

## ORDINANCE NO. 22-\_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 10, ARTICLE 17 (AFFORDABLE HOUSING ORDINANCE) AND ARTICLE 19 (DENSITY BONUS ORDINANCE) OF THE HAYWARD MUNICIPAL CODE RELATED TO AN UPDATE OF THE DENSITY BONUS ORDINANCE

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

Section 1. Provisions. The City Council incorporates by reference the findings contained in Resolution No. 22-\_\_ approving the Zoning Text Amendments to the Hayward Municipal Code.

Section 2. Chapter 10, Article 17 (Affordable Housing Ordinance) of the Hayward Municipal Code is hereby amended to read as follows:

**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 ~~as part of~~ 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;
  - ~~(2) When a Residential Development Project is within one-half mile of a rail station or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods, the Applicant may request that the Decision-Making Body reduce the number of parking spaces required for the development based on the assumption that some households will take public transportation to their jobs. This will allow for increased density within the development.~~

- 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.

Section 3. Chapter 10, Article 19 (Density Bonus Ordinance) of the Hayward Municipal Code is hereby repealed and replaced to read as follows:

**SEC. 10-19.100. TITLE.**

This Article shall be known and may be cited as the Density Bonus Ordinance of the City of Hayward.

**SEC. 10-19.105. PURPOSE.**

(a) This article provides requirements and incentives for the development of affordable housing units in conjunction with other residential and mixed-use projects and commercial projects in partnership with affordable housing providers as provided under State law. These provisions are intended to implement General Plan policies encouraging the production of affordable housing for all economic groups, and housing for disabled and older residents, transitional foster youth, and disabled veterans, and homeless persons as defined in Government Code Section 65915, all of which is integrated, compatible with and complements adjacent uses, and is located near public and commercial services.

(b) This article is enacted pursuant to the City's authority contained in Article II of the City Charter, and Government Code Section 65915(n), which authorizes a city to enact an ordinance that provides for a greater density bonus than what is granted under state law.

(c) The incentives and concessions offered in this article are used by the City as one means of meeting its commitment to encourage housing affordable to all economic groups, and to meet its regional fair share requirements for the construction of housing affordable to very low, low, and moderate income persons.

(d) All references in this Ordinance to the State Density Bonus Law refer to Government Code section 65915, et seq., as it may be amended from time to time.

**SEC. 10-19.110. DEFINITIONS.**

Certain words and phrases are defined within this Article. Where it appears from the context of such words, phrases, or provisions that a different meaning is intended, the definition shall be as determined by the Director of Development Services or their designee.

- (a) "Affordable Ownership Cost" is defined as the maximum purchase price that will be affordable to a:

1. Moderate-Income Household at Presumed Occupancy Levels, based on a reasonable down payment and monthly housing payments (including mortgage principal and interest, property taxes, homeowner's insurance, and homeowner/condominium association fees where applicable) that do not exceed one hundred ten percent of Area Median Income multiplied by thirty-five percent and divided by twelve.
  2. Low-Income Household at Presumed Occupancy Levels, based on a reasonable down payment and monthly housing payments (including mortgage principal and interest, property taxes, homeowner's insurance, and homeowner/condominium association fees where applicable) that do not exceed seventy percent of Area Median Income multiplied by thirty percent and divided by twelve.
  3. Very Low-Income Household at Presumed Occupancy Levels, based on a reasonable down payment and monthly housing payments (including mortgage principal and interest, property taxes, homeowner's insurance, and homeowner/condominium association fees where applicable) that do not exceed fifty percent of Area Median Income multiplied by thirty percent and divided by twelve.
- (b) "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.
- (c) "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.
- (d) "Applicant" is defined as any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities who seek residential property development permits or approvals from the City of Hayward.
- (e) "Area Median Income (AMI)" is defined as the median income for the 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) "Child Care Facility" is defined as a facility installed, operated, and maintained for the nonresidential care of children as defined under applicable state licensing requirements for the facility.

