



**AGENDA
CITY OF UNION CITY**

**Tuesday, March 22, 2016
7:00 PM**

**COUNCIL CHAMBERS
34009 ALVARADO NILES ROAD**

I. CALL TO ORDER

I.a. Pledge of Allegiance

I.b. Roll Call

*Mayor Carol Dutra-Vernaci
Vice Mayor Emily Duncan
Councilmember Lorrin Ellis
Councilmember Pat Gacoscos
Councilmember Jim Navarro*

II. UNFINISHED BUSINESS - None

III. PROCLAMATIONS AND PRESENTATIONS

III.a. Introduction of New and Promoted Employees

III.b. National Parkinson's Foundation (NPF) Moving Day Silicon Valley

III.c. Union City Community Pipeline Safety Initiative

IV. ORAL COMMUNICATIONS

Comments from the audience on non-agenda items will be accepted for a period of 30 minutes. Speakers are limited to three minutes each. Persons wishing to speak must complete a speaker card available at the rear of the Council Chamber or from the City Clerk. If the number of speakers exceeds the time allotment, cards will be shuffled and 10 speakers chosen at random. The remaining speakers may speak under Section XI of the agenda.

V. CONSENT CALENDAR

All matters listed on the Consent Calendar are considered routine in nature and will be enacted by one motion. If discussion is required on a specific item, it will be removed from the Consent Calendar and considered separately.

V.a. Waived Further Reading of Proposed Ordinance

(This permits reading the title only in lieu of reciting the entire text of any proposed Ordinance.)

V.b. Approve the Minutes of the Special Joint Session of the City Council and the Senior Citizen Commission Held on February 16, 2016

V.c. Approve the Minutes of the Regular City Council Meeting Held on March 8, 2016

V.d. Adopt a Resolution Authorizing Extension of the Towing Services Agreement

V.e. Adopt a Resolution to Reduce the Membership Fees at the Ruggieri Senior Center for Resident Individuals and Couples

VI. PUBLIC HEARINGS

VI.a. Adopt a Resolution Accepting the Annual Element Progress Report on the Implementation of the Housing Element for 2015

VI.b. Public Hearing (Published Notice) to introduce an Ordinance for Municipal Code Amendment, AT-16-001, to amend Chapter 18.33, Affordable Housing Ordinance, to amend the Density Bonus Provision to comply with requirements listed in State law and the City's current Housing Element and to amend the Contractually Binding Alternative Means of Compliance Provision to provide greater flexibility to generate funds to support affordable housing development

VII. CITY MANAGER REPORTS

VII.a. Introduce an Ordinance to Amend Union City Municipal Code Chapters 10.17 "Towing Services" and 10.18 "Franchises for Police Towing" to Amend Requirements for Towing Companies Providing Police Towing

VIII. SUCCESSOR AGENCY TO REDEVELOPMENT AGENCY - None

IX. AUTHORITIES AND AGENCIES - None

X. CITY COMMISSION / COMMITTEE REPORTS - None

XI. SECOND ORAL COMMUNICATIONS

XII. SCHEDULED ORAL COMMUNICATION - None

XIII. ITEMS REFERRED BY COUNCIL

Oral Reports by Mayor and Councilmembers on meetings of County or Regional Board and Commissions

*Alameda County Fire Department Advisory Commission
Alameda County Library Advisory Commission
Alameda County Mayors Conference
Alameda County Transportation Commission (ACTC)
Alameda County Waste Management Authority (WMA)
Association of Bay Area Governments (ABAG)
City of Union City Audit Subcommittee
City of Union City Youth Violence Prevention & Intervention
Advisory Committee
Disaster Council
Dumbarton Rail Corridor Policy Advisory Committee
East Bay Economic Development Alliance (EDA)
East Bay Regional Communications System Authority
(EBRCSA)
Economic Development Advisory Team (EDAT)
Housing Authority of Alameda County
League of California Cities, East Bay Division (LOCC)
New Haven Unified School District Joint Sub-Committee
Oakland Airport Community Noise Management Forum
Oversight Board to the Successor Agency to the Union City
Redevelopment Agency
Teen Center Project Updates
Union City Chamber of Commerce*

XIV. GOOD OF THE ORDER

XV. CLOSED SESSION

**XV.a. CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED
LITIGATION**

Gov. Code § 54956.9(d)(2)
Number of Potential Cases: One

XVI. ADJOURNMENT

*A complete agenda packet is available for review at City Hall or on our
website www.unioncity.org*

*Any writings or documents provided to a majority of City Council members
regarding any item on this agenda will be made available for public
inspection at the City Clerk's Counter at City Hall, located at 34009
Alvarado-Niles Road, Union City, California, during normal business hours.*

*Assistance will be provided to those requiring accommodations for
disabilities in compliance with the Americans with Disabilities Act of 1990.
Interested person must request the accommodation at least two working
days in advance of the meeting by contacting the City Clerk at (510) 675-*

5348.



Agenda Item

ATTACHMENTS:

Description	Type
 Introduction of New and Promoted Employees	Attachment



Agenda Item

DATE: March 22, 2016
TO: City Council
FROM: Tony Acosta, City Manager
SUBJECT: Introduction of New and Promoted Employees

Staff presents the following new and promoted employees to the Mayor and City Council:

City Manager

New Hires:

- **Chase Campbell** was hired on November 30, 2015. He works in the City Manager's Department as a Web Manager.

Economic and Community Development Services (ECD)

Promotion:

- **Valerie Avendano** was promoted from Building Inspector to Senior Building Inspector effective February 1, 2016.
- **Darryl Riddle** was promoted from Building Inspector to Senior Building Inspector effective February 1, 2016.

Leisure Services

New Hires:

- **Patricia Heuer** was hired on January 11, 2016. She works in Leisure Services as a Recreation Supervisor.
- **David Sarinana** was hired on January 19, 2016. He works in Youth and Family Services as a Street Outreach Worker.

Police Department

New Hires:

- **Joseph Roberts** was hired on January 25, 2016. He works in the Police Department as a Police Officer.

Public Works

New Hires:

- ***Jian Lam*** was hired on November 2, 2015. He works in the Public Works Department as a Facilities Maintenance Worker.
- ***David Lucero*** was hired on October 26, 2015. He works in the Public Works Department as a Facilities Maintenance Worker.
- ***Jaymin Munoz*** was hired on November 9, 2015. He works in the Public Works Department as a Maintenance Trainee – Streets Division.
- ***Nicholas Thompson*** was hired on November 9, 2015. He works in the Public Works Department as a Maintenance Trainee – Streets Division.

Prepared by:
Leticia Najera
Personnel Analyst


Submitted by:
Tony Acosta
City Manager

Approved by:
Tony Acosta
City Manager



Agenda Item

ATTACHMENTS:

Description	Type
 Minutes of the Special Joint Session of the City Council and the Senior Citizen Commission Held on February 16, 2016	Attachment

**Minutes
CITY OF UNION CITY
SPECIAL JOINT SESSION OF
THE CITY COUNCIL AND SENIOR CITIZENS COMMISSION
Tuesday, February 16, 2016 at 2:30 P.M.
Civic Center Council Chambers
34009 Alvarado-Niles Road
Union City, California**

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE – Meeting began at 2:30 p.m.

II. ROLL CALL –

CITY COUNCIL:

Present: Councilmembers Pat Gacoscos, Jim Navarro, Vice-Mayor Emily Duncan and Mayor Carol Dutra-Vernaci

Absent: Councilmember Lorrin Ellis

SENIOR COMMISSION:

Present: Commissioners Mary Ann Cresto, Harbhajan Dosanjh, Mila Josue, Eva Kamakea, Alternate Commissioner Joseph Pritchard

Absent: Chairperson Estrellita Munsayac (excused), Vice-Chairperson Margaret Tai (excused), Community and Recreation Services Director Jill Stavosky (excused)

Staff: City Manager Tony Acosta, Supervisor Chris Valuckas, Program Coordinator Erin Ewing and Administrative Assistant Edward Rivera

III. INTRODUCTION OF GUESTS

Joann Rhodes of the Fremont Senior Citizens Commission / Pat Hilton of the Fremont Senior Citizens Commission / Anita Roque of the Tropics Mobile Home Park

IV. APPROVAL OF MINUTES – January 19th 2016

Commissioner Kamakea made a motion to approve the minutes as submitted; Commissioner Filardo seconded the motion. All approved.

V. ORAL COMMUNICATIONS – None

VI. WRITTEN COMMUNICATIONS

Commissioner Filardo shared an invitation with the Commission from the Union City Historical Museum for an event being held on Saturday, February 20th from 4:00 p.m. – 8:00 p.m.

VII. STAFF REPORTS

A. Discussion of Topics of Mutual Interest Between the City Council and Senior Citizens Commission

1. Update from the Commission on its Activities and Goals

Commissioner Filardo brought up the subject of speakers being able to attend and speak to the Senior Citizens Commission and asked if that would be acceptable to do; Mayor Dutra-Vernaci responded that yes, this would be acceptable and is even encouraged, and as representatives of

the Senior Community in Union City, it would be to their benefit to contact Alameda County in regards to setting up speakers to come and talk with the Commission on a variety of subjects related to the Senior Community. Commissioner Dosanjh asked if, other than the City's cable channel, there is a way for people to view the Senior Citizens Commission meetings, such as on the web; City Manager Tony Acosta stated that yes, there is a way to do that and that he will have the City Web Manager Chase Campbell do some research into what archiving the Senior Citizens Commission Meetings would entail as far as storage space for the meetings and cost effectiveness. Once all the information has been gathered it will be presented to not only the Senior Citizens Commission, but the other City Commissions as well. Commissioner Filardo stated that he received a list from Alameda County in regards to senior housing in Union City and that it would appear there is quite a bit of housing available; Councilmember Gacoscas stated that Union City is actually one of the cities that has a lot of senior housing facilities, but there are actually no vacancies in any of them and in fact the amount of applications submitted vastly outnumbers what is available. Commissioner Joseph Pritchard reported that in the past year he has been meeting and working with Supervisor Valuckas and Coordinator Ewing to create a sort of partnership with the Masonic Home in order to address the issues of memory care and mental health in the senior community; plans are in the work to setup a Brain Gym at the Ruggieri Senior Center among other things.

B. Ruggieri Senior Center Supervisor's Report

Supervisor Valuckas gave a brief report on the Spectrum Meal Program; attendance has actually grown and the quality of the food has improved. Senior Center Volunteer Rosemarie Arenas is being honored at the next City Council meeting on Tuesday, February 23rd 2016; a brief reception will be held at 6:30 p.m. before the start of the Council Meeting at 7:00 p.m. Commissioner Kamakea commended all of Rosemarie's hard work at the Ruggieri Senior Center. Vice-Mayor Emily Duncan asked for a little information in regards to the lunch program such as who's welcome to attend and are non-residents of Union City welcome; Supervisor Valuckas responded that anyone is welcome, and since it is a donation based program paying a fee is not required, but there is a bit of paperwork that Spectrum requests be filled out, and reservations are requested 24 hours in advance.

C. Ruggieri Senior Center Coordinator's Report

Coordinator Ewing reported on the following upcoming events: Scam Stoppers Presentation will be held on Thursday, February 18th 2016 from 1:30 – 3:30 p.m. / De Young Museum Trip will take place on Thursday, February 25th 2016; seating is very limited. / Mad Hatters Tea Party is scheduled for Friday, March 25th 2016; this event was well received last year.

D. Community and Recreation Services Director's Report

On behalf of Director Stavosky, Supervisor Valuckas shared that on Sunday, March 6th 2016 our annual Superhero Fun Run will take place at City Hall; this event will also mark the 9 year anniversary of the Mark Green Sports Center.

E. City Council Items Related to Community and Recreation Services

Vice-Mayor Duncan spoke about the City's intention to put everything on the City Website and upping our presence on social media space and wondered if there will be resources and or classes at the Ruggieri Senior Center to help keep the members up to speed on social media training; Supervisor Valuckas reported that we have a wonderful computer instructor at the Ruggieri Center named Fred Haney, who has upgraded and maintains our computer lab. He also teaches a class on Thursdays that addresses all manner of computer related items such as social media, email and using various computer equipment, tablets and phones.

VIII. COMMISSION MATTERS

- A.** Commissioner Filardo gave a brief report on the February 8th 2016 Alameda County Commission on Aging Meeting; Guest Speaker Lisa Coleman, Executive Director of the California Long Term Care Ombudsman Association, attended the meeting and spoke about the goals of the CLTCOA to ensure high-quality Ombudsman services and they are advocates of the senior community. Mayor Dutra-Vernaci asked Commissioners Filardo and Dosanjh if there are other areas of the County that aren't represented on the commission, and if so, would they please ask their fellow commissioners to contact the Mayors of those cities and ask them to appoint someone to be their representatives on the Alameda County Commission on Aging.

- B. No upcoming changes or plans in regards to the Ruggieri Senior Center
- C. Mayor Dutra-Vernaci talked briefly in regards to Senior Membership Fees and went over the membership report provided by Supervisor Valuckas which showed membership numbers and revenue brought in by the membership fees over the last three years and based on what was presented Mayor Dutra-Vernaci, Councilmember Navarro and Councilmember Gacoscos were not in favor of reducing the fees. Vice-Mayor Duncan shared a bit of the history of why the fees were increased in 2011, which was due to the poor economy, but felt that the increase was more of a temporary measure and suggested that a further discussion should take place in regards to reducing the fees. City Manager Acosta also gave an account of the history of the membership fees, why there were enacted, and why they were raised by \$10.00 in 2011; at the time the City's budget was in dire straits and in order to save further cuts to the Senior Program which already included loss of employees and the closure of the facility on Fridays, the membership fees were raised. City Manager Acosta stated that the Senior Program is paid for out of the General Fund which comes to about \$350,000.00 and expressed caution in having the fees go up and down; the membership fees act as an insulation from the General Fund and all monies collected go directly back to the center and are used for staff, supplies, etc., but that staff would of course go along with the decision made by the Mayor and City Council. Mayor Dutra-Vernaci stated that if we were to roll-back the membership to the original fees, and the membership numbers do not increase or fall, then at some point we would have to revisit increasing the fees back to what they are now to compensate for the possible loss of programs and or services that are currently offered, which may be affected by the decrease. All agreed and the members of the Senior Citizens Commission were given the task of all joining the Ruggieri Senior Center and helping to recruit members.

- D. General Plan Advisory Committee – No update

IX. GOOD OF THE ORDER

Commissioner Kamakea commented on the new larger curbs that were recently installed at the entrance and exit to the parking lot of Our Lady of the Rosary Church; people are running over the larger curbs because they are having difficulty seeing them and suggested it would be a good idea to add some sort of flags or other flexible markers to show where the curb is. Pat Hilton from the Fremont Senior Citizens Commission shared that the Four Seasons of Health Expo is coming in June in Fremont, and that it would be a good idea to have a table there to promote the Ruggieri Senior Center, which offers exercise classes that promote good health and would be a good place to recruit members. Commissioner Josue inquired if we offer a brown bag program in Union City; Supervisor Valuckas stated we do not have that program in Union City.

X. ADJOURNMENT

Commissioner Cresto adjourned the meeting at 4:13 p.m.; the next meeting will be held on Tuesday, March 15th 2016.



Agenda Item

ATTACHMENTS:

Description	Type
 Minutes of the Regular City Council Meeting of March 8, 2016	Attachment

**MINUTES
CITY OF UNION CITY**

Tuesday, March 8, 2016
7:00 PM

**COUNCIL CHAMBERS
34009 ALVARADO NILES ROAD**

I. CALL TO ORDER

Mayor Dutra-Vernaci called the meeting to order at 7:02 p.m.

