

HAYWARD CITY COUNCIL

RESOLUTION NO. 24-\_\_\_\_\_

Introduced by Council Member \_\_\_\_\_

RESOLUTION TO ADOPT ZONING MAP AND ZONING TEXT AMENDMENTS TO CHAPTER 10, ARTICLE 1 (ZONING ORDINANCE) TO ESTABLISH AN AFFORDABLE HOUSING OVERLAY DISTRICT TO ALLOW MINISTERIAL DESIGN REVIEW OF NEW RESIDENTIAL DEVELOPMENT SUBJECT TO MINIMUM AFFORDABILITY CRITERIA AND TO REZONE THREE PROPERTIES SUBJECT TO THE OVERLAY DISTRICT

WHEREAS, the California legislature has found that “California has a housing supply and affordability crisis of historic proportions. The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state’s environmental and climate objectives” (Gov. Code Section 65589.5.); and

WHEREAS, the legislature has further found that “Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration” (Gov. Code Section 65589.5.); and

WHEREAS, the legislature adopted the Housing Crisis Act of 2019 (SB 330) which states that “In 2018, California ranked 49th out of the 50 states in housing units per capita... California needs an estimated 180,000 additional homes annually to keep up with population growth, and the Governor has called for 3.5 million new homes to be built over 7 years;” and

WHEREAS, the State of California adopted Senate Bills (SB) SB 35, SB 330, and SB 9, limiting local jurisdiction review on certain housing projects to standards that are objective, involving no personal or subjective judgement by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal; and

WHEREAS, State Housing Element Law (Government Code Sections 65580 et seq.) requires that the City Council implement the 6<sup>th</sup> Cycle Housing Element for the eight-year period ranging from 2023 to 2031 in order to accommodate the City of Hayward Regional Housing Need Allocation (RHNA) of 4,624 housing units, comprised of 1,075 very-low income units, 617 low-income units, 817 moderate-income units, and 2,115 above moderate-income units; and

WHEREAS, on February 7, 2023, the City Council adopted Resolution No. 23-033 adopting a General Plan Amendment related to the 6<sup>th</sup> Cycle Housing Element for the period of 2023-2031, which contains: (i) an assessment of the City's housing needs and an analysis of the resources and constraints, both governmental and non-governmental, relevant to the meeting of these needs; (ii) an inventory of land suitable and available for residential development and an analysis of the development potential of such sites; (iii) a fair housing assessment; (iv) a statement of the community's goals, quantified objectives, and policies relative to the maintenance, preservation, improvement, and development of housing; and (v) programs that set forth a schedule of actions the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the Housing Element Update; and

WHEREAS, on July 27, 2023, the State Department of Housing and Community Development (HCD) found Hayward's 6<sup>th</sup> Cycle Housing Element in substantial compliance with State Housing Element Law; and

WHEREAS, the Housing Element contains a Housing Plan which sets forth various actions that the City will take to streamline and support development of a variety of housing types at all levels of affordability to achieve our RHNA. Housing Element Program H-11, By Right Approval for Projects with 20 Percent Affordable Units, was adopted pursuant to Government Code 65583.2(c) because three of the sites used in the City's 6<sup>th</sup> Housing Element cycle as being appropriate for high density housing for low-income households were used in a previous Housing Element cycle. The timeframe associated with Program H-11 was January 2025; and,

WHEREAS, since HCD's certification of Hayward's adopted Housing Element (July 27, 2023) occurred more than 120 days after the statutory deadline (January 31, 2023), the City is subject to an accelerated timeframe for any program requiring a rezoning, and is required to establish this streamlined approval process by January 31, 2024, as detailed in a Corrective Action letter issued by HCD on February 5, 2024; and,

WHEREAS, the Planning Commission was slated to hold a duly noticed public hearing on this matter on March 14, 2024; however, due to a lack of quorum, this item is being forwarded to the City Council without a recommendation from the Planning Commission; and,

WHEREAS, notice of this hearing was published in the manner required by law and the hearing was duly held by the City Council on March 26, 2024.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby finds and determines as follows:

CALIFORNIA ENVIRONMENTAL QUALITY ACT

1. In July 2014, the City Council certified a Final Program Environmental Impact Report, adopted the Statement of Overriding Considerations, approved the Mitigation Monitoring and Reporting Program, Adopted the Hayward 2040 General Plan, and Approved related amendments to the General Plan Land Use Map for certain properties in the Planning Area.
2. Pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15164, Rincon Consultants prepared an Addendum to the General Plan EIR analyzing the Housing Element Update, Hazards Element Update and New Environmental Justice Element, dated January 2023. In accordance with Section 15164 of the CEQA Guidelines, a lead agency shall prepare an Addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred. Specifically, an Addendum is appropriate when there has been no substantial change proposed in the project or the circumstances under which the project is being undertaken, nor is there any new information that would require additional environmental review. In this case, the proposed Project would not require land use changes not previously known or analyzed in the General Plan EIR; therefore, the previously certified Mitigation Monitoring and Reporting Program remains valid and applicable with the Amendments.
3. Pursuant to CEQA Guidelines 15164(g), an Addendum need not be circulated for public review.
4. The adopted Final EIR identified all potential significant adverse impacts and feasible mitigation measures that would reduce impacts to a level of less than significant, and that all the applicable mitigation measures identified in the Mitigation Monitoring and Reporting Program and related to the proposed project will be implemented, if applicable, as described in the Addendum. Based on the Final EIR and the Addendum, there is no substantial evidence that the Project would have a significant effect on the environment.
5. The project complies with CEQA, and the previously certified Final EIR, Mitigation Monitoring and Reporting Program and Addendum was reviewed and considered prior to approving the project.
6. Pursuant to Government Code Section 65583.2(i), ministerial design review for new development that meets minimum affordability criteria and all applicable object standards shall not constitute a “project” for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code.