- (g) “Child Care Facility Density Bonus” means a floor area ratio bonus over the otherwise maximum allowable floor area permitted under the applicable zoning ordinance and land use elements of the general plan of the City of Hayward of the following amounts: A maximum of five (5) square feet of floor area for each one square-foot of floor area contained in the Child Care Facility for existing structures; or a maximum of ten (10) square feet of floor area for each one square-foot of floor area contained in the Child Care Facility for new structures.
- (h) “Commercial development bonus” means a modification of development standards mutually agreed upon by the City and a commercial developer and provided to a commercial development eligible for such a bonus under Subsection 10-19.170. Examples of a commercial development bonus include an increase in floor area ratio or increased building height.
- (i) “Condominium Conversion Density Bonus” means an increase in units of twenty-five percent (25%) over the number of apartments, to be provided within the existing structure or structures proposed for conversion.
- (j) “Density Bonus” is defined as a density increase over the otherwise maximum allowable gross residential density as of the date of application by the applicant to the City as per State Density Bonus Law (SDBL) Government Code Section 65915 et seq.
- (k) “Development Standard” is defined as site or construction conditions that apply to a Residential Development Project pursuant to any ordinance, general plan element, specific plan, charter amendment, or other local condition, law, policy, resolution, or regulation as per Government Code section 65915(o)(1) of State Density Bonus Law.
- (l) “Dwelling Unit” is defined as a dwelling designed and intended for residential occupancy by one household.
- (m) “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.
- (n) “Floor Area” is defined with respect to a commercial or industrial project, as the floor area as calculated under the applicable zoning ordinance of the City of Hayward and, with respect to a Child Care Facility, as the total area contained within the exterior walls of the facility and all outdoor areas devoted to the use of the facility in accordance with applicable state childcare licensing requirements.
- (o) “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.
- (p) “Major Transit Stop” as per California Public Resource 21064.3, which may be amended from time-to-time is defined as:
  - (1) An existing rail or bus rapid transit station.

- (2) A ferry terminal served by either a bus or rail transit service.
  - (3) The intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.
- (q) "Marketing Plan" is defined as a plan that describes how the Applicant will inform the public, and those within the appropriate income groups, of the availability of Affordable Housing Units.
- (r) "Maximum Allowable Residential Density" is defined as the density allowed under the zoning ordinance, or if a range of density is permitted, means the maximum allowable density for the specific general plan designation and zoning range applicable to the project.
- (s) "Mixed-Income Residential Project" is defined as a project that contains the amount of both on-site affordable (extremely low, very low, low-and moderate-income households) and market rate residential rental or for sale units required by the Affordable Housing Ordinance contained in Hayward Municipal Code Chapter 10, Article 17.
- (t) "Mixed-Use Development Project" is defined as a Residential Development Project that may include a mix of commercial, office, industrial, or residential uses.
- (u) "Mobile Home Park" is defined as a mobile home park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.
- (v) "Partnered housing agreement" means an agreement approved by the City between a commercial developer and a housing developer identifying how the commercial development will provide housing available at affordable ownership cost or affordable rent consistent with Section 10-19.170. A partnered housing agreement may consist of the formation of a partnership, limited liability company, corporation, or other entity recognized by the state in which the commercial developer and the housing developer are each partner, members, shareholders, or other participants, or a contract between the commercial developer and the housing developer for the development of both the commercial development and the residential development project.
- (w) "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.
- (x) "Resale Controls and/or Rent Restrictions" are defined as the restrictions, set forth by the City of Hayward or by state and/or federal law, by which the rents paid on rental Affordable Housing Units and the sales price for ownership Affordable Housing Units are limited to ensure that the unit remains affordable to Very Low or Low Income households for a term of no less than

fifty-five (55) years. With respect to rental units, such rent restrictions shall generally be in the form of a regulatory agreement recorded against the applicable property. With respect to owner occupied units, such resale controls shall generally be in the form of resale restrictions, deeds of trust and/or other similar documents recorded against the applicable property. Affordability restrictions and terms shall be consistent with State Density Bonus law.

