.100 GENERAL PROVISIONS

SEC. 10-17.105 TITLE.

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

SEC. 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 2015-2023 Housing Element of the General Plan of the City of Hayward.
- b. Require that future Residential Development Projects mitigate their impact on the need for affordable housing in Hayward by contributing to the production of residences in Hayward that are affordable to extremely low, very low, low-and moderate-income households.
- c. Increase the production of residences in Hayward that are affordable to extremely low, very low, low, and moderate-income households.
- d. Ensure that residences affordable to extremely low, very low, low- and moderate-income households are distributed throughout the City's various neighborhoods.
- e. Support the housing objectives contained in State law.

SEC. 10-17.115 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 2015-2023 Housing Element, 48 percent of Hayward households pay more than 30 percent of their income for housing. Over 68 percent of lower income households overpay, and among very low-income households, 89 percent of renters overpay for housing.
- b. The 2015-2023 Housing Element also shows that most lower income households cannot afford any available housing in Hayward and that moderate-income households can afford to rent but not purchase housing in Hayward.
- c. 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.
- d. The California Legislature has required each local government agency to develop a comprehensive, long-term plan establishing policies for future development. As specified in Government Code Section 65583(c), the plan must (1) encourage the development of a variety of types of housing for all income levels, including multifamily rental housing; and (2) "[a]ssist in the development of adequate housing to meet the needs of extremely low, very low, low- and moderate-income households." The City is also charged by the Legislature to use the powers vested in it to make adequate provision for the housing needs of all economic segments of the community. (Section 65580(d).)
- e. Because of the high cost of both existing and newly constructed housing, 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.
- f. Rising land prices have been a key factor in preventing development of new affordable housing. New housing construction in the City that does not include affordable units aggravates the existing shortage of affordable housing by absorbing the supply of available residential land. This reduces the supply of land for affordable housing and increases the price of remaining residential land. At the same time new housing contributes to the demand for goods and services in the City, increasing local service employment at wage levels that do not often permit employees to afford housing in the City. Providing the affordable units or fees required by this ordinance will mitigate the impacts of market-rate development on the need for affordable housing and will help to ensure that part of the City's remaining developable land is used to provide affordable housing.

- g. Because maintaining housing development feasibility while maximizing the production of affordable housing is a priority for the City, this ordinance provides multiple means of compliance; however, when feasible, the City encourages the development of on-site Affordable Units to create mixed-income communities.

SEC. 10-17.120 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 Dwelling Unit whose price is set at an Affordable Ownership Cost or Affordable Rent as defined in this Article.
- b. "Affordable Ownership Cost" is defined as the maximum purchase price that will be affordable to a Moderate Income Households, Low Income Households, Very low Income Households, Extremely Low Income Households at Presumed Occupancy Levels, based on a reasonable down payment and monthly housing payments (including, but not limited to, mortgage principal and interest, property taxes, homeowner's insurance, and homeowner/condominium association fees where applicable) that do not exceed the following, based on Presumed Occupancy Levels:
 - 1. For Extremely Low Income Households: one-twelfth (1/12th) of thirty percent (30%) of twenty percent (20%) of Area Median Income adjusted for household size; and
 - 2. For Very Low Income Households: one-twelfth (1/12th) of thirty percent (30%) of forty percent (40%) of Area Median Income adjusted for household size; and
 - 3. For Low Income Households: one-twelfth (1/12th) of thirty percent (30%) of seventy percent (70%) of Area Median Income adjusted for household size; and
 - 4. For Moderate-income Households: one-twelfth (1/12th) of thirty-five percent (35%) of one hundred ten percent (110%) of Area Median Income adjusted for household size.
- c. "Affordable Rent" is defined as the maximum monthly rent, including all fees for housing services and a utility allowance as determined by the Alameda County Housing Authority, that does not exceed the following, based on Presumed Occupancy Levels:
 - 1. For Extremely Low Income Households: thirty percent of Area Median Income multiplied by thirty percent and divided by twelve.
 - 2. For Very Low Income Households: fifty percent of Area Median Income multiplied by thirty percent and divided by twelve.
 - 3. For Low Income Households: sixty percent of Area Median Income multiplied by thirty percent and divided by twelve.