I.a. Pledge of Allegiance

Mayor Dutra-Vernaci led the salute to the flag.

I.b. Roll Call

Present: Councilmembers Gacoscas, Navarro, Vice Mayor Duncan, Mayor Dutra-Vernaci

Absent: Councilmember Ellis

II. UNFINISHED BUSINESS - None

III. PROCLAMATIONS AND PRESENTATIONS

III.a. Proclamation Recognizing March as American Red Cross Month

Mayor Dutra-Vernaci read the proclamation aloud and presented it to Mr. Jay Pimentel, Chair of the Red Cross Leadership Council.

Mr. Pimentel thanked Council for the recognition and shared Red Cross statistics for 2015. He also encouraged people to download the Red Cross Mobile application for access to disaster preparedness tools and information.

III.b. Proclamation Recognizing March as National Social Work Month

Mayor Dutra-Vernaci read the proclamation aloud and presented it to Adrian Valadez, Union City Youth and Family Services Bi-Lingual Intervention Specialist.

Mr. Valadez stated thanked Council on behalf of the social work staff at Youth and Family Services. Mr. Valadez recalled the reason behind the creation of YFS and highlighted some of the work they have able to accomplish since the program's implementation.

IV. ORAL COMMUNICATIONS

Anita Roque thanked Council for lowering the membership fees of the Senior Center to \$25.00 asked some clarifying questions regarding implementation, duration and publicizing.

Lisette Poole, Journalist Instructor from San Jose State University, stated the University was seeking to establish a dedicated and funded Islamic Studies Department and requested the City's assistance in identifying seed funding.

Peggy Walters spoke about the increasing levels of disruptive and dangerous activities taking place at the City-owned lot at the corner of Perry Road and Tartarian Way. She requested City Staff investigate various preventative measures, such as strategically planted trees, or a community garden.

Pete Martucci reported that rental activities within his cul-de-sac were causing issues within the neighborhood and questioned if they were even permissible under the Municipal Code. Mr. Martucci requested staff investigate the matter.

Mayor Dutra-Vernaci provided response and directed staff to follow up on the issues brought up by Ms. Walters and Mr. Martucci.

V. **CONSENT CALENDAR**

It was moved by Vice Mayor Duncan, seconded by Councilmember Navarro, to adopt the consent calendar. The motion was approved by the following voice vote:

AYES: Councilmembers Gacoscas and Navarro, Vice Mayor Duncan,
Mayor Dutra-Vernaci
NOES: None
ABSTAIN: None
ABSENT: Councilmember Ellis

V.a. Waived Further Reading of Proposed Ordinance

(This permits reading the title only in lieu of reciting the entire text of any proposed Ordinance.)

V.b. Approved the Minutes of the Special Joint City Council and Planning Commission Meeting Held on February 3, 2016

V.c. Approved the Minutes of the Special and Regular City Council Meetings Held on February 23, 2016

V.d. Adopted **Resolution No. 4870-16** Appropriating FY 2015/16 Grant Funds from the National Parkinson's Foundation in the Total Amount of \$13,800 to the Community & Recreation Services Department

V.e. Adopted **Resolution No. 4871-16** Approving a Supplemental Appropriation in the Amount of One Hundred and Twenty Thousand Dollars (\$120,000) From Solid Waste Management Fund (2030) to Solid Waste and Recycling Professional/Consulting Account (2030-1201-20021-54110) for Unbudgeted Consulting Services

V.f. Adopted **Resolution No. 4872-16** Authorizing a Sole Source Agreement in the Amount of \$75,585 With HF&H Consultants, LLC to Perform the Required Review of the Rate Adjustment Application for the Rate Year Ending June 30, 2017 From Republic Services

V.g. Adopted **Resolution No. 4873-16** Authorizing the Execution of the Certifications and Assurances and Authorized Agent Forms for the Low Carbon Transit Operations Program (LCTOP) For the Union City Transit Program

- V.h. Adopted **Resolution No. 4874-16** Authorizing the Execution of an Application with the State of California to Use the Low Carbon Transit Operations Program (LCTOP) for a Proposed Project at the Union Landing Transit Center
- V.i. Adopted **Resolution No. 4875-16** Authorizing Mayor Dutra-Vernaci to Attend the Liyang Tea Festival as the City's Delegate; Authorizing Reimbursement of Incidental Expenses
- V.j. Adopted **Resolution No. 4876-16** Accepting the Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2015
- V.k. Adopted
 - **Resolution No. 4877-16** Declaring the Intention to Authorize the Annexation of Territory to Community Facilities District No. 2006-1 (Public Services)
 - **Resolution No. 4878-16** Adopting Boundary Map showing Territory Proposed to be Annexed in the Future to Community Facilities District No. 2006-1 (Public Services)

VI. PUBLIC HEARINGS – None

VII. CITY MANAGER REPORTS

- VII.a. Fiscal Year 2015-16 2nd Quarter (QTR) Report on Budget to Actual Results for the Period of July 1 through December 31, 2015; Adopt a Resolution Amending and Appropriating FY 14-15 Carryover of \$2,498,909 to the Adopted FY 15-16 General Fund Operating Budget; Adopt a Resolution Amending and Appropriating FY 15-16 Adopted Operating and Capital Budget Revenue and Expenditure Categories for Various Funds Per Attachment 1-B Mid-Year Budget Adjustments and Approving Mid-Year Changes to the General Fund Assigned and Unassigned Fund Balance Categories to Comply with Council Approved Reserve Policies

Interim Finance Director Sandhu presented the report, providing a high level summary on the following: 2014-15 audit results, total general fund balance, previous fiscal year and current year-to-date revenues and expenditures, amendments to the adopted budget, general fund reserves, and the PERS/OPEB Trust reserves.

Staff responded to questions from Council regarding the reserves fund balance and target. Councilmembers provided comment.

It was moved by Councilmember Gacoscas, seconded by Vice Mayor Duncan to adopt:

- **Resolution No. 4879-16** Amending and Appropriating FY 14-15 Carryover of \$2,498,909 to the Adopted FY 15-16 General Fund Operating Budget
- **Resolution No. 4880-16** Amending and Appropriating FY 15-16 Adopted Operating and Capital Budget Revenue and Expenditure Categories for Various Funds Per Attachment 1-B Mid-Year Budget

Adjustments and Approving Mid-Year Changes to the General Fund
Assigned and Unassigned Fund Balance Categories to Comply with
Council Approved Reserve Policies

The motion was approved by the following voice vote:

AYES: Councilmembers Gacoscos and Navarro, Vice Mayor Duncan,
Mayor Dutra-Vernaci

NOES: None

ABSTAIN: None

ABSENT: Councilmember Ellis

VII.b. Update on General Plan Land Use Alternatives Report and Public Outreach

Planning Manager Campbell introduced Ted Holcom of Mintier Harnish.

Mr. Holcom reviewed the five (5) land use alternatives for the focus areas of Greater Station District, Horner-Veasby Area, and Union City Boulevard; and key findings related to land use, economic issues, fiscal impacts, transportation and Infrastructure and services, and resources and hazards.

Planning Manager Campbell reviewed the next steps, the anticipated schedule for the remaining phases and public outreach efforts.

Staff responded to questions from Council. Councilmembers provided comment.

Public comment was provided by Barry Ferrier, Hugh McNamara, Dom Filardo and Nick Aaronson.

Planning Manager Campbell acknowledged GPAC members present at the meeting; Lee Guio, Dom Filardo and Barry Ferrier.

The report was informational and did not require action of the Council.

VIII. SUCCESSOR AGENCY TO REDEVELOPMENT AGENCY - None

IX. AUTHORITIES AND AGENCIES - None

X. CITY COMMISSION I COMMITTEE REPORTS – None

XI. SECOND ORAL COMMUNICATIONS

XII. SCHEDULED ORAL COMMUNICATION - None

XIII. ITEMS REFERRED BY COUNCIL

Oral Reports by Mayor and Councilmembers on meetings of County or
Regional Board and Commissions

Alameda County Fire Department Advisory Commission Alameda –
Councilmember Navarro stated he will attend the meeting scheduled for March
14, 2016

County Library Advisory Commission – Nothing reported

Alameda County Mayors Conference – Nothing reported

Alameda County Transportation Commission (ACTC) Alameda County

Waste Management Authority (WMA) – Nothing reported

Association of Bay Area Governments (ABAG) – Nothing reported

City of Union City Audit Subcommittee – Nothing reported

City of Union City Youth Violence Prevention & Intervention Advisory Committee – Nothing reported

Disaster Council – Nothing reported

Dumbarton Rail Corridor Policy Advisory Committee East Bay – Nothing reported

Economic Development Alliance (EDA) – Nothing reported

East Bay Regional Communications System Authority (EBRCSA) – Nothing reported

Economic Development Advisory Team (EDAT) – Vice Mayor Duncan stated she attended the meeting held on March 2, where the Union Landing Branding presentation given at the Council meeting of February 23.

Housing Authority of Alameda County – Councilmember Gacoscos stated she will attend the next HACA meeting on March 9.

League of California Cities, East Bay Division (LOCC) – Nothing reported

New Haven Unified School District Joint Sub-Committee – Nothing reported

Oakland Airport Community Noise Management Forum – Nothing reported

Oversight Board to the Successor Agency to the Union City Redevelopment Agency – Nothing reported

Teen Center Project Updates – Nothing reported

Union City Chamber of Commerce – Nothing reported

XIV. GOOD OF THE ORDER

Councilmember Gacoscos stated Emerald Packaging won the East Bay Innovation Award in the Advanced Manufacturing category and Finelite was second place in the Clean Tech category.

Councilmember Gacoscos stated on March 3 she was invited to read at Delaine Eastin Elementary School to celebrate Read Across America. On March 4 she attended the Abode services breakfast. On March 7 she attended the Alameda County Library meeting where a new master plan was discussed.

Councilmember Navarro stated he heard that ACTA was planning to do a double tracking by the BART station and asked Mayor Dutra-Vernaci if that is true how would that effect the BART bridge.

Economic & Community Development Director Malloy stated that she had not

heard that Union Pacific (UP) was planning on double tracking that particular line.

Deputy City Manager Evanoff stated that there have been discussions with UP and that this has never come up in the discussion.

Public Works Director Cheng stated she had a meeting with UP and ACT consultants related to the East West Connector projects. She stated UP staff wanted to see the design of the rail bridge and wanted to know if it would have the capacity to take two tracks.

Councilmember Navarro stated kids were crossing and not paying attention while crossing at Alvarado Niles Road and Hop Ranch Road. He asked if blinking lights could be put in there.

Public Works Director stated it is not recommended to have blinking lights.

City Manager Acosta stated to be clear we are talking about groups of students jaywalking across a red light.

Vice Mayor Duncan stated she wanted to raise a question about the General Plan alternatives and how will the study session on transportation be involved in the conversation.

Economic & Community Development Director Malloy stated there will be a study session on March 22 and the second transportation discussion at the April 26 meeting, which will be specifically for the general plan.

XV. CLOSED SESSION - None

XVI. ADJOURNMENT

Mayor Dutra-Vernaci adjourned the meeting at 8:53 p.m.

Respectfully submitted,

Anna M. Brown
City Clerk



Agenda Item

DATE: 3/22/2016

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: CHIEF DARRYL MCALLISTER

SUBJECT: RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UNION CITY
AUTHORIZING THE EXTENSION OF THE POLICE TOWING SERVICES
AGREEMENT

This item is brought forward seeking City Council authorization to extend the expiration of the Police Rotational Towing and Non-Exclusive Police Towing Franchise to Central Tow as provided by Chapter 10.18 of the Union City Municipal Code.

BACKGROUND

The City's current agreement for rotational tow services with Central Towing and Transport, LLC expires on May 1, 2016. Central Towing and Transport LLC has agreed to extend the expiration date by two (2) months to expire on July 1, 2016. This extension will provide time for staff to facilitate a request for proposals in order to establish an updated rotational tow service list.

DISCUSSION

The City, in an effort to provide quality tow service to the community, contracts with one tow company for police requested tows. The agreement has specific requirements that ensure driver certifications, towing capabilities, security of vehicles, and maximum response times.

Agreements were in effect with two tow companies (Central Tow and All Ways Tow) from November 1, 2010, and they expired on November 1, 2015. The agreements were extended from November 1, 2015, to May 1, 2016. All Ways Tow has since ceased business.

Staff is preparing a request for proposals in order to update the list of tow companies for rotational tow services. While this process takes place, Central Towing and Transport LLC has signed an extension to the current agreement to expire on July 1, 2016. Existing fees would remain in effect during the extension.

FISCAL IMPACT

None

RECOMMENDATION

Staff recommends that City Council authorize the extension of the Non-Exclusive Franchise for the purpose of Police Rotational Towing to Central Towing and Transport LLC, and authorize the City Manager to sign the extension agreement on behalf of the City.

Prepared by:

LIEUTENANT DEAN SATO

Submitted by:

CAPTAIN JARED RINETTI

ATTACHMENTS:

Description	Type
☐ Resolution for Tow Services Extension	Resolution

RESOLUTION NO: _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UNION CITY
AUTHORIZING THE EXTENSION OF POLICE ROTATIONAL TOWING AND
NON-EXCLUSIVE POLICE TOWING FRANCHISE**

WHEREAS, the City's current agreement for rotational tow services with Central Towing and Transport LLC expires on May 1, 2016; and

WHEREAS, it is the intent for staff to provide for the process to request applications in order to establish an updated list of police rotational towing and non-exclusive police towing franchises; and

WHEREAS, Central Towing and Transport, LLC has agreed to the extension of Police Rotational Towing and Non-Exclusive Franchise.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Union City hereby authorizes the extension of the Police Rotational Towing and Non-Exclusive Police Towing Franchise to expire on July 1, 2016.

BE IT FURTHER RESOLVED that the City Council of the City of Union City hereby authorizes the Chief of Police to enter into an agreement to extend the existing Police rotational Towing and Non-Exclusive Police Towing Franchise.



Agenda Item

DATE: 3/22/2016

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JILL STAVOSKY, COMMUNITY AND RECREATION SERVICES DIRECTOR

SUBJECT: RESOLUTION TO REDUCE THE MEMBERSHIP FEES AT THE RUGGIERI SENIOR CENTER FOR RESIDENT INDIVIDUALS AND COUPLES

A resolution has been prepared to discuss the reduction of membership fees for resident individuals and couples who attend the Ruggieri Senior Center.

BACKGROUND

In 2007, the city approved a yearly membership fee for seniors that attend the Ruggieri Center in an effort to make the center more self-sufficient financially. The membership fee implemented for residents was \$25 for individuals and \$40 for couples and for non-residents it was \$35 for individuals and \$60 for couples.

In 2011, the city approved another membership fee increase with the hopes that the extra revenue generated would help alleviate the rising costs of the center's staff, operations and maintenance, especially during challenging economic times. The fee for residents was increased to \$35 for individuals and \$60 for couples. Non-residents rates increased to \$45 for individuals and \$80 for couples.

DISCUSSION

For the past year, the Senior Commission has expressed interest in either eliminating the membership fees at the Ruggieri Center or at least reducing the fees back to the amount when they were originally implemented in 2007. The Senior Commission reasoning was that the economy has improved and the City was in a better financial position than it had been in 2011, so the need for higher membership fees was no longer an issue.