- (y) "Residential Development Project" is defined as any development for which a discretionary or ministerial permit is required that includes the creation of five (2) or more net new Dwelling Units or residential lots, or Dwelling Units and residential lots in combination. 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 affect the purposes of this Chapter and to prevent evasion of its terms. Residential development project includes a shared housing building development as defined in Government Code section 65915, et seq, as it may be amended from time to time.
- (z) "Senior Citizen Household" is defined as a household headed by a person sixty-two (62) years of age or older.
- (aa) "Senior Citizen Housing Development" is defined as a development of at least thirty-five (35) dwelling units reserved for Senior Citizen Households and as further described in Sections 51.3 and 51.12 of the Civil Code.
- (bb) "Universal Design" is defined as housing with barrier free design that focuses on making the house safe and accessible for everyone, regardless of age, physical ability, or stature. Universal design features shall include, but not be limited to, features such as:
  - Installation of varied-height cabinets and countertops
  - Flexible appliances
  - Open space under the sink, cooktop, and preparation counter
  - Doorways and hallways that are 32 inches wide.
  - Provide at least one (1) full bathroom (accessible bathroom) and one bedroom on the same level as the kitchen and the primary entry into the unit.
  - The accessible bathroom(s) shall include the appropriate structural modifications so that grab bars can be easily installed in the future.
  - The accessible bathroom(s) shall be designed to accommodate a wheelchair turning radius, as determined by applicable Americans with Disabilities Act (ADA) standards.
  - The accessible bathroom shall include an accessible shower/bathtub.
  - Install slip-resistant flooring on the accessible level(s) of the unit
  - Provide sliding or barn doors for closets and/or bathrooms of accessible bedrooms and bathrooms that can remain open.

**SEC. 10-19.120. APPLICATION.**

The provisions of this Article apply to Residential Development Projects consisting of either five (5) or more general Dwelling Units. Projects with special targeting, including foster youth, disabled veterans, projects for unhoused people, college students, affordable Senior Citizen Housing Developments, rental projects that provide more than 20 percent of the rental units for large families (3+ bedrooms), projects incorporating Universal Design principles, in conformance with Government Code Section 65915, et seq., or as it may be modified from time to time, are eligible for additional Density Bonus. For those projects that are subject to the provisions of Hayward Municipal Code Chapter 10, Article 17, Affordable Housing Ordinance, Affordable Housing Units provided under the Affordable Housing Ordinance may be counted toward the requirements of this Article. To the extent that the provisions of this Article and the Affordable Housing Ordinance are in conflict, the provisions of the Affordable Housing Ordinance prevail.

**SEC. 10-19.125. DENSITY BONUS CALCULATION.**

All calculations are rounded up for any fractional numeric value in determining the total number of units to be granted, including base density and bonus density as well as the resulting number of affordable units needed for a given density bonus project.

- (a) If a residential development qualifies for a density bonus under more than one income category, or additionally, as a Senior Citizen Housing Development as defined herein, or as housing intended to serve transitional foster youth, disabled veterans, homeless persons, or lower income students, the applicant shall identify the categories under which the density bonus would be associated and granted. Density bonuses from more than one category can be combined up to the maximum allowed under Government Code Section 65915, as it may be modified from time to time, or the maximum amount allowed by the City's Density Bonus Law.
- (b) The density bonus units shall not be included in determining the number of affordable units required to qualify a residential development for a density bonus pursuant to Government Code Section 65915, as it may be modified from time to time, or the maximum amount allowed by the City's Density Bonus Ordinance.
- (c) The applicant may elect to accept a lesser percentage of density bonus than the residential development project is entitled to, or no density bonus, but no reduction will be permitted in the percentages of required affordable units contained in Government Code Section 65915, subdivisions (b), (c), and (f). Regardless of the number of affordable units, no residential development project shall be entitled to a density bonus of more than what is authorized under State law or as allowed by the City's Density Bonus Ordinance.