- d. "Applicant" is defined as any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities that seeks discretionary or ministerial permits for a Residential Development Project from the City of Hayward.
- e. "Area Median Income (AMI)" is defined as the median income for Alameda County, adjusted for household size, as published annually in Title 25 of the California Code of Regulations, Section 6932 (or its successor provision) by the California Department of Housing and Community Development (HCD).
- f. "Decision-Making Body" is defined as the body with the authority to approve an application for a Residential Development Project.
- g. "Dwelling Unit" is defined as a dwelling designed and intended for residential occupancy by one household.
- h. "Extremely Low, Very Low, Low, and Moderate-Income Households" are defined as households whose incomes do not exceed the extremely low, very low, low, or moderate-income limits, as applicable, established for Alameda County and adjusted for household size that are published annually in Title 25 of the California Code of Regulations, Section 6932 (or its successor provision) by HCD.
- i. "Household Income" is defined as the gross annual household income, monetary benefits, and all other sources of household income, before deductions or exemptions, and includes the income of all members of the household 18 years of age or older.
- j. "Ownership Residential Project" is defined as any Residential Development Project that creates new 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. An Ownership Residential Project also includes any Residential Development Project with a recorded condominium plan or map and the conversion of residential property to common interest developments as described in Hayward Municipal Code Section 10-3.370.
- k. "Presumed Occupancy Levels" as listed below shall be used to establish Affordable Ownership Cost and Affordable Rents, unless the Residential Development Project is financed with federal tax credits, in which case the applicable federal regulations shall determine the Presumed Occupancy Levels:
 - (1) One person for a studio unit;
 - (2) Two people for a one bedroom unit;
 - (3) Three people for a two bedroom unit; and
 - (4) One additional person for each additional bedroom thereafter.
- l. "Rental Residential Project" is defined as any Residential Development Project that creates new Dwelling Units that cannot be sold individually.

- m. "Residential Development Project" is defined as any development for which a discretionary or ministerial permit is required that includes the creation of two (2) or more net new Dwelling Units or residential lots, or Dwelling Units and residential lots in combination. A conversion of residential property containing two (2) or more Dwelling Units to a common interest development, as defined in Hayward Municipal Code Section 10-3.370, is also a Residential Development Project. All development within a two-year period of two (2) or more Dwelling Units on a lot, or on contiguous lots for which there is evidence of common ownership or control, even though not covered by the same City discretionary or ministerial permit, shall be considered to be one Residential Development Project. The provisions of this section shall be interpreted broadly to effect the purposes of this chapter and to prevent evasion of its terms.

SEC. 10-17.200 RESIDENTIAL DEVELOPMENT PROJECTS

SEC. 10-17.205 UNIT THRESHOLD AND BASIC REQUIREMENTS.

All Residential Development Projects consisting of two (2) or more Dwelling Units or lots shall be subject to the affordable housing requirements of this Article. This Article shall be applied no more than once to an approved Residential Development Project, regardless of changes in the character or ownership of the development, provided that the total number of Dwelling Units does not change.

At the time an application for a Residential Development Project is submitted, the Applicant shall specify how the requirements of this Section shall be met. An Applicant for a Residential Development Project shall comply with the affordable housing requirements of this Article by satisfying one of the following options:

- a. Pay an affordable housing in-lieu fee under Section 10-17.410; or
- b. Include on-site for-sale Affordable Units as specified in Section 10-17.210 or on-site rental Affordable Units as specified in Section 10-17.215 as approved by the Decision-Making Body. Where the calculation of the required number of Affordable Units results in a fraction of a unit, the Applicant may provide one additional Affordable Unit or pay affordable housing in-lieu fees for the fractional unit. If a project amendment results in a change in the total number of Dwelling Units, the number of Affordable Units required will be recalculated to coincide with the final approved Residential Development Project; or
- c. Construct Affordable Units not physically contiguous to the development (off-site) if approved by the Decision-Making Body under Section 10-17.225; or
- d. Propose additional alternatives not listed in this Article if approved by the Decision-Making Body under Section 10-17.230; or
- e. In an Ownership Residential Project, provide rental Affordable Units consistent with Section 10-17.215 as approved by the Decision -Making Body.

SEC. 10-17.210 ON-SITE UNITS IN OWNERSHIP RESIDENTIAL PROJECTS.