At the February 16th joint meeting between City Council and Senior Commission, it was discussed and the Council decided to reduce the membership fees to the original amounts that were first implemented in 2007. The understanding being that the reduction in fees would be for residents only and that the non-resident fees would remain the same. The membership fees for residents would now be \$25 for individuals and \$40 for couples. This reduction would be implemented on April 1, 2016. Council expressed their expectation that the Senior Commission and Center members would form an active volunteer corps that would help to alleviate the loss of staff hours created by the fee reduction. The Senior Commission further agreed to take action by actively engaging in marketing for 200 new members to replace the funds that would be lost through the

membership fee reduction.

FISCAL IMPACT

The reduction in membership fees for resident individuals and couples that attend the Ruggieri Center would result in an estimated loss of \$3,660 in revenue for the city. This figure is based on 2105 membership totals.

RECOMMENDATION

This resolution is brought to the City Council at their request.

Prepared by:

Chris Valuckas, Senior Recreation Supervisor

Submitted by:

Jill Stavosky, Community and Recreation Services Director

ATTACHMENTS:

Description	Type
☐ Resolution	Resolution

RESOLUTION NO. XXXX-16

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UNION CITY
TO REDUCE THE MEMBERSHIP FEES AT THE RUGGIERI CENTER FOR RESIDENT COUPLES
AND INDIVIDUALS**

WHEREAS, in 2007, the city approved a yearly membership fee for seniors that attend the Ruggieri Center in an effort to make the center more self – sufficient financially; and

WHEREAS, in 2011, the city approved a membership fee increase with the hopes that the extra revenue generated would help alleviate the rising costs of the center’s staff, operations and maintenance; and

WHEREAS, for the past year, the Senior Commission has expressed interest in either eliminating the membership fees at the Ruggieri Center or at least reducing the fees back to the amount when they were originally implemented; and

WHEREAS, it was discussed and then decided at the February16, 2016 joint meeting between City Council and the Senior Commission to reduce the resident membership fees to the original amounts that were first implemented in 2007; and

WHEREAS, the yearly membership fees for residents will now be reduced from \$35 to \$25 for individual memberships and from \$60 to \$40 for couples memberships; and

WHEREAS, this membership fee reduction will be for residents only and the memberships fees for non-residents would stay the same and this membership fee reduction for residents would be implemented on April 1, 2016; and

WHEREAS, City Council expresses their expectation that the that the Senior Commission and Center members would form an active volunteer corps that would help to alleviate the loss of staff hours created by the fee reduction; and

WHEREAS, The Senior Commission further agreed to take action by actively engaging in marketing for 200 new members to replace the funds that would be lost through the membership fee reduction.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Union City that resident annual membership fees for the Ruggieri Senior Center are hereby reduced to \$25 for resident individuals and \$40 for resident couples.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Union City at a regular meeting held on the 22nd day of March 2016 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

CAROL DUTRA-VERNACI
Mayor

ATTEST:

ANNA M. BROWN
City Clerk

APPROVED AS TO FORM:

BENJAMIN T. REYES, II
City Attorney



Agenda Item

DATE: 3/22/2016

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JOAN MALLOY, ECONOMIC & COMMUNITY DEVELOPMENT DIRECTOR

SUBJECT: ADOPT A RESOLUTION ACCEPTING THE ANNUAL ELEMENT PROGRESS REPORT ON THE IMPLEMENTATION OF THE HOUSING ELEMENT FOR 2015

The City Council is asked to adopt a Resolution accepting the Annual Element Progress Report on the implementation of the Housing Element for 2015.

BACKGROUND

On January 27, 2015, the City Council adopted the Housing Element of the General Plan that covers the period of 2015 through 2023. As required by Section 65400 of the Government Code, the City has to prepare and submit to the State, by April 1st of each year, an Annual Element Progress Report (“Report”) on the implementation of Housing Element. The Report for the period of January 2015 to December 2015 marks the first progress update for this Housing Element. The Report is also required to be submitted to the State Office of Housing and Community Development (HCD) in order for the City to apply for State funding that is tied to Housing Element performance.

DISCUSSION

The Report comprises of the following three components and is included as Exhibit A:

- The City’s progress in meeting its Regional Housing Need Allocation (RHNA)
- The effectiveness of the Housing Element in reaching the City’s housing goals and objectives
- Progress toward mitigating governmental constraints identified in the Housing Element.

FISCAL IMPACT

There are no costs associated with this action. However, the acceptance of the Report will allow the City to possibly benefit from future State funding programs, as discussed above.

RECOMMENDATION

The Annual Element Progress Report needs to be submitted to the State to demonstrate the City's progress in meeting its Housing Element goals and to be eligible for State funding that is tied to Housing Element performance. Staff recommends that the City Council review and adopt the attached resolution accepting the Annual Element Progress Report on the implementation of the Housing Element for 2015 and authorizing staff to proceed with the submission of said report to the State HCD.

Prepared by:

Alin Lancaster, Housing & Community Development Coordinator

Submitted by:

Joan Malloy, Economic & Community Development Director

ATTACHMENTS:

Description		Type
<input type="checkbox"/>	Resolution	Resolution
<input type="checkbox"/>	Exhibit A - Annual Element Progress Report 2015	Exhibit

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UNION CITY
ACCEPTING THE ANNUAL ELEMENT PROGRESS REPORT ON THE
IMPLEMENTATION OF THE HOUSING ELEMENT FOR 2015**

WHEREAS, on January 27, 2015, the City Council adopted the Housing Element of the General Plan that covers the period of 2015 through 2023; and

WHEREAS, Section 65400 of the Government Code requires all cities to prepare and submit to the State, by April 1st of each year, an Annual Element Progress Report on the implementation of the Housing Element; and

WHEREAS, the City of Union City may, as appropriate, be applying for State funds in the future that require the Annual Element Progress Report to be submitted and on file at the State Office of Housing and Community Development; and

WHEREAS, the Annual Element Progress Report for the period of January 2015 to December 2015 is included as Exhibit A, attached and incorporated herein by reference; and

WHEREAS, the Annual Element Progress Report has been presented to the City Council of the City of Union City on March 22, 2016 by the Housing and Community Development Division of the Economic and Community Development Department.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Union City, that the Annual Element Progress Report on the Implementation of the Housing Element for the period of January 2015 to December 2015, as presented on March 22, 2016 by the Housing and Community Development Division of the Economic and Community Development Department and attached as Exhibit A, is hereby accepted and acknowledged; and

BE IT FURTHER RESOLVED that the City Council of the City of Union City does hereby authorize staff to proceed with the submission of the Annual Element Progress Report to the State Office of Housing and Community Development.

Exhibit A

ANNUAL ELEMENT PROGRESS REPORT *Housing Element Implementation* (CCR Title 25 §6202)

Jurisdiction Union City
Reporting Period 1/1/2015 - 12/31/2015

Table A

Annual Building Activity Report Summary - New Construction Very Low-, Low-, and Mixed-Income Multifamily Projects

Housing Development Information								Housing with Financial Assistance and/or Deed Restrictions		Housing without Financial Assistance or Deed Restrictions	
1	2	3	4				5	5a	6	7	8
Project Identifier (may be APN No., project name or address)	Unit Category	Tenure R=Renter O=Owner	Affordability by Household Incomes				Total Units per Project	Est. # Infill Units*	Assistance Programs for Each Development	Deed Restricted Units	Note below the number of units determined to be affordable without financial or deed restrictions and attach an explanation how the jurisdiction determined the units were affordable. Refer to instructions.
			Very Low-Income	Low-Income	Moderate-Income	Above Moderate-Income			See Instructions	See Instructions	
(9) Total of Moderate and Above Moderate from Table A3 ▶▶			0	290			290				
(10) Total by income Table A/A3 ▶▶					290		290				
(11) Total Extremely Low-Income Units*											

* Note: These fields are voluntary

Exhibit A

ANNUAL ELEMENT PROGRESS REPORT *Housing Element Implementation* (CCR Title 25 §6202)

Jurisdiction Union City
Reporting Period 1/1/2015 - 12/31/2015

Table A2
Annual Building Activity Report Summary - Units Rehabilitated, Preserved and Acquired pursuant to GC Section 65583.1(c)(1)

Please note: Units may only be credited to the table below when a jurisdiction has included a program in its housing element to rehabilitate, preserve or acquire units to accommodate a portion of its RHNA which meet the specific criteria as outlined in GC Section 65583.1(c)(1)

Activity Type	Affordability by Household Incomes				(4) The Description should adequately document how each unit complies with subsection (c)(7) of Government Code Section 65583.1
	Extremely Low-Income*	Very Low-Income	Low-Income	TOTAL UNITS	
(1) Rehabilitation Activity				0	
(2) Preservation of Units At-Risk				0	
(3) Acquisition of Units				0	
(5) Total Units by Income	0	0	0	0	

* Note: This field is voluntary

Table A3
Annual building Activity Report Summary for Above Moderate-Income Units (not including those units reported on Table A)

	1. Single Family	2. 2 - 4 Units	3. 5+ Units	4. Second Unit	5. Mobile Homes	6. Total	7. Number of infill units*
No. of Units Permitted for Moderate						0	
No. of Units Permitted for Above Moderate	45		243	2		290	290

* Note: This field is voluntary

Exhibit A

ANNUAL ELEMENT PROGRESS REPORT *Housing Element Implementation* (CCR Title 25 §6202)

Jurisdiction Union City
Reporting Period 1/1/2015 - 12/31/2015

Table B

Regional Housing Needs Allocation Progress

Permitted Units Issued by Affordability

Enter Calendar Year starting with the first year of the RHNA allocation period. See Example.		2015	2016	2017	2018	2019	2020	2021	2022	2023	Total Units to Date (all years)	Total Remaining RHNA by Income Level
Income Level		RHNA Allocation by Income Level	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8		
Very Low	Deed Restricted	317										317
	Non-deed restricted											
Low	Deed Restricted	264										264
	Non-deed restricted											
Moderate	Deed Restricted	192										192
	Non-deed restricted											
Above Moderate		417	290								290	127
Total RHNA by COG. Enter allocation number:		1,190	290								290	900
Total Units ▶▶▶												
Remaining Need for RHNA Period ▶▶▶▶▶												

Note: units serving extremely low-income households are included in the very low-income permitted units totals.

Exhibit A

ANNUAL ELEMENT PROGRESS REPORT *Housing Element Implementation* (CCR Title 25 §6202)

Jurisdiction Union City
Reporting Period 1/1/2015 - 12/31/2015

Table C

Program Implementation Status

Program Description (By Housing Element Program Names)	Housing Programs Progress Report - Government Code Section 65583. Describe progress of all programs including local efforts to remove governmental constraints to the maintenance, improvement, and development of housing as identified in the housing element.		
Name of Program	Objective	Timeframe in H.E.	Status of Program Implementation
HE-A.a Rezone Program	The City shall rezone enough land to accommodate the remaining housing need of 154 lower-income and 210 above moderate-income units within two years of adoption of the Housing Element. The City shall ensure that the rezoned sites are large enough to accommodate a minimum of 16 units per site, will permit owner-occupied and rental multifamily residential uses by-right (without a conditional use permit, planned unit development permit, or other discretionary action), and that at least 50 percent of the remaining need will be accommodated on sites zoned for exclusively residential uses.	Rezone land by January 31, 2016 to accommodate fourth Housing Element cycle unaccommodated need of 84 housing units. Rezone to accommodate remaining need within three years of adoption (January 2018).	In January 2016, the City Council adopted a General Plan Amendment (AG-15-001), Zoning Map Amendment (A-15-001) and Zoning Text Amendment (AT-15-005) to redesignate two Housing Element potential rezone sites that together accommodate 302 net new expected units. Sufficient land will be rezoned to accommodate the remaining need by January 2018.
HE-A.b Participate in Priority Development Area Program	As a means to assist development of the Station District, the City shall continue to participate in the Priority Development Area (PDA) program, which offers incentives to encourage affordable and high density housing adjacent to transit. The City shall participate through attending PDA meetings, implementing the Station District Plan, and facilitating housing and employment-related development in the Station District.	Ongoing	Ongoing

Exhibit A

ANNUAL ELEMENT PROGRESS REPORT *Housing Element Implementation* (CCR Title 25 §6202)

Jurisdiction Union City
Reporting Period 1/1/2015 - 12/31/2015

HE-A.c Maintain Vacant Land Inventory	The City shall continue to maintain a current inventory of vacant residentially-zoned parcels and associated development potential and a list of recently approved residential projects to assist developers in identifying land suitable for residential development. The City shall continue to annually update the inventory. The City shall continue to make this information available to the public and developers through the City's website.	Ongoing, update inventory annually	Ongoing
HE-A.d Develop RHNA Evaluation Procedure	To ensure sufficient residential capacity is maintained to accommodate the RHNA need, the City will develop and implement a formal ongoing (project-by-project) evaluation procedure pursuant to Government Code Section 56863. Should an approval of development result in a reduction of capacity below the residential capacity needed to accommodate the remaining need for lower income households, the City will identify and re-zone sufficient sites to accommodate the shortfall.	Ongoing	Ongoing - evaluated as part of the City's development review process
HE-A.e Monitor Publicly-Owned Land	The City shall continue to monitor the status of available land owned by Caltrans and other public agencies and actively work with developers that may wish to develop such properties for housing.	Monitor at least annually	Ongoing - monitored on an annual basis

Exhibit A

ANNUAL ELEMENT PROGRESS REPORT *Housing Element Implementation* (CCR Title 25 §6202)

Jurisdiction Union City
Reporting Period 1/1/2015 - 12/31/2015

HE-A.f Secondary Dwelling Unit Information Program	The City shall promote the development of secondary dwellings units by continuing to provide informational handouts at the Planning Division public counter and posting information on the City's website.	Ongoing	Information on secondary units is posted on the City's website and is made available at the Planning Division Counter.
HE-A.g Parking Reduction in CSMU Zoning District	The City shall reduce residential parking requirements in the CSMU to facilitate transit-oriented residential development.	Year 2015	It is anticipated that this item will be completed in conjunction with the comprehensive Zoning Ordinance updates that will occur upon adoption of the 2017 General Plan Update
HE-B.a Affordable Housing Ordinance	The City shall continue to implement the Affordable Housing Ordinance.	Ongoing	Ongoing
HE-B.b Support Affordable Housing Development	The City shall continue to provide financial and/or technical support to local non-profit organizations and the Alameda County Housing Authority to assist in the acquisition of properties, pursue grant funding, and leverage City funds for the development of affordable housing, including extremely low-income housing.	Research funding opportunities annually and pursue funding as available	Ongoing as funding opportunities and projects arise
HE-B.c Update Density Bonus Ordinance	The City shall update the Density Bonus Ordinance to explicitly comply with current (2014) State law and also to allow units that are required to be maintained as affordable units pursuant to the City's Affordable Housing Ordinance to be considered restricted affordable units for the purposes of determining whether the housing development qualifies for a density bonus.	Year 2016	The City is currently in the process of amending the density bonus provision of the City's Affordable Housing Ordinance to comply with State law and to meet the requirements of this implementation program. The Planning Commission approved the ordinance amendment on March 3, 2016. The City Council is scheduled to do a first reading of the ordinance amendment on March 22, 2016 and it is anticipated a second reading will be in April 2016. The ordinance amendment is expected to go into effect in May 2016.

