



## SUBJECT

City-Initiated Zoning Text and Map Amendments to Chapter 1, Article 10 (Planning, Zoning and Subdivisions) of the Hayward Municipal Code to Implement a 6<sup>th</sup> Cycle Housing Element Program to Establish an Affordable Housing Overlay District and to Rezone Three Properties Subject to the Overlay District to Allow Ministerial Design Review of New Residential Development Subject to Affordability and Other Criteria.

## RECOMMENDATION

That the Planning Commission recommends that the City Council approve the proposed Zoning Map and Text Amendments to Chapter 10 (Planning, Zoning and Subdivisions), of the Hayward Municipal Code related to establishing a new Streamlined Affordable Housing Overlay District and rezoning three properties to be subject to the new Overlay District.

## SUMMARY

On February 7, 2023, the City Council adopted Resolution No. 23-033 adopting the 6<sup>th</sup> Cycle Housing Element<sup>1</sup>. The State Department of Housing and Urban Development certified Hayward's Housing Element on July 27, 2023. Pursuant to State Law, the certified Housing Element includes sections on Housing Resources<sup>23</sup>, which contains a list of pending and approved housing developments and specific sites with appropriate zoning that could be developed or redeveloped into high density housing; and a Housing Plan<sup>4</sup>, composed of Goals, Policies and Programs, intended to help the City achieve housing goals set under the Regional Housing Needs Allocation (RHNA).

Housing Element Program H-11 requires the City to establish a by-right design review approval process for housing development on parcels that were used in previous Housing Element Sites Inventories, and that were identified as potentially accommodating high density residential development affordable to low-income households. Three properties meet these criteria: 548 Claire Street (APN 431-0040-029-00); 28824 Mission Boulevard (APN 078C-0461-006-04); and a vacant property located at Fletcher Lane (APN 445 -0001-004-13). The proposed Streamlined Affordable Housing Overlay District would not apply to any other properties in Hayward at this time.

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<sup>1</sup> February 7, 2023 City Council Meeting.

<https://hayward.legistar.com/LegislationDetail.aspx?ID=6016046&GUID=4F497BC8-5C65-474C-8E6E-7447DA88EFEA&Options=&Search=>

<sup>2</sup> Housing Element, Appendix C, Housing Resources.

[https://www.hayward-ca.gov/sites/default/files/Appendix\\_C\\_Housing\\_Resources\\_Certified.pdf](https://www.hayward-ca.gov/sites/default/files/Appendix_C_Housing_Resources_Certified.pdf)

<sup>3</sup> Housing Element, Sites Inventory, HCD Format.

[https://www.hayward-ca.gov/sites/default/files/Hayward\\_Sites\\_Inventory\\_HCD\\_Format\\_0.pdf](https://www.hayward-ca.gov/sites/default/files/Hayward_Sites_Inventory_HCD_Format_0.pdf)

<sup>4</sup> 6<sup>th</sup> Cycle Housing Element with Housing Plan.

[https://www.hayward-ca.gov/sites/default/files/City\\_of\\_Hayward\\_2023\\_2031\\_Housing%20Element\\_Certified.pdf](https://www.hayward-ca.gov/sites/default/files/City_of_Hayward_2023_2031_Housing%20Element_Certified.pdf)

In order to utilize the proposed Streamlined Affordable Housing Overlay approval process, new development on these sites must include 20% of the housing units for lower income households, meet minimum environmental clearance criteria and meet objective zoning, subdivision and design standards. 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. Because this will be a ministerial planning process and meet minimum environmental clearance criteria, development of these parcels will not be considered “projects” as defined in Section 21100 of the Public Resources Code (California Environmental Quality Act “CEQA”) and therefore not subject to CEQA.

## **BACKGROUND**

California Government Code Title 7, Division 1, Chapter 3, Article 10.6 [65580 – 65589.11] regulates the use and requirements of housing elements in California. State law requires that Hayward update its General Plan Housing Element every eight years. On February 7, 2023, the City Council adopted Resolution No. 23-033 adopting the 6<sup>th</sup> Cycle Housing Element. The City formally submitted the Housing Element to HCD on February 13, 2023 and resubmitted revisions of the Housing Element based on various comments on March 21, 2023, May 12, 2023, and June 7, 2023. On July 27, 2023, HCD certified Hayward’s Housing Element (50 days lapsed between the City’s last formal submittal to HCD and their certification of the Housing Element).