If the Applicant elects to provide on-site for-sale Affordable Units in an Ownership Residential Project, they shall be provided as follows:

- a. High-Density Condominium Projects. In high-density condominium projects approved at densities of thirty five (35) units per acre or more, 7.5 percent of the Dwelling Units shall be for-sale Affordable Units and Affordable Units shall be made affordable to Moderate-Income Households at Affordable Ownership Cost.
- b. All Other Ownership Residential Projects.
 - (1) In all other Ownership Residential Projects with submitted Affordable Housing Plans pending approval prior to the effective date of this Ordinance amendment, ten (10) percent of the Dwelling Units shall be for-sale Affordable Units and Affordable Units shall be made affordable to Moderate-Income Households at Affordable Ownership Cost.
 - (2) In all other Ownership Residential Projects submitting an Affordable Housing Plan for approval after the effective date of this Ordinance amendment, twelve (12) percent of the Dwelling Units shall be for-sale Affordable Units and one-half of for-sale Affordable Units shall be made affordable to Moderate-Income Households and one-half shall be made affordable to Low Income Households at Affordable Ownership Cost.
- c. The Applicant may elect to provide Affordable Units affordable to Extremely Low, Very Low, or Low Income Households rather than units affordable to the affordability level as required within this section.
- d. For-sale Affordable Units must be legally restricted to occupancy by Moderate-Income Households, Low Income Households, Very low Income Households, Extremely Low Income Households, as required or elected, at Affordable Ownership Cost in perpetuity.

SEC. 10-17.215 ON-SITE UNITS IN RENTAL RESIDENTIAL PROJECTS.

If the Applicant elects to provide on-site rental Affordable Units in a Rental Residential Project, they shall be provided as follows:

- a. Six (6) percent of the Dwelling Units shall be rental Affordable Units.
- b. One-half of rental Affordable Units shall be made affordable to Low-Income Households at Affordable Rent and one-half shall be made affordable to Very Low Income Households at Affordable Rent. The first Affordable Unit required shall be made affordable to Very Low Income Households at Affordable Rent. The Applicant may elect to provide Affordable Units affordable to Extremely Low or Very Low Income Households rather than units affordable to Very Low and Low-Income Households.

- c. Rental Affordable Units must be legally restricted to occupancy by Low-Income, Very Low Income Households or Extremely Low Income Households, as elected, at Affordable Rent in perpetuity.

SEC. 10-17.220 DESIGN, DISTRIBUTION AND TIMING OF AFFORDABLE UNITS.

On-site Affordable Units shall be integrated with the proposed Residential Development Project, as set forth in this Chapter and as required by law including, but not limited to California Health and Safety Code Section 17929, and shall be comparable in infrastructure (including sewer, water and other utilities), construction quality, exposure to environmental conditions, access to amenities, and exterior design to the on-site market-rate units. Specifically:

- a. The Affordable Units should be integrated with the project as a whole. The Affordable Units must be at least equal in size (number of bedrooms and square footage) and amenities as the on-site market rate units, and any comparative deficiency in size or amenities must be compensated for by additional Affordable Units, larger Affordable Units, or affordability to households with lower incomes. The mix of Affordable units must be proportional to the total project unit mix. Affordable Units may 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.
- b. No building permits will be issued for any market-rate units in the Residential Development Project until permits for all Affordable Units have been obtained, unless Affordable Units are to be constructed in phases pursuant to a plan approved by Decision Making Body.
- c. Market-rate units in the Residential Development Project will not be inspected for occupancy until all Affordable Units have been constructed, unless Affordable Units are to be constructed in phases pursuant to a plan approved by Decision Making Body.

SEC. 10-17.225 OFF-SITE CONSTRUCTION.

As an alternative to construction of on-site Affordable Units, an Applicant may instead construct Affordable Units not physically contiguous to the development (off-site) if the Decision-Making Body determines that:

- a. Off-site construction will further affordable housing opportunities in the City to a greater extent than construction of the required Affordable Units as part of the proposed Residential Development Project;
- b. A schedule for completion of the off-site Affordable 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 Affordable Units are at least equal in size (number of bedrooms and square footage) and amenities to the Affordable Units that would be provided on-site, or any comparative deficiency in size or amenities is compensated for by

additional Affordable Units, larger Affordable Units, or affordability to households with lower incomes.

- d. The off-site location is suitable for the proposed Affordable Units, consistent with the General Plan and the Housing Element, and will not tend to cause residential segregation

Except as approved by the Decision-Making Body, off-site Affordable Units shall conform with all other requirements in this Article that are applicable to on-site Affordable Units.

SEC. 10-17.230 ADDITIONAL ALTERNATIVES.