**SEC. 10-19.130. STATE TARGETED AND CITY SPECIAL-TARGETED HOUSING UNITS.**

The City shall grant a density bonus and incentives, or concessions described in Section 10-19.190, when an Applicant for a Residential Development Project seeks and agrees to construct a residential development that qualifies under State Density Bonus Law as shown in the table below. For Residential Development Projects that meet the criteria, the density bonus shall be calculated based on the density bonuses allowed under Government Code Section 65915, as it may be modified from time to time.

An additional density bonus increase shall apply to Mixed Income Residential Projects with special targeting that includes:

- Rental projects that provide more than 20% of the rental units for large families (3+ bedrooms)
- Projects that incorporate Universal Design features in more than 20% of the units
- Senior housing projects as defined by Government Code Section 65915, as it may be modified from time to time
- College student housing projects as defined by Government Code Section 65915, as it may be modified from time to time
- Projects with units set-aside for foster youth, disabled veterans, or individuals experiencing homelessness as defined by Government Code Section 65915, as it may be modified from time to time.

Target Population Served	State Required Restricted Affordable Units	Hayward Maximum Density	Hayward Maximum Density Increase for Special Targeting
Very Low Income	15%	55%	60%
Low Income	23%	55%	60%
Moderate Income	44%	55%	60%
Foster Youth/Disabled Veterans/Unhoused Individuals	10% restricted at very low Income	25%	30% (15% restricted at very low income)
College Students	20% Low-Income Student	40%	45% (25% restricted low-income students)

#### **SEC. 10-19.140. LAND DONATION.**

If a density bonus is requested for a land donation as per Government Code Section 65915, the applicant shall provide the following:

- The location of the land to be dedicated
- A title report showing proof of site control



**SEC. 10-19.150. CHILD CARE FACILITIES.**

When an Applicant proposes to construct a Residential Development Project that conforms to the requirements of Section 10-19.130 and includes a Child Care Facility that will be located on the premises of, as part of, or adjacent to, the Residential Development Project, the City shall grant an additional density bonus pursuant to Government Code Section 65915, as it may be modified from time to time.

**SEC. 10-19.160. CONDOMINIUM CONVERSIONS.**

When an Applicant's Residential Development Project is the conversion of an existing apartment complex to a condominium complex, the Applicant shall provide documentation showing that all of the requirements included in City of Hayward Municipal Code Chapter 10, Article 3, Subdivision Ordinance, and Government Code Section 65915, as it may be modified from time to time, regarding condominium conversions can be met.

**SEC. 10-19.170. COMMERCIAL DEVELOPMENT BONUS.**

In accordance with Government Code Section 65915, as it may be modified from time to time, when an Applicant proposes to construct a commercial development and has entered into a partnered housing agreement approved by the City, the City shall grant a commercial development bonus mutually agreed upon by the developer and the City. The commercial development bonus shall not include a reduction or waiver of fees imposed on the commercial development to provide for affordable housing. The requirements for commercial development bonus are as follows, which shall also be described in the partnered housing agreement:

- (a) The residential development project shall be located either:
  - (1) On the site of the commercial development; or
  - (2) On a site within the City that is within one-half mile of a major transit stop as defined in Government Code Section 65915, as it may be modified from time to time, and is located within one mile of public amenities, including schools and employment centers.
- (b) At least 30 percent of the total units in the residential development project shall be made available at affordable ownership cost or affordable rent for low-income households, or at least 15 percent of the total units in the residential development project shall be made available at affordable ownership cost or affordable rent for very low-income households.
- (c) The commercial developer must agree either to directly build the affordable units; donate a commercial development site consistent with Section 10-19.110 (h), for the affordable units; or make a cash payment to the housing developer for the affordable units.