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.

On February 5, 2024, the City received a Corrective Action Letter from HCD explaining that 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 was subject to an accelerated timeframe for rezonings and was required to establish this streamlined approval process by January 31, 2024. HCD notified the City that continued non-compliance could result in the City losing Housing Element certification and being ineligible for grant and transportation related funding from the State and make the City vulnerable to lawsuits by housing advocates. Shortly after receipt of the Corrective Action Letter, staff held a meeting with HCD staff to inform them of the City’s intent to adopt the ordinance described in this report. HCD staff was satisfied with the City’s plans for achieving compliance with state law and requested to be notified upon final adoption of the ordinance by the City Council.

Public Outreach: Between August 2021 and May 2022, the Hayward Housing and Climate Team comprised of staff from the Planning Division, Environmental Services Division and the Housing Division have conducted extensive outreach related to the Housing Element, Climate Action Plan and Environmental Justice Element as detailed in the City Council staff report prepared for the Housing Element and linked above. The Housing Plan of the Housing

Element, which included Program H-11, the subject of this Ordinance, was discussed at public hearings with the Planning Commission on January 26, 2023, and with the City Council on February 7, 2023.

On February 7, 2024, the City sent letters to the three property owners via certified mail informing them about the proposed Affordable Housing Overlay and zoning map amendments. As of the publication of this report, none of the affected property owners reached out to City staff to inquire about the proposed amendments.

On March 1, 2024, a Notice of Public Hearing was mailed to the three property owners whose properties are subject to the rezoning; to individuals who requested to receive notice about zoning amendments; posted at City Hall, the Downtown Library and Weekes Branch Library; and, published on one-eighth page in *The Daily Review* pursuant to Government Code Section 65091.

## PROJECT DESCRIPTION

This project involves adoption of a proposed amendment to Chapter 10, Article 1, Zoning Ordinance to create a new Streamlined Affordable Housing Overlay zoning district, and an amendment to the Zoning Map to identify the properties that would be subject to the new Ordinance, as described in more detail below.

Streamlined Affordable Housing Overlay District: The HMC would be amended to add Section 10-1.2650, Streamlined Affordable Housing Overlay District (Attachment III). Similar to other sections of the Municipal Code, it contains a purpose, eligibility criteria, application submittal requirements, processes for ministerial review, application of standard conditions of approval, inactivity and modification and conclude with expiration and extension provisions.

Consistent with State Law, this Ordinance would be applicable to identified properties that meet minimum density and development assumptions in the 6<sup>th</sup> Cycle Housing Element and include a minimum of 20% of the units developed on-site for low-income households, provided that the development is 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 any other applicable sections of the Hayward Municipal Code. Pursuant to various sections of Government Code, “objective zoning standards,” “objective subdivision standards,” and “objective design review standards” mean standards that involve no personal or subjective judgment 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.

Ministerial planning approval does not require noticing, involves a thorough review by City staff to ensure that a development is consistent with all applicable standards and requirements and is subject to adopted standard conditions of approval that apply to all projects. Per the proposed Ordinance, and consistent with HMC Section 10-19.220<sup>5</sup> and

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<sup>5</sup> Chapter 10, Article 19, Density Bonus Ordinance.

[https://library.municode.com/ca/hayward/codes/municipal\\_code?nodeId=HAYWARD\\_MUNICIPAL\\_CODE\\_CH10PLZOSU\\_ART19DEB00R](https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART19DEB00R)

State Law, a ministerial planning application may be accompanied by a Density Bonus application. If such an application is filed, an applicant would be eligible to receive waivers and concessions that allow deviations from objective standards, and the City shall grant such waivers and concessions unless the City makes written findings, based on substantial evidence, that such waivers or concessions would have an adverse impact on public health and safety, and/or violate State or Federal Law. Other ministerial planning processes that have been adopted recently include Senate Bill 35 and Senate Bill 9 applications, both of which have been processed by City staff consistent with State law.