An Applicant may also propose additional alternatives not listed in this Article if the Decision-Making Body finds that such an alternative would provide a greater benefit to the City than the other options explicitly described in this Article. An Applicant may also choose to propose any combination of on-site construction, off-site construction, affordable housing in-lieu fee, rental housing, or other alternative that conforms to the provisions of this Article and would at least equal the benefit to the City as the other options explicitly described in this Article. Except as approved by the Decision-Making Body, off-site Affordable Units shall conform with all other requirements in this Article that are applicable to on-site for-sale Affordable Units.

SEC. 10-17.300 RESERVED

SEC. 10-17.400 AFFORDABLE HOUSING IN-LIEU FEE

SEC. 10-17.405 ADOPTION OF AFFORDABLE HOUSING IN-LIEU FEE.

Affordable housing in-lieu fees for Residential Development Projects may be established by resolution of the City Council and amended from time to time as appropriate. Any such fees shall be part of the City's Master Fee Schedule. The fees shall not exceed the cost to the City of mitigating the impact of such developments on the need for affordable housing in the City.

SEC. 10-17.410 PAYMENT OF AFFORDABLE HOUSING IN-LIEU FEE.

Affordable housing in-lieu fees shall be paid either prior to issuance of a building permit for a Dwelling Unit or prior to approval of a final inspection or issuance of an occupancy permit for a Dwelling Unit. Regardless of the option chosen, no final inspection will be approved and no occupancy permit will be issued for any Dwelling Unit unless all required affordable housing in-lieu fees have been paid in full.

SEC. 10-17.415 USE OF AFFORDABLE HOUSING IN-LIEU FEE.

The affordable housing in-lieu fee shall be placed in the Affordable Housing Trust Fund and used as described in Sections 10-17.1000—10-17.1010.

SEC. 10-17.500 IMPLEMENTATION OF AFFORDABLE HOUSING PLAN

SEC. 10-17.505 GENERAL.

The provisions of this Article shall apply to all agents, successors and assignees of an Applicant or property owner proposing a Residential Development Project governed by this Article. No discretionary or ministerial permit shall be issued for any Residential Development Project unless in compliance with the terms of this Article.

SEC. 10-17.510 AFFORDABLE HOUSING PLAN.

Unless the Applicant proposes to pay affordable housing in-lieu fees consistent with Section 10-17.400—10-17.415, an Applicant shall submit an Affordable Housing Plan (AHP) as part of the earliest application for a Residential Development Project. In accordance with the Permit Streamlining Act, the Planning Director shall determine whether the AHP is complete. The elements of a complete AHP are described below. If the AHP is incomplete, the AHP will be returned to the Applicant with a list of the deficiencies or the information required. No application for a discretionary or ministerial permit to which this Article applies shall be deemed complete until the AHP 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 to determine the consistency of the proposed AHP with the requirements of this Article.

A complete AHP shall include, at a minimum:

- a. The location, structure (attached or detached), proposed tenure (for-sale or rental), and size of the proposed market-rate units and Affordable Units and the basis for calculating the number of Affordable Units provided;
- b. A floor or site plan depicting the location of the Affordable Units;
- c. The income levels to which each Affordable Unit will be made affordable;
- d. For Residential Development Projects that require development of units in phases, a plan that addresses the timing of development of the number of Affordable Units proportionate to each proposed phase of development as required by this Article.. Approval of Certificates of Occupancy in each phase is subject to review for completeness, public safety, accessibility, and separation from adjacent and on-going construction activity as determined by the City Engineer and Building Official.
- e. A description of any incentives that are requested by the Applicant;
- f. If off-site units, rental units, or other alternatives are proposed under Sections 10-17.205, 10-17.225, or 10-17.230, the information necessary to support the findings required for approval of such alternatives;

- g. A preliminary marketing plan that describes how the Applicant will inform the public, and those within the appropriate income groups, of the availability of Affordable Units;
- h. A written statement demonstrating compliance with the requirements of Section 10-17.220 for on-site Affordable Units; and
- i. Any other information reasonably requested by the Planning Director to assist with evaluation of the AHP under the standards of this Article.

Affordable Housing Plans that meet all of the requirements of this Article shall be approved by Decision-Making Body. An Affordable Housing Plan that requests a waiver of any of the requirements set forth in this Article shall require approval of the City Council.

SEC. 10-17.515 AFFORDABLE HOUSING AGREEMENT.