- (d) Any approved partnered housing agreement shall be described in the City's Housing Element annual report as required by Government Code Section 65915, as it may be modified from time to time.

**SEC. 10-19.180. DESIGN, DISTRIBUTION AND TIMING OF AFFORDABLE HOUSING UNITS.**

Affordable Housing Units must be constructed concurrently with market-rate units. The Affordable Housing Units shall be integrated into the Residential Development Project and be comparable in infrastructure (including sewer, water, and other utilities), construction quality, and exterior design to the market-rate units. The Affordable Housing Units must also comply with Section. 10-17.230 of this Code regarding the design, distribution, and timing of affordable units.

**SEC. 10-19.190. REQUESTS FOR INCENTIVES OR CONCESSIONS.**

As per Government Code Section 65915, as it may be modified from time to time, the Applicant shall submit a Density Bonus Application, as described in Section 10-19.220 below, for the specific incentives or concessions that the Applicant requests. The City shall grant the concession or incentive requested by the Applicant unless the City makes a written finding, based upon substantial evidence, of either of the following:

- (a) The concession or incentive does not result in identifiable and actual cost reductions to provide for affordable housing costs, or for rents for the affordable housing units; or
- (b) The concession or incentive would have a specific adverse impact upon public health and safety, or on any real property that is listed in the Federal Register of Historic Resources, the California Register of Historical Resources, or the City's List of Officially Designated Architecturally and Historically Significant Buildings and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to Low and Moderate Income households; or
- (c) The concession or incentive would be in compliance with state or federal law.

**SEC. 10-19.200. GRANTING OF INCENTIVES OR CONCESSIONS.**

As defined in Government Code Section 65915, as it may be modified from time to time, projects that include certain percentages of affordable units qualify for various incentives or concessions from development standards. The number of incentives or concessions that may be requested and granted shall be based upon the number the Applicant is entitled to pursuant to State Density Bonus Law and one extra incentive/concession allowed by this Article. If the conditions of 10-19.130 are met by the Applicant, the following incentives/concessions shall be granted as shown following table:

No. of Incentives/ Concessions	Percentage of Very-Low Income Units	Percentage of Low- Income Units	Percentage of Moderate- Income Units
1	5%	10%	10%

3	10%	17%	20%*
4	15%	24%	30%*
5	100% (LI/VLI) or 100% (MI 20% /LI 80%)		

\*Applies to common interest development, as defined in Section 4100 of the Civil Code

- (a) In accordance with Government Code Section 65915, as it may be modified from time to time, four (4) incentives or concessions are allowed for a project within one-half mile of a major transit stop.
- (b) Nothing in this section requires the provision of direct financial incentives for the residential development project, including, but not limited to, the provision of financial subsidies, publicly owned land, fee waivers, or waiver of dedication requirements. The City, at its sole discretion, may choose to provide such direct financial incentives.

#### **SEC. 10-19.210. COMPLIANCE.**

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

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

#### **SEC. 10-19.220. DENSITY BONUS APPLICATION.**

An application for a density bonus request, including incentives or concessions and waivers, shall be reviewed and approved by the highest approving body and if denied, the City shall bear burden of proof in accordance with Government Code Section 65915, as it may be modified from time to time. In accordance with Hayward Municipal Code Section 10-1.2854, Appeal and Review Process. if Any Applicant requesting a density bonus and any incentive(s), waiver(s), concession(s), or commercial development bonus provided by State Density Bonus Law shall submit a density bonus report as described below concurrently with the filing of the planning application for the first discretionary permit required for the residential development project, commercial development, or mixed-use development. The requests contained in the density bonus report shall be processed concurrently with the planning entitlement application. The applicant shall be informed whether the application is complete consistent with Government Code Section 65943, as it may be modified from time to time.

The density bonus report shall include the following minimum information:

- (a) Requested density bonus.