Exhibit A

ANNUAL ELEMENT PROGRESS REPORT *Housing Element Implementation* (CCR Title 25 §6202)

Jurisdiction Union City
Reporting Period 1/1/2015 - 12/31/2015

HE-B.d Preserve Affordable Units	The City shall continue to implement existing City guidelines for the preservation of affordable units in City-bond and other publicly financed projects. The City shall monitor assisted projects that are eligible to terminate affordability controls and respond to any Notice of Intent or Plan of Action.	Ongoing	Ongoing
HE-B.e Promote Affordable Housing	The City shall place general information regarding affordable housing programs as well as promoting specific projects on the City website, in the City newsletter, at City Hall, in the local newspaper, and on local cable access. The City shall also continue to participate in annual housing fairs and other presentation and workshops to promote the City's housing programs in the community.	Ongoing	Information on affordable housing opportunities is regularly updated and posted on the City's website and is made available at City Hall and community centers. The City also continues to participate in presentations/meetings to promote the City's housing programs.
HE-C.a First Time Homebuyer Program	The City shall continue a first time homebuyer program, as funding is available, either through State funding or through program-related income.	Monitor funding sources at least annually and pursue funding as it becomes available	The City's First Time Homebuyer Program Administrator, Neighborhood Housing Services Silicon Valley, disbanded in June 2015 and subsequently the City's First Time Homebuyer Program was dissolved. Additionally, due to the dissolution of Redevelopment Agencies, the City currently does not have funding available for first time homebuyer programs. However, the City continues to monitor and pursue new funding sources and promotes non-City funded programs such as CalHFA and the Mortgage Credit Certificate Program through its website and other promotional material.

Exhibit A

ANNUAL ELEMENT PROGRESS REPORT *Housing Element Implementation* (CCR Title 25 §6202)

Jurisdiction Union City
Reporting Period 1/1/2015 - 12/31/2015

HE-C.b Mortgage Credit Certificate Program	The City shall continue to work with Alameda County to administer the Mortgage Credit Certificate (MCC) program.	Ongoing	The City continues to provide funding to Alameda County to administer the Mortgage Credit Certificate Program. No Union City residents were served in 2015 however the program has provided assistance to 24 Union City residents since 2000.
HE-C.c Section 8 Rental Assistance Program	The City shall continue to support the Alameda County Housing Authority in its continuing administration of HUD Section 8 rental certificates and vouchers to assist very low-income Union City households.	Ongoing	Ongoing
HE-C.d Homebuyer Education	The City shall support the efforts of local HUD-approved counseling agencies in their homebuyer-education, post-purchase, and default/ foreclosure counseling efforts. The City shall post information on the City website about foreclosure counseling, toll-free hotlines, foreclosure prevention programs, and other resources available for residents facing possible foreclosures.	Ongoing	The City continues to support local HUD-approved counseling agencies and information on homebuyer education and foreclosure counseling is regularly updated and posted on the City's website and is made available at City Hall and community centers.
HE-C.e Rental Assistance Program	The City shall continue to provide rental assistance, as funding is available, to very low- and extremely low-income residents at the Tropics Mobile Home Park.	Annual certification	The City continues to provide rental assistance to very low and extremely-low income residents at the Tropics Mobile Home Park
HE-D.a Housing Rehabilitation	The City shall give high priority for the expenditure of a portion of CDBG funds for housing rehabilitation, and directly contract with the County to administer the housing rehabilitation services. The City shall also use Housing Successor funds and HOME funds as available and appropriate, to support housing rehabilitation for lower-income households.	Contract with the County annually for rehabilitation services	The City continued to contract with the County to administer the Housing Rehabilitation Program. In FY 2014-2015 (July to June), 54 rehabilitation grants were issued. Additionally, from July 2015 to December 2015, 14 rehabilitation grants were issued.

Exhibit A

ANNUAL ELEMENT PROGRESS REPORT *Housing Element Implementation* (CCR Title 25 §6202)

Jurisdiction Union City
Reporting Period 1/1/2015 - 12/31/2015

HE-D.b Improvements in the Decoto and Old Alvarado Neighborhoods	As appropriate, the City shall continue capital-improvement and housing-rehabilitation programs to upgrade infrastructure and housing in the Decoto and Old Alvarado neighborhoods.	Contract with the County annually for CDBG funds	<p><u>Housing Rehabilitation</u> The Housing Rehabilitation Program is available citywide however 6 rehabilitation grants were provided in FY 2014-2015 to households living in Decoto and one grant has been provided in FY 2015-2016 to a household living in Decoto.</p> <p><u>Capital Improvements - Decoto</u> 1. Completed the construction of the Decoto Green Street Project - C Street from 6th to 9th (\$1.25 million) 2. Began construction on the South Decoto Green Street Project – F Street to I street , 12th to 15th Street (\$4 million) 3. Design of the H Street –Green Street improvements</p> <p><u>Capital Improvements - Alvarado</u> 1. Installed additional LED Street Lights 2. Installed new bike racks on Smith Street 3. Relocated and repurposed modular buildings for the Hedgehog summer camp program at Old Alvarado Park. 4. Rebranding efforts and entry/wayfinding signage for Historic Alvarado Business Area</p>
HE-D.c Code Enforcement	The City shall continue to encourage the rehabilitation of substandard residential properties by homeowners and landlords, using the Code Enforcement program when necessary, to improve overall housing quality and conditions in the city.	As complaints are received	The City continues to use code enforcement to encourage the rehabilitation of substandard residential properties. In calendar year 2015, 368 code enforcement cases were closed.
HE-D.d Secure Buildings to Reduce Crime	The City shall continue programs that work with property owners in areas affected by poor building design and disproportionately high levels of criminal activity to add security devices, secure property boundaries, and redesign building elements to reduce crime problems.	Ongoing	Ongoing

Exhibit A

ANNUAL ELEMENT PROGRESS REPORT *Housing Element Implementation* (CCR Title 25 §6202)

Jurisdiction Union City
Reporting Period 1/1/2015 - 12/31/2015

HE-E.a Support Fair Housing Counseling Services	The City shall continue to provide funds and support for ECHO Housing in the operation of its fair-housing counseling services. The City shall continue to coordinate with ECHO in working with rental housing owners and tenants to ensure understanding and compliance with fair-housing laws. The City shall continue to refer housing complaints to ECHO.	Ongoing	The City continues to provide CDBG funding to ECHO Housing. In FY 2014-2015 (July to June), ECHO Housing provided fair housing services to 13 households and tenant/landlord services to 90 households. Additionally, from July 2015 to December 2015, ECHO Housing provided fair housing services to 4 households and tenant/landlord services to 41 households.
HE-E.b Distribute Fair Housing Information	The City shall obtain information on fair housing laws from the Department of Housing and Community Development and State Fair Employment and Housing Commission's enforcement programs and make it available to the public.	Ongoing	Information on fair housing laws and programs is regularly updated and posted on the City's website and is made available at City Hall and community centers.
HE-F.a Housing for Large Families	Through ongoing discussions with for-profit and nonprofit developers and local realtors, the City shall monitor the needs of large families in obtaining appropriately-sized rental housing. If a need is identified, the City shall work with developers to encourage the inclusion of 3- and 4-bedroom units in new multifamily developments.	Ongoing	The City continues to have discussions with developers regarding housing for large families as projects arise. In 2015, the issued building permits for 5 three-bedroom units and 40 four-bedroom units.
HE-F.b Partnerships to Address Homeless Needs	The City shall continue to participate with the appropriate homeless agencies in its efforts to address the needs of Union City residents in need of emergency shelter or temporary housing.	Ongoing	The City continues to fund Abode Services, the homeless shelter provider in the area. The City also continues to coordinate with organizations providing homeless services, other jurisdictions, and EveryOne Home to address homelessness in Union City.

ANNUAL ELEMENT PROGRESS REPORT

Housing Element Implementation

(CCR Title 25 §6202)

Jurisdiction Union City

Reporting Period 1/1/2015 - 12/31/2015

HE-F.c Affordable Senior Housing	As appropriate, the City shall continue to partner with the Housing Authority and non-profit developers to build affordable senior housing on targeted sites within proximity to amenities and key services for seniors.	As appropriate	As appropriate, the City shall continue to partner with the Housing Authority and non-profit developers to build affordable senior housing.
HE-F.d Reasonable Accommodation	The City shall create a public information flyer on reasonable accommodation for disabled persons and provide that information on the City's website.	Year 2016	The City is in the process of creating a flyer on reasonable accommodation and will post it on the City's website when it is completed.
HE-F.e Development of Housing for Persons with Disabilities	Where practical and feasible, the City shall support applications for County, State, and Federal funding for the construction and rehabilitation of supportive housing for persons with disabilities, including developmental disabilities.	Support applications as opportunities arise	The City will continue to support applications as they arise
HE-F.h Coordinate with the Regional Center of the East Bay	The City shall work with the Regional Center of the East Bay to implement an outreach program informing residents of the housing and services available for persons with developmental disabilities.	Initiate contact in 2015-16	The City has reached out to the Regional Center of the East Bay for outreach and marketing materials that will be made available at City Hall and other community facilities.
HE-G.a Promote Weatherization Programs	The City shall continue to post and distribute information on currently available weatherization programs.	Ongoing	Information on weatherization programs is regularly updated and posted on the City's website and is made available at City Hall and community centers.

Exhibit A

ANNUAL ELEMENT PROGRESS REPORT *Housing Element Implementation* (CCR Title 25 §6202)

Jurisdiction Union City
Reporting Period 1/1/2015 - 12/31/2015

HE-G.b Encourage Energy Efficient Appliance Upgrades	The City shall collaborate with PG&E, Alameda County Water District, and non-profit organizations to promote existing financial incentive programs to encourage voluntary replacement of inefficient appliances with new Energy Star appliances. The City shall leverage the Energy Upgrade California platform to promote Energy Star appliances and electronics.	Ongoing	Ongoing - the City promotes the Energy Upgrade program through its website, permit center, periodic workshops, and direct mail.
HE-G.c Energy Upgrade California	The City shall support regional efforts to implement Energy Upgrade California program for residential property owners. The City shall leverage Energy Upgrade California outreach and educational materials to encourage energy efficiency retrofits and the use of energy efficient, low-carbon, or renewable technologies.	Ongoing	Ongoing - the City promotes the Energy Upgrade program through its website, permit center, periodic workshops, and direct mail.
HE-G.d Solar Panel Program	The City shall continue working on a comprehensive solar PV program that provides outreach, financing, and other forms of assistance to homeowners.	Ongoing	Ongoing - the City is continuing to work on a comprehensive solar PV program and passed legislation in September 2015 approving six PACE (Property Assessed Clean Energy) providers to operate in Union City, creating a financing option for solar PV.
HE-G.e Solar Hot Water Heater Program.	The City shall develop a program to facilitate the installation of solar hot water heaters in homes.	Year 2018	This will be completed by 2018
HE-H.a Staff Coordination	City staff members involved in the implementation of Housing Element programs shall meet biannually to review progress in addressing housing issues, especially issues relating to affordable housing.	Biannually	In practice, staff coordinates more frequently in an on-going basis.

Exhibit A

ANNUAL ELEMENT PROGRESS REPORT *Housing Element Implementation* (CCR Title 25 §6202)

Jurisdiction Union City
Reporting Period 1/1/2015 - 12/31/2015

HE-H.b Annual Progress Report	The City shall review and report annually on the implementation of Housing Element programs and the City's effectiveness in meeting the program objectives for the prior calendar year.	Annually	Ongoing
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General Comments:

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Agenda Item

DATE: 3/22/2016

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JOAN MALLOY, ECONOMIC & COMMUNITY DEVELOPMENT DIRECTOR

SUBJECT: PUBLIC HEARING (PUBLISHED NOTICE) TO INTRODUCE AN ORDINANCE FOR MUNICIPAL CODE AMENDMENT, AT-16-001, TO AMEND CHAPTER 18.33, AFFORDABLE HOUSING ORDINANCE, TO AMEND THE DENSITY BONUS PROVISION TO COMPLY WITH REQUIREMENTS LISTED IN STATE LAW AND THE CITY'S CURRENT HOUSING ELEMENT AND TO AMEND THE CONTRACTUALLY BINDING ALTERNATIVE MEANS OF COMPLIANCE PROVISION TO PROVIDE GREATER FLEXIBILITY TO GENERATE FUNDS TO SUPPORT AFFORDABLE HOUSING DEVELOPMENT

The City of Union City is proposing to modify Title 18, *Zoning*, of the Municipal Code to amend Chapter 18.33, *Affordable Housing Ordinance*, to:

- Comply with State law and the City's current Housing Element; and
- Provide greater flexibility to generate funds to support affordable housing development.

The Planning Commission reviewed Zoning Text Amendment, AT-16-001, at its March 3, 2016 meeting and recommended approval on a 5-0 vote. A copy of the Planning Commission staff report, draft minutes, draft resolution, and desk items are attached to this staff report (Attachments 2-5).

BACKGROUND

The City's current Housing Element (2015-2023) identifies implementation programs that the City must take to in order to meet the goals identified in the Housing Element. More specifically, implementation program HE-B.c - Update Density Bonus Ordinance states that the City will update the density bonus provisions of the Affordable Housing Ordinance (the "Ordinance") in 2016 in order to comply with current State law.

Additionally, at the January 26, 2016 City Council meeting, the City Council received an update on the Ordinance and engaged in a discussion regarding the goals of the Ordinance and the City's affordable housing priorities. As a result of this discussion, the City Council directed staff to amend the Ordinance to provide greater flexibility for the City to generate funds to support affordable rental housing projects. Below is a summary of the information that was presented to City Council and the direction that was provided. The January 26, 2016 City Council Staff Report is included as Attachment 2 of the Planning Commission Staff Report (March 3, 2016).

Affordable Housing and Homelessness Issues

Home prices and rents have been increasing significantly over the last few years, which has resulted in the displacement of more families and highlighted the need for more affordable housing. More specifically, as reported by Kids' Zone, there has been a significant increase in the number of homeless families within Union City. Adding to the affordable housing problem is the dissolution of the City's Redevelopment Agency (RDA) in 2011, which was the City's primary funding source for affordable housing. The City relied heavily on RDA Housing Funds to construct affordable rental housing in partnership with non-profit developers for all levels of low-income residents. Given the City's limited resources, the City Council was asked to prioritize the types of affordable housing the City should focus on supporting. The City Council indicated that the first priority is affordable rental housing and the second priority is affordable ownership housing.

Affordable Housing Ordinance

The Ordinance requires residential development projects to set aside fifteen percent (15%) of the total units as affordable units. More specifically, the Ordinance requires ownership developments to provide affordable units for moderate income households and rental developments to provide affordable units for very-low and low income household. However, in 2009, multiple court cases eliminated the ability of California cities to require affordable housing be incorporated into rental housing developments. Therefore, the City cannot enforce the Ordinance on rental developments. These court rulings, coupled with the loss of RDA funding, has stopped the City from being able to create affordable rental housing for extremely-low to low income households, which are the most vulnerable households.

Affordable Housing Nexus Study

With the limited resources at hand, the City is seeking new ways to generate funding for affordable housing, especially affordable rental housing. Recently, the City joined a multi-jurisdictional, affordable housing nexus study. The nexus study will serve as the legal justification for an affordable housing impact fee on commercial and residential developments. The study is estimated to be completed by fall 2016, at which time the City Council will decide whether to enact an affordable housing impact fee on commercial and/or residential developments. More specifically, the City will be able to enact this fee on rental housing developments, which are no longer subject to the Affordable Housing Ordinance.

Ordinance Amendment

The affordable housing nexus study will provide the City with a new funding opportunity however it won't be completed until fall 2016 and there are residential developments in the pipeline that will be seeking entitlement approvals before the fall. In order to generate funds from the projects in the pipeline, staff suggested that the City Council, as an interim solution, amend the Ordinance to make the payment of an in-lieu fee a more attractive alternative for developers. Currently, the Ordinance has an optional in-lieu fee provision however it is structured so that it is more expensive to pay the fee than provide actual affordable units. This was done purposefully as the original goal of the Ordinance was to construct affordable units.