An approved Affordable Housing Plan shall be memorialized by an Affordable Housing Agreement (AHA) between the City and the Applicant. The form of the AHA will vary, depending on the manner in which the provisions of this Article are satisfied for a particular Residential Development Project. An AHA must include, at minimum, the following:

- a. Description of the development, including whether the Affordable Units will be rented or owner-occupied;
- b. The number, size and location of any Extremely Low-, Very Low-, Low- or Moderate-Income Units;
- c. Affordability incentives provided by the City (if any), including the nature and amount of any local public funding;
- d. Provisions and/or documents for resale restrictions, deeds of trust, rights of first refusal or rental restrictions;
- e. Marketing plan requirements for sale or rental of the Affordable Units;
- f. Provisions for monitoring the ongoing affordability of the Affordable Units, and the process for qualifying prospective resident households for income eligibility; and
- g. Any additional obligations relevant to the compliance with this Article.

The form of the AHA resale and rental restrictions, deeds of trust, option agreements and other documents authorized by this subsection must be approved by the City Manager or designee prior to being executed with respect to any Residential Development Project.

Approval of an AHA is a condition of any discretionary or ministerial permit for any Residential Development Project for which this Article applies, unless the Applicant

has proposed to pay affordable housing mitigation fees consistent with Section 10-17.400—10-17.415.

SEC. 10-17.520 TERM OF AGREEMENT.

All for-sale Affordable Units provided under this Article must be legally restricted to occupancy by Moderate, Low, Very Low, or Extremely Low-Income Households, as applicable, in perpetuity. All rental Affordable Units provided under this Article must be legally restricted to occupancy by Low, Very Low, or Extremely Low-Income Households, as applicable, in perpetuity.

SEC. 10-17.525 RECORDING OF AGREEMENT.

An approved Affordable Housing Agreement must be recorded against the property included in the Residential Development Project prior to approval of any parcel or final map or issuance of any building permit, whichever occurs first. Additional rental or resale restrictions, deeds of trust, option agreements and/or other documents acceptable to the City Manager or designee may also be recorded. In cases where the requirements of this Article are satisfied through the development of off-site units, the Affordable Housing Agreement must simultaneously be recorded against the Residential Development Project site and the property where the off-site units are to be developed.

SEC. 10-17.600 EXEMPTIONS

The requirements of this Article do not apply to the following:

- a. The reconstruction of any structures that have been destroyed by fire, flood, earthquake or other act of nature; provided, however, that this Article shall apply to net new Dwelling Units added to a site if the reconstruction of the site increases the total number of Dwelling Units by two or more.
- b. Development agreements originally adopted and executed by the City Council prior to January 1, 2004 and any extensions or modifications of those development agreements that did not modify the affordable housing requirements; and any development agreements which specify an alternative requirement for affordable housing.

SEC. 10-17.700 DEVELOPMENT INCENTIVES

This Article confers economic and land use benefits on Residential Development Projects that provide on-site Affordable Units, as set forth below:

- a. **Density Bonus.** The Applicant may apply for a density bonus and other regulatory incentives provided by state law pursuant to Chapter 10, Article 19 of the Hayward Municipal Code. In calculating the number of Affordable Units required by this Article, any additional Dwelling Units authorized as a density bonus pursuant to Government Code Section 65915 et seq. ("State Density Bonus Law") shall not be counted toward the base density calculation for the Residential Development Project.

- b. Modified Development Standards to Increase Density.
 - (1) In a residential project which contains single family detached homes, Affordable Units may be attached Dwelling Units rather than detached homes. In a residential project that includes attached multi-story Dwelling Units, Affordable Units may contain only one story.
- c. Expedited Processing. Expedited processing of development approvals and permits will be available for Residential Development Projects with on-site Affordable Units, consistent with State law.
- d. Technical and Financial Assistance. Upon request, information shall be provided to Applicants regarding objective design guidelines and financial subsidy programs for Residential Development Projects that provide on-site affordable units.

SEC. 10-17.800 ADMINISTRATION OF AFFORDABLE UNITS

SEC. 10-17.805 SELECTION CRITERIA.