- (1) Summary table showing the maximum number of dwelling units permitted by the zoning and general plan excluding any density bonus units, proposed affordable units by income level, proposed bonus percentage, number of density bonus units proposed, total number of dwelling units proposed on the site, and resulting density in units per acre.
- (2) A tentative map and/or preliminary site plan, drawn to scale, showing the number and location of all proposed units, designating the location of proposed affordable units and density bonus units.
- (3) The zoning and general plan designations and assessor's parcel number(s) of the residential development project site.
- (4) A description of all dwelling units existing on the site in the five-year period preceding the date of submittal of the application and identification of any units rented in the five-year period. If dwelling units on the site are currently rented, income and household size of all residents of currently occupied units shall be included in the description, if known. If any dwelling units on the site were rented in the five-year period but are not currently rented, the income and household size of residents occupying dwelling units when the site contained the maximum number of dwelling units, if known.
- (5) Description of any recorded covenant, ordinance, or law applicable to the site that restricted rents to levels affordable to very-low or lower income households in the five-year period preceding the date of submittal of the application.
- (6) If a density bonus is requested for a land donation, the location of the land to be dedicated, proof of site control, and reasonable documentation that each of the requirements included in Government Code Section 65915, subdivision (g) can be met.
- (b) Requested Concession(s) or Incentive(s). In the event an application proposes concessions or incentives for a residential development project pursuant to State Density Bonus Law, the density bonus report shall include the following minimum information for each incentive requested, shown on a site plan if appropriate:
  - (1) The City's required development standard and the Applicant's requested development standard concession or regulatory incentive.
  - (2) Except where mixed-use zoning is proposed as a concession or incentive, reasonable documentation to show that any requested incentive will result in identifiable and actual cost reductions to provide for affordable housing costs or rents.
  - (3) If approval of mixed-use zoning is proposed, documentation that nonresidential land uses will reduce the cost of the residential development project, that the nonresidential land uses are compatible with the residential development project and the existing or planned development in the area where the proposed residential development project will be located, and that mixed-use zoning will provide for affordable housing costs or rents.

- (c) Requested Waiver(s). In the event an application proposes waivers of development standards for a residential development project pursuant to State Density Bonus Law, the density bonus report shall include the following minimum information for each waiver requested on each lot, shown on a site plan if appropriate:
  - (1) The City's usual development standard and the requested development standard waiver.
  - (2) Reasonable documentation that the development standards for which a waiver is requested will have the effect of physically precluding the construction of a development at the densities or with the concessions or incentives permitted by State Density Bonus Law, as may be amended from time to time.
- (d) Requested Parking Reduction. Except for projects subject to Government Code section 65863.2, in the event an application proposes a parking reduction for a residential development project pursuant to Government Code Section 65915 (p), as it may be modified from time to time, a table showing parking required by the zoning regulations, parking proposed under Government Code Section 65915 (p), as may be modified from time to time and reasonable documentation that the project is eligible for the requested parking reduction. Applications for parking reduction requests that are less than those allowed under Government Code Section 65915(p), as may be modified from time to time shall include a transportation demand management (TDM) plan to reduce parking demand.
- (e) Child Care Facility. If a density bonus or incentive is requested for a child care facility in a residential development project, reasonable documentation that all of the requirements included in Government Code Section 65915 (h), as it may be amended from time to time, can be met.
- (f) Condominium Conversion. If a density bonus or incentive is requested for a condominium conversion, reasonable documentation that all the requirements included in Government Code Section 65915.5 can be met.
- (g) Commercial Development Bonus. If a commercial development bonus is requested for a commercial development, the application shall include the proposed partnered housing agreement and the proposed commercial development bonus, as defined in Section 10-19.170, and reasonable documentation that each of the standards included in Section 10-19.170 has been met.
- (h) Fee. Payment of any fee in an amount set by resolution of the City Council for staff time necessary to determine compliance of the Density Bonus Report with State Density Bonus Law.

**SEC. 10-19.230. 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 Development Services Director or designee 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 Development Services Director or designee. At any time during the review process, the Development Services Director or designee 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 and Article 17 – Affordable Housing Ordinance. The AHP will satisfy the application requirement for this Article and Article 17.