Staff presented several alternatives for how the Ordinance could be modified and recommended that the Council consider a profit sharing model. The profit sharing model allows for all of the affordable units, or a portion of the affordable units, that would have been built to be sold at market rate. The City would then split the profits from those units with the developer. The profit sharing model would also establish a minimum fee per affordable unit that would have been built. The City Council agreed with staff that the Ordinance should be modified to accommodate alternative methods to meet the intent of the Ordinance, and directed staff to amend the Ordinance to allow for more flexibility in its application, which could include a profit sharing agreement.

City Council Direction

In summary the City Council provided the following direction to staff:

- The City Council's first priority is to support affordable rental housing for extremely-low to low income households and its second priority is affordable ownership housing for moderate income households.
- With the loss of RDA and the inability to enforce the Ordinance on rental developments, the City has limited resources to create affordable rental housing. In order to generate funds to support affordable rental housing, the City Council directed staff to amend the Ordinance to allow for more flexibility in its application, which could include a profit sharing agreement.

DISCUSSION

Proposed Zoning Test Amendments

The proposed amendments affect Chapter 18.33, *Affordable Housing Ordinance*, of the Municipal Code and are included in Exhibit A to the attached draft Ordinance and in redline format in Exhibit B. Specifically, the proposed amendments would amend the density bonus and contractually binding alternative means of compliance provisions of the Ordinance.

Density Bonus

In order to comply with State law, the Density Bonus Provision, Section 18.33.060(A), will be amended to allow units that are required to be affordable, per the Ordinance, to be counted towards a density bonus. Additionally, the current language regarding density bonus eligibility is not compliant with State law. Therefore, staff recommends removing this language and revising the provision to reference the State law that permits density bonuses.

Contractually Binding Alternative Means of Compliance

The Contractually Binding Alternative Means of Compliance Provision ("Alternative Provision"), 18.33.060(H), will be amended to provide greater flexibility for the City to negotiate profit sharing agreements and/or other alternative compliance agreements with developers. Currently, the Alternative Provision gives the City Council discretion to allow developers to implement an alternative affordable housing program instead of complying with the provisions of the Ordinance. However, the current provision requires the alternative affordable housing program to provide an equal to or greater than level of affordable housing. This requirement is very stringent and doesn't give the City (or the developer) flexibility. Therefore, staff is recommending that section (18.33.060(H)(2)) be revised to state the following:

"The City Council finds that such alternative affordable housing program meets the purpose of this chapter. The City Council, at its discretion, may require that the alternative affordable housing program include the payment of an in-lieu fee, the provision of affordable units, or a combination thereof."

During the January 26th meeting, the City Council expressed a desire to have a balance between generating funds and producing affordable ownership housing. The revision listed above addresses the City Council's request by giving the City Council the discretion to negotiate with developers for an in-lieu fee (including profit sharing) and/or affordable units.

Additionally, staff is recommending that a minimum fee be established for alternative affordable housing programs that include the payment of an in-lieu fee. The proposed minimum fee is \$160,000 per each affordable unit that would have been required to be built including fractional units. This minimum fee amount is recommended as it is consistent with the Ordinance's existing small project (6 units or less) in-lieu fee provision and would provide equal treatment of small projects and large projects (7 units or more). Furthermore, the recommended minimum fee establishes a good balance between providing an attractive alternative for developers while ensuring the City is receiving an adequate in-lieu fee. Finally, the proposed amendment includes revising the definition of "affordable housing program" to correspond with the revisions listed above.

Planning Commission Review

The Planning Commission reviewed the proposed text amendments at its March 3, 2016 meeting. The Planning Commission received two public comments from Dennis Martin of Bay Area Building Industry Association (BIA) and Vince Fletcher of DR Horton. In summary, both commenters requested that the Planning Commission consider lowering the proposed minimum fee of \$160,000 per affordable unit, stating that the minimum fee should be adjusted based on development type (single family vs. multifamily) and that the minimum fee was too high for multifamily developments. Two desk items were also provided to the Planning Commission during the meeting and are included as Attachment 5. The first desk item was an updated Planning Commission resolution, and the second desk item was correspondence from Lisa Vorderbrueggen of the Bay Area Building Industry Association (BIA). The Planning Commission recommended approval by a 5-0 vote with no modifications to the proposed amendment wording. For additional information, a copy of the Planning Commission staff report, draft meeting minutes, and draft resolution are attached to this staff report and labeled Attachments 2, 3, and 4 respectively.

FISCAL IMPACT

There are no immediate fiscal impacts from the adoption of the proposed text amendment. However, the proposed text amendment does give the City Council greater flexibility to negotiate with developers for the payment of an in-lieu fee. Any in-lieu fees generated from the Ordinance would go into the City's Housing In-Lieu Fund and would be used on future affordable housing projects. There are no fiscal impacts to the General Fund from adoption of the proposed text amendment.

RECOMMENDATION

Staff recommends that the City Council introduce the attached Ordinance to approve Zoning Text Amendment, AT-16-001, to amend Chapter 18.33, *Affordable Housing Ordinance*, in order to comply with State law and the City's current Housing Element and provide greater flexibility to generate funds to support affordable housing development. If the Ordinance is introduced at the March 22, 2016 meeting, the second reading would occur on April 12, 2016.

Prepared by:

Alin Lancaster, Housing & Community Development Coordinator

Submitted by:

Joan Malloy, Economic & Community Development Director

ATTACHMENTS:

Description	Type
▣ Attachment 1 - CC Ordinance # -16, AT-16-001 Affordable Housing Ordinance - Zoning Text Amendment	Ordinance
▣ Exhibit A to CC Ordinance # -16, AT-16-001- Clean Version	Exhibit
▣ Exhibit B to CC Ordinance # -16, AT-16-001 - Redline Version	Exhibit
▣ Attachment 2 - Planning Commission Staff Report	Attachment
▣ Attachment 3 - Draft Planning Commission Minutes	Attachment
▣ Attachment 4 - Draft Planning Commission Resolution	Attachment
▣ Attachment 5 - Planning Commission Desk Item	Attachment

ORDINANCE NO. XX-16

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UNION CITY TO AMEND CHAPTER 18.33, AFFORDABLE HOUSING ORDINANCE, OF THE MUNICIPAL CODE, TO AMEND THE DENSITY BONUS PROVISION TO COMPLY WITH REQUIREMENTS LISTED IN STATE LAW AND THE CITY'S CURRENT HOUSING ELEMENT AND TO AMEND THE CONTRACTUALLY BINDING ALTERNATIVE MEANS OF COMPLIANCE PROVISION TO PROVIDE GREATER FLEXIBILITY TO GENERATE FUNDS TO SUPPORT AFFORDABLE HOUSING DEVELOPMENT

GENERAL RECITALS

WHEREAS, the California Constitution, Article XI, Section 7, provides cities and counties with the authority to enact ordinances to protect the health, safety, welfare, and morals of their citizens; and

WHEREAS, the City of Union City is proposing Municipal Code Amendment, AT-16-001, to amend provisions listed in Chapter 18.33 (the "Affordable Housing Ordinance") to amend the density bonus provision to comply with requirements listed in State law and the City's current Housing Element and to amend the contractually binding alternative means of compliance provision to provide greater flexibility to generate funds to support affordable housing development; and

WHEREAS, the City's current Housing Element provides that the City will update the density bonus provision of the Affordable Housing Ordinance in 2016 to comply with State law requirements; and

WHEREAS, the existing density bonus provision of the Affordable Housing Ordinance is not compliant with State law requirements; and

WHEREAS, the City desires to amend the density bonus provision of the Affordable Housing Ordinance to allow units that are required to be affordable pursuant to the Affordable Housing Ordinance to be considered restricted affordable units for the purposes of determining whether a housing development qualifies for a density bonus and to reference State law requirements for density bonus eligibility; and

WHEREAS, the California Supreme Court has affirmed the power of a city to enact a broad inclusionary housing ordinance to increase the amount of affordable housing provided that the ordinance is reasonably related to the broad general welfare purposes of the ordinance in California Bldg. Industry Assn. v. City of San Jose (2015) 61 Cal.4th 435; and

WHEREAS, the City's Redevelopment Agency dissolved in 2011 pursuant to State law; and

WHEREAS, the City relied upon Redevelopment Agency Housing Funds to construct affordable rental housing; and

WHEREAS, the Affordable Housing Ordinance requires ownership developments to provide affordable units for moderate income households; and

WHEREAS, the Affordable Housing Ordinance also requires rental developments to provide affordable units for very-low and low income households. However, this provision is unenforceable pursuant to the California Court of Appeal decision in Palmer/Sixth Street Properties, LP v. City of Los Angeles (2009) 175 Cal.App.4th 1396; and

WHEREAS, the dissolution of the City's Redevelopment Agency and recent California case law has limited the City's ability to provide affordable housing for very-low and low income households; and

WHEREAS, the City desires to amend the Affordable Housing Ordinance to provide more flexibility and City discretion to accept a contractually binding alternative means of compliance; and

WHEREAS, the amendments to the Municipal Code propose to amend Chapter 18.33.060 as shown in Exhibit A and in red-lined version in Exhibit B for reference, which exhibits are attached and incorporated herein by reference.

PLANNING COMMISSION REVIEW

WHEREAS, the Planning Commission held a duly noticed public hearing on the proposed Zoning Code Amendments on March 3, 2016 at which time all interested parties had the opportunity to be heard. The Planning Commission considered a staff report and all written and oral testimony and voted 5-0 to adopt a resolution recommending approval of the proposed amendments to amend the Affordable Housing Ordinance to update the density bonus provision to comply with State law and City Housing Element requirements and to provide greater flexibility to generate funds to support affordable housing development; and

CITY COUNCIL REVIEW

WHEREAS, the City Council held a duly noticed public hearing on the proposed amendments to amend the Affordable Housing Ordinance to update the density bonus provision to comply with State law and City Housing Element requirements and to provide greater flexibility to generate funds to support affordable housing development on March 22, 2016, at which time all interested parties had the opportunity to be heard. The City Council considered a staff report dated March 22, 2016 and incorporated herein by reference, the Planning Commission recommendation, and all written and oral testimony before taking action on the amendments; and

WHEREAS, the amendments to the Municipal Code propose to amend Chapter 18.33.060, as shown in Exhibit A and in red-lined version in Exhibit B for reference, which exhibits are attached and incorporated herein by reference.

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

SECTION 1. Recitals. The above recitals are true and correct and made a part of this ordinance.

SECTION 2. CEQA. Approval of the amendments is exempt from further environmental review under the general rule in California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) that CEQA only applies to projects that have the potential for causing a significant effect on the environment. As a series of text amendments and additions, it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment.

SECTION 3. Findings. The City Council makes the following findings in support of approving this ordinance, based on the whole of the record before it.

1. The City has a substantial interest in amending the Zoning Ordinance to comply with State law and the City's current Housing Element and to provide greater flexibility to generate funds to support affordable housing development.
2. The amendments are consistent with the General Plan and any applicable specific plans and are necessary and desirable to achieve the purposes of Title 18, Zoning.

SECTION 4. Approval. The City Council hereby approves the amendments to the Municipal Code, more particularly, amending Chapter 18.33.060, as shown in attached Exhibit A, which is incorporated herein by reference and available for review in the City Clerk's office. For reference purposes, a red-lined copy of the amendments is shown in attached Exhibit B, which is incorporated herein by reference and available for review in the City Clerk's office.

SECTION 5. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION 6. Publication and effective date. Within fifteen (15) days from and after adoption, this ordinance shall be published once in the Tri-City Voice, a newspaper of general circulation printed and published in Alameda County and circulated in the City of Union City, in accordance with California Government Code Section 36933. This ordinance shall take effect and be enforced thirty (30) days after its adoption.

2621865.1

Exhibit A

Chapter 18.33 AFFORDABLE HOUSING

18.33.010 Purpose.

The purpose of this chapter is to:

- A. Enhance the public welfare by ensuring that future residential developments contribute to the attainment of the affordable housing goals set forth in the Housing Element of the General Plan of the City of Union City.
- B. Increase the production of residential units in Union City that are affordable to households of very low, low, and moderate income.
- C. Facilitate a cooperative effort between the City of Union City and the housing development community for the provision of affordable housing to all economic segments of the community.
- D. Ensure that units affordable to households of very low, low and moderate income are distributed throughout the City's various neighborhoods.
- E. Comply with the requirements of Health and Safety Code Section 33341.3(b) within the redevelopment project area and elsewhere in the community as applicable.

18.33.020 Definitions.

As used in this chapter, each of the following terms is defined as follows:

- A. "Affordable housing program" means a method for providing the affordable housing units in the proposed project, a method for a payment in-lieu of providing affordable units, or a combination thereof, pursuant to Section 18.33.060(H).
- B. "Affordable unit" means an ownership or rental housing unit, including senior housing, affordable by households with very low, low or moderate incomes as defined in this chapter. The unit shall be deemed affordable if it meets the requirements of Health and Safety Code Section 50052.5(b) for owner occupied housing and Section 50053(b) for rental housing.
- C. "Applicant" means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which seeks city real property development permits or approvals.
- D. "Dwelling unit" means a dwelling designed and intended for occupancy by one (1) household.
- E. "Housing costs" means the monthly mortgage principal and interest, property taxes, homeowners' insurance, utility allowance and condominium fees, where applicable, for ownership units; and the monthly rent and utility allowance for rental units.
- F. "HUD" means the United States Department of Housing and Urban Development or its successor.
- G. "Very low, low and moderate income levels" means those income and eligibility levels determined periodically by the United States Department of Housing and Urban

Development based on the Oakland Standard Metropolitan Statistical Area (SMSA) median income levels by family size. Such levels shall be calculated on the basis of gross annual household income considering household size and number of dependents, income of all wage earners, elderly or disabled family members and all other sources of household income and will be recertified as set forth by local standards, State and Federal housing law.

1. “Very low income” means fifty percent (50%) or under of the SMSA median, adjusted for actual household size.
2. “Low income” means fifty-one (51%) to eighty percent (80%) of the SMSA median, adjusted for actual household size.
3. “Moderate income” means eighty-one (81%) to one hundred twenty percent (120%) of the SMSA median, adjusted for actual household size.

H. “Resale controls and/or rent restrictions” means legal restrictions, as set forth by the City of Union City, State and Federal law, by which the affordable units shall be restricted to ensure that the unit remains affordable to very low, low or moderate income households, as applicable, permanently or for the longest period allowed by law and in any event until at least March 26, 2033. Such resale controls and/or rental restrictions shall generally be consistent with the requirements of Health and Safety Code Section 33334.3(f)(2). 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.

I. “Residential development” includes, without limitation, detached single-family dwellings, multiple dwelling structures, groups of dwellings, condominium or townhouse developments, condominium conversions, cooperative developments, mixed use developments that include housing units, and residential land subdivisions intended to be sold to the general public.

J. “Residential project” includes contiguous or non-contiguous parcels that have one (1) or more applications filed within a twenty-four (24) month period and which are under the same ownership.

18.33.030 General requirements.

A. Fifteen Percent (15%) Requirement. All residential development projects designed and intended for permanent occupancy located in any zoning district, for which an application for any use permit, site development permit or subdivision map is filed after the effective date of the ordinance codified in this chapter, shall maintain fifteen percent (15%) of the total number of dwelling units or parcels within the development as affordable units, according to the terms of this chapter. The foregoing requirement shall be applied no more than once to an approved development, regardless of changes in the character or ownership of the development, provided the total number of units does not change. In projects located outside of the redevelopment project area where the calculation of the inclusionary

requirement results in a fraction of a unit, such a fraction shall be paid in the form of an in-lieu fee, as set forth in Section 18.33.060(B) (Affordable Unit In-Lieu Fees). When the project is developed inside the redevelopment project area, all fractional numbers of units required (including numbers below 0.5) shall be rounded up to the next whole number and that resulting affordable unit shall be provided as set forth in this chapter. The City reserves the right, solely at the City's discretion, to negotiate with the project developer to adjust the required affordability levels of a particular project on a case-by-case basis if it is deemed necessary and appropriate by the City to maximize the best suited development for a site.