No household shall be permitted to occupy an Affordable Unit unless the City Manager or designee has first approved the household's eligibility as a Moderate-, Low-, Very Low-, or Extremely Low-Income Household, as applicable. The Applicant, 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 designee. A household shall be selected for occupancy of an Affordable Unit based on the following criteria:

- a. First Priority: Person(s) displaced by activity of the Hayward Housing Authority, the Hayward Redevelopment Agency or the City, the City's code enforcement activities
- b. Second Priority: Person(s) who live or work within the City of Hayward.
- b. Third Priority: All other eligible households.

SEC. 10-17.810 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 property owner and its officers and employees (and their immediate family members).

SEC. 10-17.815 OCCUPANCY.

Any household who occupies an Affordable Unit must occupy that unit as the household's principal residence. Should the household cease to occupy the Affordable Unit as its principal residence, the household will be in default of its resale restriction or lease.

The City may, in its sole discretion, grant a temporary waiver of this occupancy requirement for hardship.

SEC. 10-17.820 RESALE OF FOR-SALE AFFORDABLE UNITS.

The initial and subsequent sales price of for-sale Affordable Units must be set at Affordable Ownership Cost.

- a. Transfer of Restrictions. When the ownership of a for-sale Affordable Unit is transferred, each new owner must sign an Affordable Housing Agreement consistent with the provisions of this Article.
- b. Resale. The maximum sales price permitted on resale of a for-sale Affordable Unit shall be the lower of (1) fair market value or (2) the seller's lawful purchase price, increased by, as determined by the City, (a) the rate of increase of Area Median Income during the seller's ownership or (b) the rate at which the Consumer Price Index for All Urban Consumers, San Francisco Area, increased during the seller's ownership. To the extent authorized in the resale restrictions or Affordable Housing Agreement recorded against the property, 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 designee may authorize an increase in the maximum allowable sales price to achieve such recovery. Capital improvements are limited to new construction. Repairs of any type, including but not limited to roofs, bathrooms and kitchens, are not considered capital improvements.

SEC. 10-17.825 OPTION TO PURCHASE - FOR-SALE AFFORDABLE UNITS.

In the event of a default under the resale restrictions, the City shall have the option to purchase the Affordable Unit following the default by the owner under the terms of the resale restrictions.

It is the responsibility of the seller of an Affordable Unit that is subject to 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 or from similar programs offered by other municipalities, lenders, or local housing organizations. The City may establish procedures to review the prospective purchaser's eligibility to purchase an Affordable Unit. If the seller is unable to find an eligible purchaser, the City shall have the option to purchase the Affordable Unit.

In either event, the option price for the Affordable Unit shall equal the price that could be charged to an income-eligible purchaser.

SEC. 10-17.830 RENTAL AFFORDABLE UNITS.

If rental Affordable Units are provided, the Affordable Units shall be offered to eligible households at Affordable Rent. The owner of rental Affordable Units shall certify each tenant's Household Income to the City Manager or 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 and submit such information on a form approved by the City Manager or designee. The City Manager or designee shall review the prospective tenant's eligibility to rent an Affordable Unit. No tenant may move into an Affordable Unit prior to authorization by the City Manager or designee.

SEC. 10-17.835 MARKETING PLAN.

Owners of rental Affordable Units may fill vacant Affordable Units by selecting income-eligible households in accordance with the approved marketing plan. Marketing Plans must be consistent with affirmatively furthering fair housing policies and include providing marketing materials in multiple languages as required by the City.

SEC. 10-17.840 COMPLIANCE REPORTS.

Owners of rental Affordable Units shall submit annual compliance reports summarizing the occupancy of each Affordable Unit. Annually, the owner shall re-certify all tenants for income-eligibility and submit an annual report. The forms and format used will be the same as those specified for the Tax Exempt Multifamily Mortgage Bond Program or other State or federal housing subsidy program approved by the City.

SEC. 10-17.845 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. The owner shall manage and operate the Affordable Units in compliance with federal and state fair housing laws.

SEC. 10-17.850 CHANGES IN TENANT INCOME.

If, after moving into an Affordable Unit, a tenant's Household Income exceeds the income limit for that Affordable Unit, the following shall apply:

- a. If the tenant's Household 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 Affordable Unit and re-designate the Affordable Unit as affordable to households of a higher income level, as long so the next vacant Affordable Unit is re-designated for the income category previously applicable to the tenant's household.
- b. If there are no Affordable Units available at the tenant's increased income level, the tenant's rent shall be raised to 30 percent of the tenant's actual monthly Household Income or fair market rent, whichever is lower. If the tenant is paying fair market rent, the next vacant Dwelling Unit that is comparable in size (number of bedrooms, bathrooms, square footage, etc.) to the original Affordable Unit shall be designated as an Affordable Unit at the income level previously applicable to the Dwelling Unit converted to market rate. However, if the Affordable Units are financed with federal tax credits, the following shall apply: if, upon recertification,

a tenant's Household Income exceeds 70 percent of AMI, the owner shall charge the existing tenant rent equal to the amount permitted under the rules and regulations of the Internal Revenue Service and the California Tax Credit Allocation Committee, and the owner shall rent the next available Dwelling Unit to a Very Low Income Household for Affordable Rent.