The AHP should include, but not be limited to, the following:

- (a) The location, structure (attached, semi-attached, or detached), proposed tenure (for- sale or rental), and size of the proposed market-rate, commercial space and/or Affordable Housing Units;
- (b) A floor or site plan depicting the location of the Affordable Housing Units and a floor plan describing the size, in square footage, of the Affordable Housing Units;
- (c) The income levels to which each Affordable Housing Unit will be made affordable;
- (d) For phased Residential Development Projects, a phasing plan that provides for the timely development of the number of Affordable Housing Units proportionate to each proposed phase of development as required by this Article;
- (e) 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;
- (f) A written statement demonstrating compliance with the requirements of Section 10-17.220 for on-site Affordable Units;
- (g) A preliminary marketing plan that describes how the Applicant intends to inform the public, and those within the appropriate income groups, of the availability of Affordable Housing Units; and
- (h) Any other information reasonably requested by the Development Services Director or designee to assist with evaluation of the AHP under the standards of this Article and Article 17 – Affordable Housing Ordinance.

**SEC. 10-19.240. AFFORDABLE HOUSING AGREEMENT.**

Affordable Housing Agreement (AHA). Except where a density bonus, incentive, waiver, parking reduction, or commercial development bonus is provided for a market-rate Senior Citizen Housing Development, the Applicant shall enter into an AHA with the City, in a form approved by the City Attorney, to be executed by the City Manager, to ensure that the requirements of this section are satisfied. The AHA shall guarantee the affordability of the affordable units for a minimum of 55 years or a longer if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy

program; shall identify the type, size, and location of each affordable unit; and shall specify phasing of the affordable units in relation to the market-rate units as per State Density Bonus Law.

- (a) Senior Housing Agreement. Where a density bonus, waiver, or parking reduction is provided for a market-rate Senior Citizen Housing Development, the Applicant shall enter into a restrictive covenant with the City, running with the land, in a form approved by the City Attorney, to be executed by the City Manager, to require that the residential development project be operated as “housing for older persons” consistent with state and federal fair housing laws.
- (b) The executed AHA or senior housing agreement shall be recorded against the land prior to final or parcel map approval, or, where a map is not being processed, prior to issuance of building permits for the residential development project. The AHA or senior housing agreement shall be binding on all future owners and successors in interest.
- (c) The AHA shall include, but not be limited to, the following:
  - (1) The number of density bonus dwelling units granted;
  - (2) The number and type of affordable dwelling units
  - (3) The unit size(s) (square footage) of target dwelling units and the number of bedrooms per target dwelling unit;
  - (4) The proposed location of the affordable dwelling units;
  - (5) Schedule for production of affordable dwelling units;
  - (6) Incentives or concessions or waivers provided by the City;
  - (7) Where applicable, tenure and conditions governing the initial sale of the affordable units;
  - (8) Where applicable, tenure and conditions establishing rules and procedures for qualifying tenants, setting rental rates, filling vacancies, and operating and maintaining units for affordable rental dwelling units;
  - (9) Compliance with federal and state laws;
  - (10) Prohibition against discrimination;
  - (11) Indemnification;
  - (12) City’s right to inspect units and documents;
  - (13) Remedies;
  - (14) The duration of the AHA.

**SEC. 10-19.250. AFFORDABLE HOUSING AGREEMENTS FOR OWNERSHIP UNITS.**

In the case of Residential Development Projects consisting of ownership units, the AHA must provide the following additional conditions governing the sale and use of Affordable Housing Units during the applicable use restriction period:

- (a) Affordable Housing Units shall be sold to Very Low Income households, Lower Income households or Moderate Income households in a common interest development, at an affordable sales price and housing cost as defined by this Article.
- (b) Affordable Housing Units shall be owner-occupied by Very Low, Lower Income households or by Moderate Income households within common interest developments.
- (c) The purchaser of each Affordable Housing Unit shall execute an instrument or agreement approved by the City restricting the sale of the Affordable Housing Unit in accordance with this Article and Article 17 of Chapter 10 of this Code during the applicable use restriction period. Such instrument or agreement shall be recorded against the parcel containing the Affordable Housing unit and shall contain such provisions as the City may require ensuring continued compliance with this Article, Article 17 of Chapter 10 of this Code, and Government Code Section 65915, as it may be amended from time to time.
- (d) Any additional obligations relevant to the compliance with this Article.