B. Affordability Levels. Affordable units provided pursuant to the fifteen percent (15%) requirement of subsection A of this section shall be made affordable to households with very low, low and moderate income pursuant to the minimum distributions included in the following table:

Income Level	Rental Units Distribution of Affordable Units Required to Be Built	Owner Units Distribution of Affordable Units Required to Be Built
Very Low Income	30%	Not Applicable
Low Income	70%	10%
Moderate Income—81 to 100%	Not Applicable	30%
Moderate Income—101 to 120%	Not Applicable	60%

For projects with seven (7) or more rental units, the application of the minimum distributions will be as set forth in the following table:

Total Number of Affordable Rental Units to Be Built	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Very Low Income Units	—	1	1	1	2	2	3	3	3	3	4	4	4	5	5
Low Income Units	1	1	2	3	3	4	4	5	6	7	7	8	9	9	10

For projects with seven (7) or more owner units, the application of the minimum distributions will be as set forth in the following table:

Total Number of Affordable Owner Units to Be Built	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Low Income Units	–	–	–	1	1	1	1	1	1	1	2	2	2	2	2
Moderate Income Units (81—100%)	–	1	1	1	2	2	2	3	3	3	3	4	4	5	5
Moderate Income Units (101—120%)	1	1	2	2	2	3	4	4	5	6	6	6	7	7	8

For larger projects that exceed fifteen (15) required units to be built, the columns can be added to equal the total number, and the corresponding required units shall be built.

C. Conditions of Approval. Any tentative map, use permit or site development permit approving residential construction projects meeting the foregoing criteria shall contain conditions sufficient to ensure compliance with the provisions of this chapter. Such conditions shall specify the schedule of construction of affordable units, the number of affordable units, and appropriate resale controls and rental restrictions.

D. Concurrent Construction. All affordable units in a project or phase of a project shall be constructed concurrently with nonaffordable units.

E. Design and Distribution of Affordable Units. Unless the City, at its sole discretion, and in cooperation with the Developer, an alternate development plan for the affordable units is developed, all affordable units shall reflect the range of numbers of bedrooms provided in the project as a whole, and shall not be distinguished by exterior design, construction, or materials, and shall be reasonably dispersed throughout the project.

F. Single-Family Housing Projects with Corner Lot Duplexes. When affordable housing units are required in single-family developments, duplexes may be built on corner lots in the development. If a single-family residential development does include corner lot duplexes, no more than fifty percent (50%) of the affordable housing requirement for that project can be satisfied with the use of duplex units and no more than fifty percent (50%) of the total duplex units built can be affordable units. The remaining fifty percent (50%) of the affordable housing requirement for that project shall be provided in the single-family product as set forth in this chapter. Duplexes shall meet the setback standards of the zoning district in which they are located. Exceptions to the setback standards may be granted by approval of a Use Permit. The City may also consider other alternative affordable options, as set forth in Section 18.33.060(e).

18.33.040 General procedures.

- A. Agreements. Prior to the issuance of a certificate of occupancy, resale restrictions and/or rental controls, as applicable, all of which must be acceptable to the Director and be consistent with the requirements of this chapter, shall be recorded against parcels having affordable units and shall be effective for the life of the project.
- B. Right of First Refusal. The resale restrictions shall provide that in the event of the sale of an affordable unit, the City shall have the right to purchase any affordable owner-occupancy unit at the maximum prices which could be charged to an eligible household.
- C. Selection Criteria. No household shall be permitted to occupy a unit which is required to be affordable under this chapter unless the City or its designee has approved the household's eligibility. Eligible potential occupants of affordable units will be qualified on the basis of household income, the median combined household income statistics published periodically by HUD, all sources of household income and assets, a relationship between household size and the size of available units, and any further criteria required by law. The developer shall use an equitable selection method established in conformance with the terms of this chapter. No distinction will be made between adults and children. All persons in each of the following categories of otherwise qualified persons shall be selected before persons from the next succeeding category are selected:
 - 1. First priority: Persons who have been displaced by the proposed project;
 - 2. Second priority: Persons who live or work within the City of Union City;
 - 3. Third priority: Persons who have immediate family living in the City of Union City;
 - 4. Fourth priority: All other eligible persons.

18.33.050 Public subsidy assistance.

It is the intent of this chapter that its requirements of construction and maintenance of affordable units shall not depend upon the availability of any government subsidies. This is not to preclude the use of such programs or subsidies where available, however, and it is anticipated that subsidies of rental units may be available from HUD or State sources on an ongoing basis.

18.33.060 Development options.

This chapter is not intended to place any unreasonable burden upon developers of residential projects, and for that reason confers significant economic and land use benefits thereon, as set forth below:

- A. Density Bonus. The limitations upon residential density contained in Chapter 18.32 of this Code shall be deemed modified to the extent required by the terms of this chapter. The

city, upon request, may approve an increase in the number of units permitted in a proposed residential development governed by this chapter, when such an increase in density is consistent with State density bonus law per Section 65915 of the State Government Code. The dwelling units or parcels designated to meet the City's mandatory inclusionary housing requirement shall count toward qualifying the proposed development for a density bonus.

B. Small Project In-Lieu Fees. The Director, upon request by the developer, may waive the requirements to provide affordable units pursuant to Section 18.33.030 (general requirements) in exchange for the payment of an affordable unit in-lieu fee; provided, that the proposed development is six (6) units or less. The developer may also have the option to pay the small project in-lieu fee where the calculation of the inclusionary requirement results in the fraction of a unit as set forth in Section 18.33.030(A). If fees are permitted to be paid in-lieu of providing affordable units, the fees shall be paid prior to issuance of the first building permit for the project, or secured at that time by an approved letter of credit or bond. The small project in-lieu fee shall be initially set at one hundred sixty thousand dollars (\$160,000.00) per each affordable unit that would have been required to be built for the entire project. This amount shall be multiplied by the fractional amount of the unit required to determine the actual fee to be paid by the developer. The small project in-lieu fee amount may be amended from time to time by the City Council by resolution, to meet inflationary increases, and the amount shall be set forth in the City's Master Fee Schedule. Any small project in-lieu fees collected from any project will be committed to an affordable housing project within five (5) years of being collected.

C. Optional In-Lieu Fee. The City, solely at its discretion, may waive the requirements to provide affordable owner units pursuant to Section 18.33.030 (general requirements) in exchange for the payment of an optional in-lieu fee for any or all required units. If fees are permitted to be paid in-lieu of providing affordable units, the fee shall be paid prior to the issuance of the first building permit for the project, or secured at that time by an approved letter of credit or bond. The optional in-lieu fee shall be initially set at one hundred eighty dollars (\$180.00) per square foot of the affordable units that would have been required to be built for the entire project, pursuant to this chapter. The City shall utilize the square footage of the units that are required to be built, in the range of bedrooms, sizes and product styles that would be required to satisfy the requirements of Section 18.33.030 (general requirements). The optional in-lieu fee amount may be amended from time to time by the City Council by resolution, to meet inflationary increases, and the amount shall be set forth in the City's Master Fee Schedule. Any optional in-lieu fees collected from any project will be committed to an affordable housing project within five (5) years from being collected.

D. Waiver of Requirements. The City Council, at its discretion, may waive the requirements of this chapter if there are unusual development costs associated with the property that

would otherwise prevent the project from proceeding. Typically, such a condition would involve excessive costs inherent on the property, such as environmental contamination.

E. Off-Site and Alternative Construction Options. Where affordable units are required by Section 18.33.030, the City may instead, at its sole discretion, consider the construction of units not physically contiguous to the development (off-site) or alternative on-site affordable housing development options, set forth in a binding agreement as set forth in 18.33.060(H), if the Planning Commission determines that:

1. A schedule for completion of the off-site units concurrently with completion of the related market-rate units is provided and agreed upon as a condition of approval for the project;
2. The off-site or alternative units are at least equal in basic amenities to other units in the project, with extra consideration give for the creation of additional affordable units, larger units or affordability to households with lower incomes; and
3. Off-site or alternative construction options will further affordable housing opportunities in the City to a greater extent than construction of the normally required units as part of the residential project in question;
4. When the original development is located in the redevelopment agency project area and the off-site location is located outside of the redevelopment project area, then two (2) units for every one (1) unit required to be built in the original location shall be developed. It may be determined by the City that working with a non-profit to develop higher density, rental units on or off-site may be a more efficient way to meet affordable needs at that point in time. In all cases, the affordable units must be built prior to or concurrently with the market rate development, unless a development agreement with a non-profit has been approved. The utilization of off-site and alternative housing will be considered relative to the inventory of available sites at that time.

F. Technical and Financial Assistance. Upon request, the City or its designee shall provide assistance to applicants concerning information regarding financial subsidy programs and economic analysis designed to indicate the most suitable methods by which the terms of this chapter may be implemented. To the extent that funds may be available and consistent with applicable Federal and State regulations and policies, affordable unit project applicants may apply to receive Federal community development block grant or City redevelopment funds for purposes of defraying certain off-site improvement costs and other expenses. Such determination of eligibility shall be made by the Director and/or the Redevelopment Agency Manager. The City shall establish application and administration procedures and criteria by which eligible expenditures of such funds and their amounts shall be determined.

G. Priority Processing. All residential developments providing affordable units pursuant to the requirements of this chapter shall receive “priority processing” by which housing developments shall be reviewed and checked for all required City permit and other approvals in advance of other pending developments.

H. Contractually Binding Alternative Means of Compliance. The City Council, in its discretion, may permit an applicant to comply with the purpose of this chapter for a particular residential development project through implementation of an alternative affordable housing program instead of by compliance with the provisions of this chapter if:

1. Such alternative affordable housing program is set forth in a binding agreement, including, but not limited to, a government code development agreement, disposition and development agreement, disposition and development loan agreement, owner participation agreement, or affordable housing agreement with the City of Union City; and
2. The City Council finds that such alternative affordable housing program meets the purpose of this chapter. The City Council, at its discretion, may require that the alternative affordable housing program include the payment of an in-lieu fee, the provision of affordable units, or a combination thereof.
3. Any affordable housing program that includes the payment of an in-lieu fee for any or all required affordable units, shall provide an in-lieu fee of no less than one hundred sixty thousand dollars (\$160,000.00) per each affordable unit that would have been required to be built, including fractional units.

18.33.070 Exemptions.

Residential developments consisting of only one (1) unit will be exempt from the requirements of this chapter; provided, that the unit is an owner-occupied single-family home, constructed by or for the property owner or the property owner’s immediate family members, and the owner or immediate family member lives in the home for a minimum of five (5) years upon its completion.

18.33.080 Enforcement.

A. The provisions of this chapter shall apply to all agents, successors and assignees of an applicant proposing a residential development governed by this chapter. No tentative map, use permit, special development permit or occupancy permit shall be issued for any residential development unless exempt from or in compliance with the terms of this chapter.

B. 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.

18.33.090 Appeals.

A. Any person aggrieved by any action involving denial, suspension or revocation of an occupancy or other permit, or denial, suspension or revocation of any development approval, may appeal such action or determination in the manner provided for appeal of use permits, by Chapter 18.56.

B. Any applicant or other person who contends that his or her rights conferred by this chapter have been adversely affected by any determination or requirement of any agency designated by the City as its administrative agent may notify the chief executive officer of said agency to that effect in writing, stating relevant facts. All such contentions shall be considered exclusively by said agency in accordance with such procedures as they may be established. In instances in which violations of this chapter or any agreement with the City on the part of said agency is alleged, City shall take appropriate investigative and corrective actions.

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Exhibit B

Chapter 18.33 AFFORDABLE HOUSING

18.33.010 Purpose.

The purpose of this chapter is to:

- A. Enhance the public welfare by ensuring that future residential developments contribute to the attainment of the affordable housing goals set forth in the Housing Element of the General Plan of the City of Union City.
- B. Increase the production of residential units in Union City that are affordable to households of very low, low, and moderate income.
- C. Facilitate a cooperative effort between the City of Union City and the housing development community for the provision of affordable housing to all economic segments of the community.
- D. Ensure that units affordable to households of very low, low and moderate income are distributed throughout the City's various neighborhoods.
- E. Comply with the requirements of Health and Safety Code Section 33341.3(b) within the redevelopment project area and elsewhere in the community as applicable.

18.33.020 Definitions.

As used in this chapter, each of the following terms is defined as follows:

- A. "Affordable housing program" means a method for providing the affordable housing units in the proposed project, ~~a method for a payment in-lieu of providing affordable units, or a combination thereof, as defined herein.~~ pursuant to Section 18.33.060(H).
- B. "Affordable unit" means an ownership or rental housing unit, including senior housing, affordable by households with very low, low or moderate incomes as defined in this chapter. The unit shall be deemed affordable if it meets the requirements of Health and Safety Code Section 50052.5(b) for owner occupied housing and Section 50053(b) for rental housing.
- C. "Applicant" means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which seeks city real property development permits or approvals.
- D. "Dwelling unit" means a dwelling designed and intended for occupancy by one (1) household.
- E. "Housing costs" means the monthly mortgage principal and interest, property taxes, homeowners' insurance, utility allowance and condominium fees, where applicable, for ownership units; and the monthly rent and utility allowance for rental units.
- F. "HUD" means the United States Department of Housing and Urban Development or its successor.
- G. ~~"Level of affordable housing" means the total number of affordable units and the distribution of those affordable housing units in the income ranges provided herein.~~

GH. “Very low, low and moderate income levels” means those income and eligibility levels determined periodically by the United States Department of Housing and Urban Development based on the Oakland Standard Metropolitan Statistical Area (SMSA) median income levels by family size. Such levels shall be calculated on the basis of gross annual household income considering household size and number of dependents, income of all wage earners, elderly or disabled family members and all other sources of household income and will be recertified as set forth by local standards, State and Federal housing law.

1. “Very low income” means fifty percent (50%) or under of the SMSA median, adjusted for actual household size.
2. “Low income” means fifty-one (51%) to eighty percent (80%) of the SMSA median, adjusted for actual household size.
3. “Moderate income” means eighty-one (81%) to one hundred twenty percent (120%) of the SMSA median, adjusted for actual household size.

HI. “Resale controls and/or rent restrictions” means legal restrictions, as set forth by the City of Union City, State and Federal law, by which the affordable units shall be restricted to ensure that the unit remains affordable to very low, low or moderate income households, as applicable, permanently or for the longest period allowed by law and in any event until at least March 26, 2033. Such resale controls and/or rental restrictions shall generally be consistent with the requirements of Health and Safety Code Section 33334.3(f)(2). 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.

IJ. “Residential development” includes, without limitation, detached single-family dwellings, multiple dwelling structures, groups of dwellings, condominium or townhouse developments, condominium conversions, cooperative developments, mixed use developments that include housing units, and residential land subdivisions intended to be sold to the general public.

JK. “Residential project” includes contiguous or non-contiguous parcels that have one (1) or more applications filed within a twenty-four (24) month period and which are under the same ownership.