**ZONING TEXT AND MAP AMENDMENTS**

Pursuant to Hayward Municipal Code Section 10-1.3425(b), the Planning Commission may recommend approval of an amendment to the Zoning Ordinance and Zoning Map upon making the following findings:

**1. Substantial proof exists that the proposed change will promote the public health, safety, convenience and general welfare of the residents of Hayward;**

In adopting State Housing Element Law, the legislature found that “California has a housing supply and affordability crisis of historic proportions. The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state’s environmental and climate objectives.” (Government Code Section 65589.5.). As documented in the adopted, certified 6<sup>th</sup> Cycle Housing Element Appendix A, Housing Needs Assessment, Hayward’s residents are also experiencing a crisis in affordability which is related to a lack of affordable housing, particularly for low-income and special needs households.

There is substantial proof that the proposed change will promote the public health, safety, convenience and general welfare of the residents of Hayward in that the amendments are being undertaken to comply with the adopted, certified Housing Element and State Law. Compliance with State Law and annual reporting on ongoing Housing Element compliance is required for local jurisdictions to access State funding sources. In addition, a compliant Housing Element makes the City more competitive for grant funding to construct affordable housing and infrastructure improvements. While it will not solve the State, regional or local housing crisis, the City’s Housing Plan, and specifically Program H-11 will remove constraints for housing development on three parcels by creating a ministerial planning review process for development that meets minimum affordability criteria. Ministerial planning review processes streamline development approvals by reducing the time and cost associated with the development process thus supporting more efficient market rate and affordable housing development.

**2. The proposed change is in conformance with the purposes of the Zoning Ordinance and all applicable, officially adopted policies and plans;**

The proposed Streamlined Affordable Housing Overlay District and related Zoning Map Amendment conforms to the purposes of the Zoning Ordinance, and all applicable, adopted policies and plans in that it will implement the City’s adopted, certified Housing Element, adopted Strategic Properties related to housing development, and is consistent with State Housing Law.

The proposed Overlay will not change the existing Zoning District or General Plan land use designation for the properties and will not result in any changes in allowable densities, uses or other development standards, notwithstanding any

modifications afforded as part of a Density Bonus request as permitted by local and State Law. Future development on these sites would be subject to the minimum objective standards of their respective zoning district and General Plan land use designation including but not limited to minimum lot size, density, setbacks, maximum floor area ratio, maximum building height or number of stories, minimum group and private open space, minimum landscaping requirements, and minimum design and façade standards.

Further, any future development would also be subject to other sections of the Municipal Code including the Off-Street Parking Ordinance (Article 2), Subdivision Ordinance (Article 3), Tree Preservation Ordinance (Article 15), and the Affordable Housing Ordinance (Article 17), and the Reach Code, as applicable.

**3. Streets and public facilities existing or proposed are adequate to serve all uses permitted when property is reclassified.**

The proposed Streamlined Affordable Housing Overlay District and reclassification of three properties to be subject to the new Overlay District will not result in any changes to the existing Zoning District or General Plan land use designation for the properties. As a result, the Amendments will not impact streets or public facilities in that they will allow for a streamlined ministerial planning process provided that any proposed development on the three subject properties are consistent with objective zoning standards, objective subdivision standards, objective design review standards and performance standards set forth in General Plan, Specific Plan, Zoning Ordinance, Subdivision Ordinance and other applicable sections of the Hayward Municipal Code.

**4. All uses permitted when property is reclassified will be compatible with present and potential future uses, and further, a beneficial effect will be achieved which is not obtainable under existing regulations.**

The proposed Streamlined Affordable Housing Overlay District and reclassification of three properties to be subject to the new Overlay District will not result in any changes to the existing Zoning District or General Plan land use designation for the properties. The proposed amendments would not change any potential future uses in that it would establish a ministerial design review process for high density residential development subject to minimum affordability requirements, which are permitted uses on all three sites. Ministerial planning review processes are beneficial and support efficient development of high-density housing in that they streamline development approvals by reducing the time and cost associated with the discretionary design review process.

Further, adoption of these regulations would implement Program H-11 of the Housing Element and ensure that the City remains in compliance with the adopted and certified Housing Element. Ongoing compliance with the adopted certified Housing Element is required for local jurisdictions to access State funding sources, to make the City more competitive for grant funding to construct affordable housing and infrastructure improvements, and to protect the City from lawsuits by housing advocates.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward, based on the foregoing findings, hereby adopts the findings in support of Zoning Map and Text Amendments related to establishment of the Affordable Housing Overlay District and rezoning three properties to be subject to that Overlay District, subject to the adoption of the companion Ordinance.

BE IT RESOLVED that this resolution shall become effective on the date that the companion Ordinance (Ordinance No. 24-\_\_) becomes effective.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2024.

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:  
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

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