**Zoning Map Amendment:** The proposed Ordinance would be accompanied by a Zoning Map Amendment to identify the three properties subject to the proposed new regulations (Attachment III):

- 548 Claire Street (APN 431-0040-029-00): Located within the Downtown Specific Plan, this 0.62-acre site is developed with a light industrial building constructed in 1950. According to City records, there is an active business license for video production services at the site.
- 28824 Mission Boulevard (APN 078C-0461-006-04): This 1.38-acre vacant site is located within the Mission Boulevard Code area. On January 11, 2024, a developer submitted a Site Plan Review Application to construct a 40-unit multi-family rental development, and
- Fletcher Lane (APN 445 -0001-004-13) is a 4.6-acre vacant lot located within the Mission Boulevard Code area. The site is paved and currently used as a private parking lot based on aerial images of the site.

As previously mentioned, 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. In addition, it will not require that the owners cease operations or otherwise change how the site is currently used as it will simply allow for streamlined ministerial approval of a housing development if a developer decides to apply under the new District regulations. Unless amended or expanded in the future, no other properties would be subject to the proposed Overlay District.

## **POLICY CONTEXT AND CODE COMPLIANCE**

**Hayward 2040 General Plan/Hayward Municipal Code:** As identified in the Housing Element, three properties would be subject to this Ordinance:

- 548 Claire Street (APN 431-0040-029-00) which is located within the Urban Neighborhood (UN) zoning district and is designated City Center – Retail and Office Commercial (CC-ROC) in the *Hayward 2040 General Plan*.
- 28824 Mission Boulevard (APN 078C-0461-006-04) which is located within the Mission Boulevard – Corridor Center (MB-CC) zoning district and is designated Sustainable Mixed Use (SMU) in the *Hayward 2040 General Plan*.

- Fletcher Lane (APN 445 -0001-004-13) which is located within the Mission Boulevard – Corridor Neighborhood (MB-CN) zoning district and is designated Sustainable Mixed Use (SMU) in the *Hayward 2040 General Plan*.

Future development on these sites would be subject to the design 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.

## **STAFF ANALYSIS**

Staff believes that the Planning Commission can make the findings to recommend approval of the proposed Zoning Text and Map Amendments to establish a new Streamlined Affordable Housing Overlay District on three properties because it will implement a specific Program included in the City's 6<sup>th</sup> Cycle Housing Element, be consistent with State Law, and ultimately result in creation of a new streamlining tool to support development of affordable housing in 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 Housing Element (Appendix A, Housing Needs Assessment), Hayward's residents are experiencing a housing crisis related to a lack of affordable housing, particularly for low-income and special needs households.

Implementation of Housing Element Program H-11, will create a streamlined, ministerial planning review and approval process for three specific properties that were used in prior housing elements provided that the proposed developments meet minimum densities set forth in the Housing Element, include 20% of the housing units for lower income households, meet minimum environmental clearance criteria and objective zoning, subdivision and design standards. Adoption and implementation of this Ordinance will expedite the development of new affordable housing by reducing the time and cost associated with a discretionary design review process.

Adoption of these Amendments and implementation of this Program is required in order to maintain a certified Housing Element. Compliance with State Law and the adopted Housing Element is monitored by the State through the Annual Progress Report (APR), and continued compliance is required for local jurisdictions to access State funding and positions Hayward to be more competitive for grant funding to construct affordable housing and infrastructure improvements.

## ENVIRONMENTAL REVIEW

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 Plan Area.

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 (Attachment V), 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. The Addendum analyzed the 6<sup>th</sup> Cycle Housing Element and related Housing Plan, including Program H-11 related to ministerial site plan review for development on specific sites and subject to minimum affordability criteria.


Additionally, 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.

## NEXT STEPS

Following Planning Commission feedback and recommendation, staff will forward the proposed Zoning Map and Text Amendments to the City Council for a public hearing and first reading of an Ordinance tentatively scheduled for March 26, 2024. Following adoption of the proposed regulations, staff will notify HCD that the actions have been completed to ensure that the City is not found out of compliance with State Law.

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