18.33.030 General requirements.

A. Fifteen Percent (15%) Requirement. All residential development projects designed and intended for permanent occupancy located in any zoning district, for which an application for any use permit, site development permit or subdivision map is filed after the effective date of the ordinance codified in this chapter, shall maintain fifteen percent (15%) of the total number of dwelling units or parcels within the development as affordable units, according to the terms of this chapter. The foregoing requirement shall be applied no more than once to an approved development, regardless of changes in the character or ownership

of the development, provided the total number of units does not change. In projects located outside of the redevelopment project area where the calculation of the inclusionary requirement results in a fraction of a unit, such a fraction shall be paid in the form of an in-lieu fee, as set forth in Section 18.33.060(B) (Affordable Unit In-Lieu Fees). When the project is developed inside the redevelopment project area, all fractional numbers of units required (including numbers below 0.5) shall be rounded up to the next whole number and that resulting affordable unit shall be provided as set forth in this chapter. The City reserves the right, solely at the City's discretion, to negotiate with the project developer to adjust the required affordability levels of a particular project on a case-by-case basis if it is deemed necessary and appropriate by the City to maximize the best suited development for a site.

B. Affordability Levels. Affordable units provided pursuant to the fifteen percent (15%) requirement of subsection A of this section shall be made affordable to households with very low, low and moderate income pursuant to the minimum distributions included in the following table:

Income Level	Rental Units Distribution of Affordable Units Required to Be Built	Owner Units Distribution of Affordable Units Required to Be Built
Very Low Income	30%	Not Applicable
Low Income	70%	10%
Moderate Income—81 to 100%	Not Applicable	30%
Moderate Income—101 to 120%	Not Applicable	60%

For projects with seven (7) or more rental units, the application of the minimum distributions will be as set forth in the following table:

Total Number of Affordable Rental Units to Be Built	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Very Low Income Units	—	1	1	1	2	2	3	3	3	3	4	4	4	5	5
Low Income Units	1	1	2	3	3	4	4	5	6	7	7	8	9	9	10

For projects with seven (7) or more owner units, the application of the minimum distributions will be as set forth in the following table:

Total Number of Affordable Owner Units to Be Built	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Low Income Units	–	–	–	1	1	1	1	1	1	1	2	2	2	2	2
Moderate Income Units (81—100%)	–	1	1	1	2	2	2	3	3	3	3	4	4	5	5
Moderate Income Units (101—120%)	1	1	2	2	2	3	4	4	5	6	6	6	7	7	8

For larger projects that exceed fifteen (15) required units to be built, the columns can be added to equal the total number, and the corresponding required units shall be built.

C. Conditions of Approval. Any tentative map, use permit or site development permit approving residential construction projects meeting the foregoing criteria shall contain conditions sufficient to ensure compliance with the provisions of this chapter. Such conditions shall specify the schedule of construction of affordable units, the number of affordable units, and appropriate resale controls and rental restrictions.

D. Concurrent Construction. All affordable units in a project or phase of a project shall be constructed concurrently with nonaffordable units.

E. Design and Distribution of Affordable Units. Unless the City, at its sole discretion, and in cooperation with the Developer, an alternate development plan for the affordable units is developed, all affordable units shall reflect the range of numbers of bedrooms provided in the project as a whole, and shall not be distinguished by exterior design, construction, or materials, and shall be reasonably dispersed throughout the project.

F. Single-Family Housing Projects with Corner Lot Duplexes. When affordable housing units are required in single-family developments, duplexes may be built on corner lots in the development. If a single-family residential development does include corner lot duplexes, no more than fifty percent (50%) of the affordable housing requirement for that project can be satisfied with the use of duplex units and no more than fifty percent (50%) of the total duplex units built can be affordable units. The remaining fifty percent (50%) of the affordable housing requirement for that project shall be provided in the single-family product as set forth in this chapter. Duplexes shall meet the setback standards of the zoning district in which they are located. Exceptions to the setback standards may be granted by approval of a Use Permit. The City may also consider other alternative affordable options, as set forth in Section 18.33.060(e).

18.33.040 General procedures.

- A. Agreements. Prior to the issuance of a certificate of occupancy, resale restrictions and/or rental controls, as applicable, all of which must be acceptable to the Director and be consistent with the requirements of this chapter, shall be recorded against parcels having affordable units and shall be effective for the life of the project.
- B. Right of First Refusal. The resale restrictions shall provide that in the event of the sale of an affordable unit, the City shall have the right to purchase any affordable owner-occupancy unit at the maximum prices which could be charged to an eligible household.
- C. Selection Criteria. No household shall be permitted to occupy a unit which is required to be affordable under this chapter unless the City or its designee has approved the household's eligibility. Eligible potential occupants of affordable units will be qualified on the basis of household income, the median combined household income statistics published periodically by HUD, all sources of household income and assets, a relationship between household size and the size of available units, and any further criteria required by law. The developer shall use an equitable selection method established in conformance with the terms of this chapter. No distinction will be made between adults and children. All persons in each of the following categories of otherwise qualified persons shall be selected before persons from the next succeeding category are selected:
 - 1. First priority: Persons who have been displaced by the proposed project;
 - 2. Second priority: Persons who live or work within the City of Union City;
 - 3. Third priority: Persons who have immediate family living in the City of Union City;
 - 4. Fourth priority: All other eligible persons.

18.33.050 Public subsidy assistance.

It is the intent of this chapter that its requirements of construction and maintenance of affordable units shall not depend upon the availability of any government subsidies. This is not to preclude the use of such programs or subsidies where available, however, and it is anticipated that subsidies of rental units may be available from HUD or State sources on an ongoing basis.

18.33.060 Development options.

This chapter is not intended to place any unreasonable burden upon developers of residential projects, and for that reason confers significant economic and land use benefits thereon, as set forth below:

- A. Density Bonus. The limitations upon residential density contained in Chapter 18.32 of this Code shall be deemed modified to the extent required by the terms of this chapter. The city, upon request, may approve an increase in the number of units permitted in a proposed residential development governed by this chapter, when such an increase in density is consistent with State density bonus law per Section 65915 of the State Government Code.

~~The City may provide for either a density bonus of at least twenty five percent (25%) and at least one (1) other concession or incentive or other incentives of equivalent financial value to developers of housing developments that reserve at least twenty percent (20%) of their units for lower income households, ten percent (10%) for very low income households, or fifty percent (50%) for qualifying senior citizens. Developers receiving this density bonus must ensure the continued affordability of all lower income units for a minimum of thirty (30) years.~~ The dwelling units or parcels designated to meet the City's mandatory inclusionary housing requirement shall ~~not~~ count toward qualifying the proposed development for a density bonus.

B. Small Project In-Lieu Fees. The Director, upon request by the developer, may waive the requirements to provide affordable units pursuant to Section 18.33.030 (general requirements) in exchange for the payment of an affordable unit in-lieu fee; provided, that the proposed development is six (6) units or less. The developer may also have the option to pay the small project in-lieu fee where the calculation of the inclusionary requirement results in the fraction of a unit as set forth in Section 18.33.030(A). If fees are permitted to be paid in-lieu of providing affordable units, the fees shall be paid prior to issuance of the first building permit for the project, or secured at that time by an approved letter of credit or bond. The small project in-lieu fee shall be initially set at one hundred sixty thousand dollars (\$160,000.00) per each affordable unit that would have been required to be built for the entire project. This amount shall be multiplied by the fractional amount of the unit required to determine the actual fee to be paid by the developer. The small project in-lieu fee amount may be amended from time to time by the City Council by resolution, to meet inflationary increases, and the amount shall be set forth in the City's Master Fee Schedule. Any small project in-lieu fees collected from any project will be committed to an affordable housing project within five (5) years of being collected.

C. Optional In-Lieu Fee. The City, solely at its discretion, may waive the requirements to provide affordable owner units pursuant to Section 18.33.030 (general requirements) in exchange for the payment of an optional in-lieu fee for any or all required units. If fees are permitted to be paid in-lieu of providing affordable units, the fee shall be paid prior to the issuance of the first building permit for the project, or secured at that time by an approved letter of credit or bond. The optional in-lieu fee shall be initially set at one hundred eighty dollars (\$180.00) per square foot of the affordable units that would have been required to be built for the entire project, pursuant to this chapter. The City shall utilize the square footage of the units that are required to be built, in the range of bedrooms, sizes and product styles that would be required to satisfy the requirements of Section 18.33.030 (general requirements). The optional in-lieu fee amount may be amended from time to time by the City Council by resolution, to meet inflationary increases, and the amount shall be set forth

in the City's Master Fee Schedule. Any optional in-lieu fees collected from any project will be committed to an affordable housing project within five (5) years from being collected.

D. Waiver of Requirements. The City Council, at its discretion, may waive the requirements of this chapter if there are unusual development costs associated with the property that would otherwise prevent the project from proceeding. Typically, such a condition would involve excessive costs inherent on the property, such as environmental contamination.

E. Off-Site and Alternative Construction Options. Where affordable units are required by Section 18.33.030, the City may instead, at its sole discretion, consider the construction of units not physically contiguous to the development (off-site) or alternative on-site affordable housing development options, set forth in a binding agreement as set forth in 18.33.060(H), if the Planning Commission determines that:

1. A schedule for completion of the off-site units concurrently with completion of the related market-rate units is provided and agreed upon as a condition of approval for the project;
2. The off-site or alternative units are at least equal in basic amenities to other units in the project, with extra consideration given for the creation of additional affordable units, larger units or affordability to households with lower incomes; and
3. Off-site or alternative construction options will further affordable housing opportunities in the City to a greater extent than construction of the normally required units as part of the residential project in question;
4. When the original development is located in the redevelopment agency project area and the off-site location is located outside of the redevelopment project area, then two (2) units for every one (1) unit required to be built in the original location shall be developed. It may be determined by the City that working with a non-profit to develop higher density, rental units on or off-site may be a more efficient way to meet affordable needs at that point in time. In all cases, the affordable units must be built prior to or concurrently with the market rate development, unless a development agreement with a non-profit has been approved. The utilization of off-site and alternative housing will be considered relative to the inventory of available sites at that time.

F. Technical and Financial Assistance. Upon request, the City or its designee shall provide assistance to applicants concerning information regarding financial subsidy programs and economic analysis designed to indicate the most suitable methods by which the terms of this chapter may be implemented. To the extent that funds may be available and consistent with applicable Federal and State regulations and policies, affordable unit project applicants may apply to receive Federal community development block grant or City redevelopment funds for purposes of defraying certain off-site improvement costs and other expenses. Such

determination of eligibility shall be made by the Director and/or the Redevelopment Agency Manager. The City shall establish application and administration procedures and criteria by which eligible expenditures of such funds and their amounts shall be determined.

G. Priority Processing. All residential developments providing affordable units pursuant to the requirements of this chapter shall receive “priority processing” by which housing developments shall be reviewed and checked for all required City permit and other approvals in advance of other pending developments.

H. Contractually Binding Alternative Means of Compliance. The City Council, in its discretion, may permit an applicant to comply with the purpose of this chapter for a particular residential development project through implementation of an alternative affordable housing program instead of by compliance with the provisions of this chapter if:

1. Such alternative affordable housing program is set forth in a binding agreement, including, **but not limited to**, a government code development agreement, disposition and development agreement, disposition and development loan agreement, ~~or~~ owner participation agreement, **or affordable housing agreement** with the ~~City and/or the Community Redevelopment Agency of the~~ City of Union City; and
2. The City Council finds that such alternative affordable housing program **meets the purpose of this chapter. The City Council, at its discretion, may require that the alternative affordable housing program include the payment of an in-lieu fee, the provision of affordable units, or a combination thereof. will provide an equal to or greater than level of affordable housing to the community as would be provided through adherence of the applicant to the requirements of this chapter.**
3. Any affordable housing program that includes the payment of an in-lieu fee for any or all required affordable units, shall provide an in-lieu fee of no less than one hundred sixty thousand dollars (\$160,000.00) per each affordable unit that would have been required to be built, including fractional units.

18.33.070 Exemptions.

Residential developments consisting of only one (1) unit will be exempt from the requirements of this chapter; provided, that the unit is an owner-occupied single-family home, constructed by or for the property owner or the property owner’s immediate family members, and the owner or immediate family member lives in the home for a minimum of five (5) years upon its completion.

18.33.080 Enforcement.

A. The provisions of this chapter shall apply to all agents, successors and assignees of an applicant proposing a residential development governed by this chapter. No tentative map,

use permit, special development permit or occupancy permit shall be issued for any residential development unless exempt from or in compliance with the terms of this chapter. B. 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.

18.33.090 Appeals.

A. Any person aggrieved by any action involving denial, suspension or revocation of an occupancy or other permit, or denial, suspension or revocation of any development approval, may appeal such action or determination in the manner provided for appeal of use permits, by Chapter 18.56.

B. Any applicant or other person who contends that his or her rights conferred by this chapter have been adversely affected by any determination or requirement of any agency designated by the City as its administrative agent may notify the chief executive officer of said agency to that effect in writing, stating relevant facts. All such contentions shall be considered exclusively by said agency in accordance with such procedures as they may be established. In instances in which violations of this chapter or any agreement with the City on the part of said agency is alleged, City shall take appropriate investigative and corrective actions.

2613603.1



Agenda Item

DATE: MARCH 3, 2016

TO: PLANNING COMMISSION

FROM: JOAN MALLOY, ECONOMIC AND COMMUNITY DEVELOPMENT
DIRECTOR

SUBJECT: MUNICIPAL CODE AMENDMENT (AT-16-001)

APPLICANT: CITY OF UNION CITY

LOCATION: CITYWIDE

REQUEST: The City of Union City is proposing to modify Title 18, Zoning, of the Municipal Code to:

- Amend the Density Bonus Provision of the Affordable Housing Ordinance to comply with requirements listed in State law and the City's current Housing Element; and
- Amend the Contractually Binding Alternative Means of Compliance Provision of the Affordable Housing Ordinance to provide greater flexibility to generate funds to support affordable housing development.

ENVIRONMENTAL ASSESSMENT:

Staff recommends that approval of the amendments is exempt from further environmental review under the general rule in California Environmental Quality Act (CEQA) Guidelines section 15061(b)(3), that CEQA only applies to projects that have the potential for causing a significant effect on the environment. As a series of text amendments and additions, it can be seen with certainty that there is no possibility that the Municipal Code Amendment (AT-16-001) will have a significant effect on the environment.

I. BACKGROUND & ANALYSIS:

The City's current Housing Element (2015-2023) identifies implementation programs that the City must take to in order to meet the goals identified in the Housing Element. More specifically, implementation program HE-B.c - Update Density Bonus Ordinance states that the City will amend the density bonus provisions of the Affordable Housing Ordinance (the "Ordinance") in 2016 in order to comply with current State law.

Additionally, at the January 26, 2016 Council meeting, the City Council received an update on the Ordinance and engaged in a discussion regarding the goals of the Ordinance and the City's affordable housing priorities. As a result of this discussion, the City Council directed staff to amend the Ordinance to provide greater flexibility for the City to generate funds to support affordable rental housing. Below is a summary of the information that was presented to City Council and the direction that was provided. See Attachment 2 – City Council staff report dated January 26, 2016, for additional information.

Affordable Housing and Homelessness Issues

Home prices and rents have been increasing significantly over the last few years, which has resulted in the displacement of more families and highlighted the need for more affordable housing. More specifically, as reported by KidZone, there has been a significant increase in the number of homeless families within Union City. Adding to the affordable housing problem is the dissolution of the City's Redevelopment Agency in 2011, which was the City's primary funding source for affordable housing. The City relied heavily on RDA Housing Funds to construct affordable rental housing in partnership with non-profit developers. Given the City's limited resources, the City Council was asked to prioritize the types of affordable housing the City should focus on supporting: rental, ownership, special needs, and/or seniors. The City Council indicated that their first priority is affordable rental housing and their second priority is affordable ownership housing.