**SEC. 10-19.260. AFFORDABLE HOUSING AGREEMENTS FOR RENTAL UNITS.**

In the case of Residential Development Projects consisting of rental units, the AHA must provide the following additional conditions governing the use of Affordable Housing units during the use restriction period:

- (a) Specific property management procedures for qualifying and documenting tenant income eligibility, establishing affordable rent and maintaining Affordable Housing units for qualified tenants;
- (b) Provisions requiring property owners to verify household incomes and maintain books and records to demonstrate compliance with this Article.
- (c) Provisions requiring the Property Owner to submit an annual report to the City, which includes the name(s), address, and income of each household occupying target units, and which identifies the bedroom size and monthly rent or cost of each Affordable Housing unit.
- (d) Provisions describing the amount of, and timing for payment of, Administrative Fees to be paid to the City for the on-going compliance monitoring of the provisions of this Article.
- (e) Any additional obligations relevant to the compliance with this Article.

**SEC. 10-19.270. ADMINISTRATIVE FEE.**



An administrative fee shall be charged to the Applicant for City review of all materials submitted in accordance with this Article for implementation and on-going enforcement of the provisions of this Article. The fee amount shall be established by City Council resolution and will be described in the City of Hayward Master Fee schedule.

**SEC. 10-19.280. VIOLATION OF AFFORDABLE HOUSING COST REQUIREMENTS.**

In the event it is determined that rents in excess of those allowed by operation of this Article have been charged to a tenant residing in a rental Affordable Housing Unit, the City may take the appropriate legal action to recover, and the rental unit owner shall be obligated to pay to the tenant (or to the City in the event the tenant cannot be located), any excess rent charges.

In the event it is determined that a sales price in excess of that allowed by operation of this Article has been charged to an income-eligible household purchasing an ownership Affordable Residential Unit, the City may take the appropriate legal action to recover, and the Affordable Residential Unit seller shall be obligated to pay to the purchaser (or to the City in the event the purchaser cannot be located), any excess sales costs.

Section 4. California Environmental Quality Act. The City Council independently finds and determines that the Addendum to the Program EIR for the Hayward 2040 General Plan concludes that no new or unanticipated levels of development are anticipated that were not previously identified in the General Plan and General Plan EIR, and no new or unanticipated traffic, employment density, or construction impacts are expected to be generated as a result of adoption of the updated regulations. Therefore, the proposed Amendments substantially conform to the Goals and Policies set forth in the General Plan, and that were analyzed in the related Program EIR. No further environmental review is necessary in accordance with Section 15164 of the CEQA Guidelines because none of the conditions described in Section 15162 of the CEQA Guidelines calling for preparation of a subsequent EIR have occurred.

Section 5. Severance. Should any part of this Ordinance be declared by a final decision by 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 6. Effective Date. In accordance with the provisions of Section 620 of the City Charter, the Ordinance shall become effective 30 days following adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the 6<sup>th</sup> day of December 2022, by Council Member \_\_\_\_\_.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the \_\_\_\_<sup>th</sup> day of \_\_\_\_\_ 2023, by the following votes of members of said City Council.

AYES:            COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN:      COUNCIL MEMBERS:

ABSENT:       COUNCIL MEMBERS:

APPROVED: \_\_\_\_\_  
Mayor of the City of Hayward

DATE: \_\_\_\_\_

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

APPROVED AS TO FORM:

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