SEC. 10-17.900 ADJUSTMENTS AND WAIVERS

SEC. 10-17.905 APPLICATION FOR ADJUSTMENTS AND WAIVERS.

As part of an application for the first approval of a Residential Development Project, an Applicant may apply for a reduction, adjustment, or waiver of the requirements of this Article based upon a showing that applying the requirements of this chapter would result in an unconstitutional taking of property or would result in any other unconstitutional result. The Applicant shall set forth in detail the factual and legal basis for the claim, including all supporting technical documentation.

SEC. 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: (a) the Applicant will benefit from any incentives included in this Article; (b) the Applicant will be obligated to provide the most economical Affordable Units feasible in terms of construction, design, location and tenure; and (c) that the Applicant is likely obtain other housing subsidies where such funds are reasonably available.

SEC. 10-17.915 ACTION ON ADJUSTMENT OR WAIVER.

The City Council, based upon legal advice provided by or at the behest of the City Attorney, may approve a reduction, adjustment, or waiver if it determines that applying the requirements of this chapter would effectuate an unconstitutional taking of property or otherwise have an unconstitutional application to the property. The reduction, adjustment, or waiver shall be approved only to the extent necessary to avoid an unconstitutional result, after adoption of written findings and based on legal analysis and the evidence. If a reduction, adjustment, or waiver is granted, any change in the residential or nonresidential project shall invalidate the reduction, adjustment, or waiver, and a new application shall be required for a reduction, adjustment, or waiver pursuant to this Section. 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 shall remain applicable.

SEC. 10-17.1000 AFFORDABLE HOUSING TRUST FUND

SEC. 10-17.1005 TRUST FUND.

There is hereby established a separate Affordable Housing Trust Fund ("Fund"). This Fund shall receive all affordable housing in-lieu fees and may also receive monies from other sources.

SEC. 10-17.1010 PURPOSE, LIMITATIONS AND ADMINISTRATION.

Monies deposited in the Fund must be used to increase the supply of housing affordable to Moderate-, Low-, Very Low-, or Extremely Low-Income households in the City, through new construction, acquisition of affordability covenants and substantial rehabilitation of existing housing, or provision of other residential facilities, including emergency shelters and transitional housing, if those facilities mitigate the impact of market-rate housing on the need for affordable housing. Up to fifteen (15) percent of revenue may be used to cover reasonable administrative costs associated with the administration and implementation of this Article.

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

SEC. 10-17.1100 ENFORCEMENT

SEC. 10-17.1105 MISDEMEANOR.

It shall be a misdemeanor for any person to sell or rent an Affordable Unit at a sales price or rent exceeding Affordable Rent or Affordable Ownership Cost or otherwise to violate any of the provisions of this Article.

SEC. 10-17.1110 CITY ACTIONS.

The City may institute actions in law or equity for violations of this Article and may suspend or revoke any discretionary or ministerial permit upon finding a violation of any of the provisions of this Article, an approved Affordable Housing Agreement, or any documents, such as resale restrictions and rent regulatory agreements, entered into by the City to implement the requirements of this Article.

Section 2. Severance.

If any section, subsection, paragraph or sentence of this Ordinance, or any part thereof, is for any reason found to be unconstitutional, invalid or beyond the authority of the City of Hayward by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance.

Section 3. Effective Date.

This ordinance shall become effective thirty (30) days after adoption by the City Council.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the 28 day of March, 2023, by Mayor Salinas.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the 11 day of April, 2023, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS: Andrews, Goldstein, Roche, Syrop, Zermeño

MAYOR: Salinas

NOES: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

APPROVED: _____

Mayor of the City of Hayward

DATE: _____

April 17, 2023

ATTEST: _____

City Clerk of the City of Hayward

APPROVED AS TO FORM: _____

City Attorney of the City of Hayward