Affordable Housing Ordinance

The Ordinance requires residential development projects to set aside fifteen percent (15%) of the total units as affordable units. More specifically, the Ordinance requires ownership developments to provide affordable units for moderate income households and rental developments to provide affordable units for very-low and low income household. The Ordinance was set up to require market-rate developments to provide the units rather than pay an affordable housing fee.

However, in 2009, multiple court cases eliminated the ability of California cities to require affordable housing be incorporated into rental housing developments. Therefore, the City cannot enforce the Ordinance on rental developments. These court rulings, coupled with the loss of RDA funding, has stopped the City from being able to create affordable rental housing

for extremely-low to low income households, which are the most vulnerable households. With the limited tools at hand, staff suggested that the City Council consider alternative methods to build a fund that could be used to support affordable housing projects.

The Ordinance has an optional in-lieu fee provision that would allow the City to generate funds. However, the Ordinance is structured so that it is more expensive to pay the fee than provide actual affordable units. This was done purposefully to encourage the construction of below-market rate (“BMR”) units for moderate income households. Now, in order to generate funds for affordable rental housing construction, staff recommended that the City Council amend the Ordinance to make the payment of an in-lieu fee a more attractive alternative for developers.

Staff presented several alternatives for how the Ordinance could be modified and recommended that the Council consider a profit sharing model. The profit sharing model allows for all affordable units, or a portion of the affordable units, that would have been built, to be sold at market rate. The City would then split the profits from those units with the developer. The profit sharing model would establish a minimum fee per affordable unit that would have been built. The City Council agreed with staff that the Ordinance should be modified to accommodate alternative methods to meet the intent of the Ordinance, and directed staff to amend the Ordinance to allow for more flexibility in its application, which could include a profit sharing agreement.

City Council Direction

In summary the City Council provided the following direction to staff:

- The City Council’s first priority is to support affordable rental housing for extremely-low to low income households and its second priority is affordable ownership housing for moderate income households.
- With the loss of RDA and the inability to enforce the Ordinance on rental developments, the City has limited resources to create affordable rental housing. In order to generate funds to support affordable rental housing, the City Council directed staff to amend the Ordinance to allow for more flexibility in its application, which could include a profit sharing agreement.

II. DISCUSSION

The proposed amendments affect Title 18, Zoning, of the Municipal Code and are included in Exhibit A to the attached draft Resolution and in redline format in Exhibit B. Specifically, the proposed amendments would:

- **Density Bonus Provision**

In order to comply with State law, the Density Bonus Provision, Section 18.33.060(A), will be amended to allow units that are required to be affordable pursuant to the Ordinance to be considered restricted affordable units for the purposes of determining whether the housing development qualifies for a density bonus. Additionally, the current language regarding density bonus eligibility is not compliant with State law. Therefore, staff recommends removing this language and revising the provision to reference the State law that permits density bonuses.

- **Contractually Binding Alternative Means of Compliance Provision**

The Contractually Binding Alternative Means of Compliance Provision (“Alternative Provision”), 18.33.060(H), will be amended to provide greater flexibility for the City to negotiate agreements and/or other alternative compliance agreements with developers. Currently, the Alternative Provision gives the City Council discretion to allow developers to implement an alternative affordable housing program instead of complying with the provisions of the Ordinance. However, the current provision requires the alternative affordable housing program to provide an equal to or greater than level of affordable housing. This requirement is very stringent and doesn’t give the City (or the developer) flexibility. Therefore, staff is recommending that this section (18.33.060(H)(2)) be revised to state the following:

“The City Council finds that such alternative affordable housing program meets the purpose of this chapter. The City Council, at its discretion, may require that the alternative affordable housing program include the payment of an in-lieu fee, the provision of affordable units, or a combination thereof.”

Additionally, Staff is recommending that if an alternative affordable housing program includes the payment of a fee, the provision establishes a fee minimum. The proposed minimum fee is \$160,000 per each affordable unit that would have been required to be built including fractional units. This minimum fee amount is recommended as it is consistent with the small project (6 units or less) in-lieu fee provision that is already provided in the Ordinance. Finally, an amendment will be made to the definition of “affordable housing program” to correspond with the revisions listed above.

III. REQUIRED FINDINGS:

Section 18.64.060 requires that when considering Zoning Text Amendments, the Planning Commission shall provide a recommendation to the City Council on the following:

1. Recommendation whether the proposal should be adopted or rejected, including the reasons for the recommendation;

ATTACHMENT 2

AT-16-001 - Affordable Housing Ordinance Amendment
March 3, 2016, Page 5

2. The relationship of the application or proposal to the general plan and any applicable specific plans; and
3. Whether the change is necessary or desirable to achieve the purposes of Title 18.

IV. ALTERNATIVES:

1. Recommend approval of the proposed Municipal Code Amendments to the City Council as proposed;
2. Recommend approval of the proposed Municipal Code Amendments to the City Council with stated modifications;
3. Recommend denial of the proposed Municipal Code Amendments to the City Council, stating reasons for denial; or
4. Continue the matter for further consideration.

V. RECOMMENDATION:

Staff recommends that the Planning Commission recommend approval of Municipal Code Amendment (AT-16-001) to the City Council based on the following specific findings:

1. That approval of the Municipal Code Amendments is exempt from further environmental review under the general rule in California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) that CEQA only applies to projects that have the potential for causing a significant effect on the environment. As a series of text amendments and additions, it can be seen with certainty that there is no possibility that the Municipal Code Amendment (AT-16-001) will have a significant effect on the environment; and
2. That the proposed Municipal Code Amendments should be granted because it will fulfill implantation program HE-B.c of the City's current Housing Element and will give the City greater flexibility to generate funds for affordable housing; and
3. That the proposed Municipal Code Amendments be granted as they are consistent with the General Plan, and any applicable specific plans; and
4. That the proposed Municipal Code Amendments are necessary and desirable to achieve the purposes of Title 18.

ATTACHMENT 2

AT-16-001 - Affordable Housing Ordinance Amendment
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It is further recommended that the Planning Commission adopt a Resolution confirming this action.

Alin Lancaster

Housing & Community Development Coordinator

ATTACHMENTS

1. Draft Resolution Recommending Approval of Municipal Code Amendment, AT-16-001, to the City Council, to Amend Chapter 18.33 of the Municipal Code, Affordable Housing Ordinance, to amend the Density Bonus Provision to comply with requirements listed in State law and the City's current Housing Element and to amend the Contractually Binding Alternative Means of Compliance Provision to provide greater flexibility to generate funds to support affordable housing development; and
 1. Exhibit A to Draft Affordable Housing Ordinance: Municipal Code as Amended
 2. Exhibit B to Draft Affordable Housing Ordinance: Municipal Code as Amended with redlines for reference.
2. January 26, 2016 Staff Report
 1. Exhibit A to Staff Report: Affordable Housing Inventory
 2. Exhibit B to Staff Report: 2015 Income Limits
 3. Exhibit C to Staff Report: Neighboring Jurisdictions' In-Lieu Fees

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ATTACHMENT 2

ATTACHMENT 1

PLANNING COMMISSION RESOLUTION NUMBER XX-XX

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF UNION CITY
RECOMMENDING APPROVAL TO THE CITY COUNCIL OF MUNICIPAL CODE
AMENDMENT, AT-16-001, TO AMEND CHAPTER 18.33, AFFORDABLE HOUSING
ORDINANCE, TO AMEND THE DENSITY BONUS PROVISION TO COMPLY WITH
REQUIREMENTS LISTED IN STATE LAW AND THE CITY'S CURRENT HOUSING
ELEMENT AND TO AMEND THE CONTRACTUALLY BINDING ALTERNATIVE
MEANS OF COMPLIANCE PROVISION TO PROVIDE GREATER FLEXIBILITY TO
GENERATE FUNDS TO SUPPORT AFFORDABLE HOUSING DEVELOPMENT**

WHEREAS, the City of Union City is proposing Municipal Code Amendment, AT-16-001, to amend provisions listed in Chapter 18.33 (the "Affordable Housing Ordinance") to amend the density bonus provision to comply with requirements listed in State law and the City's current Housing Element and to amend the contractually binding alternative means of compliance provision to provide greater flexibility to generate funds to support affordable housing development; and

WHEREAS, the California Constitution, Article XI, Section 7, provides cities and counties with the authority to enact ordinances to protect the health, safety, welfare, and morals of their citizens; and

WHEREAS, the City's current Housing Element provides that the City will update the density bonus provision of the Affordable Housing Ordinance in 2016 to comply with State law requirements; and

WHEREAS, the existing density bonus provision of the Affordable Housing Ordinance is not compliant with State law requirements; and

WHEREAS, the City desires to amend the density bonus provision of the Affordable Housing Ordinance to allow units that are required to be affordable pursuant to the Affordable Housing Ordinance to be considered restricted affordable units for the purposes of determining whether a housing development qualifies for a density bonus and to reference State law requirements for density bonus eligibility; and

WHEREAS, the California Supreme Court has affirmed the power of a city to enact a broad inclusionary housing ordinance to increase the amount of affordable housing provided that the ordinance is reasonably related to the broad general welfare purposes of the ordinance in California Bldg. Industry Assn. v. City of San Jose (2015) 61 Cal.4th 435; and

WHEREAS, the City's Redevelopment Agency dissolved in 2011 pursuant to State law; and

WHEREAS, the City relied upon Redevelopment Agency Housing Funds to construct affordable rental housing; and

WHEREAS, the Affordable Housing Ordinance requires ownership developments to provide affordable units for moderate income households; and

WHEREAS, the Affordable Housing Ordinance also requires rental developments to provide affordable units for very-low and low income households. However, this provision is unenforceable pursuant to the California Court of Appeal decision in Palmer/Sixth Street Properties, LP v. City of Los Angeles (2009) 175 Cal.App.4th 1396; and

WHEREAS, the dissolution of the City's Redevelopment Agency and recent California case law has limited the City's ability to provide affordable housing for very-low and low income households; and

WHEREAS, the City desires to amend the Affordable Housing Ordinance to provide more flexibility and City discretion to accept a contractually binding alternative means of compliance; and

WHEREAS, the Planning Commission held a duly noticed public hearing on the proposed Municipal Code Amendments on March 3, 2016 at which time all interested parties had the opportunity to be heard. The Planning Commission considered a staff report dated March 3, 2016 and all written and oral testimony; and

WHEREAS, the amendments to the Municipal Code propose to amend Chapter 18.33.060 as shown in Exhibit A and in red-lined version in Exhibit B for reference, which exhibits are attached and incorporated herein by reference.

NOW, THEREFORE, BE IT RESOLVED, that the foregoing recitals are true and correct and made a part of this Resolution.

BE IT FURTHER RESOLVED that the Planning Commission of the City of Union City hereby recommends that the City Council adopt an ordinance amending Chapter 18.33.060 of the Municipal Code to amend provisions related to density bonuses and contractually binding alternative means of compliance, and does hereby find as follows:

1. That approval of the Municipal Code Amendments is exempt from further environmental review under the general rule in California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) that CEQA only applies to projects that have the potential for causing a significant effect on the environment. As a series of text amendments and additions, it can be seen with certainty that there is no possibility that the Municipal Code Amendment (AT-16-001) will have a significant effect on the environment; and
2. That the proposed Municipal Code Amendments should be granted because it will ensure the Affordable Housing Ordinance complies with State law, the City fulfills implementation program HE-B.c of the City's current Housing Element, and the City has greater flexibility to generate funds to support affordable housing development; and
3. That the proposed Municipal Code Amendments amending Title 18 are consistent with the General Plan, and any applicable specific plans, because the amendments would encourage

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construction and maintenance of affordable housing by allowing the City to obtain funds to provide financial support for the development of affordable housing and update the density bonus provisions to comply with State law; and

4. That the proposed Municipal Code Amendments are necessary and desirable to achieve the purposes of Title 18.

BE IT FURTHER RESOLVED, that the Planning Commission of the City of Union City hereby recommends approval of the proposed text amendments, AT-16-001, as shown in Exhibit A and incorporated herein by reference, to the City Council.

I HEREBY CERTIFY that the foregoing resolution was introduced and adopted at a regular meeting of the Planning Commission of the City of Union City held on March 3, 2016, by the following vote:

AYES
NOES
ABSTAIN
ABSENT
MOVED:
SECONDED:

APPROVED

**RAYMOND GONZALES, JR.,
CHAIRPERSON**

ATTEST:

JOAN MALLOY, SECRETARY

2613905.1

Exhibit A**Chapter 18.33 AFFORDABLE HOUSING****18.33.010 Purpose.**

The purpose of this chapter is to:

- A. Enhance the public welfare by ensuring that future residential developments contribute to the attainment of the affordable housing goals set forth in the Housing Element of the General Plan of the City of Union City.
- B. Increase the production of residential units in Union City that are affordable to households of very low, low, and moderate income.
- C. Facilitate a cooperative effort between the City of Union City and the housing development community for the provision of affordable housing to all economic segments of the community.
- D. Ensure that units affordable to households of very low, low and moderate income are distributed throughout the City's various neighborhoods.
- E. Comply with the requirements of Health and Safety Code Section 33341.3(b) within the redevelopment project area and elsewhere in the community as applicable.

~~(Ord. 677-06 § 2, 2006; Ord. 670-06 § 3, 2006; Ord. 600-02 § 2 (Exh. A (part)), 2002)~~

18.33.020 Definitions.

As used in this chapter, each of the following terms is defined as follows:

- A. "Affordable housing program" means a method for providing the affordable housing units in the proposed project, a method for a payment in-lieu of providing affordable units, or a combination thereof, as defined herein, pursuant to Section 18.33.060(H).
- B. "Affordable unit" means an ownership or rental housing unit, including senior housing, affordable by households with very low, low or moderate incomes as defined in this chapter. The unit shall be deemed affordable if it meets the requirements of Health and Safety Code Section 50052.5(b) for owner occupied housing and Section 50053(b) for rental housing.
- C. "Applicant" means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which seeks city real property development permits or approvals.
- D. "Dwelling unit" means a dwelling designed and intended for occupancy by one (1) household.
- E. "Housing costs" means the monthly mortgage principal and interest, property taxes, homeowners' insurance, utility allowance and condominium fees, where applicable, for ownership units; and the monthly rent and utility allowance for rental units.
- F. "HUD" means the United States Department of Housing and Urban Development or its successor.

~~G. “Level of affordable housing” means the total number of affordable units and the distribution of those affordable housing units in the income ranges provided herein.~~

GH. “Very low, low and moderate income levels” means those income and eligibility levels determined periodically by the United States Department of Housing and Urban Development based on the Oakland Standard Metropolitan Statistical Area (SMSA) median income levels by family size. Such levels shall be calculated on the basis of gross annual household income considering household size and number of dependents, income of all wage earners, elderly or disabled family members and all other sources of household income and will be recertified as set forth by local standards, State and Federal housing law.

1. “Very low income” means fifty percent (50%) or under of the SMSA median, adjusted for actual household size.
2. “Low income” means fifty-one (51%) to eighty percent (80%) of the SMSA median, adjusted for actual household size.
3. “Moderate income” means eighty-one (81%) to one hundred twenty percent (120%) of the SMSA median, adjusted for actual household size.

HI. “Resale controls and/or rent restrictions” means legal restrictions, as set forth by the City of Union City, State and Federal law, by which the affordable units shall be restricted to ensure that the unit remains affordable to very low, low or moderate income households, as applicable, permanently or for the longest period allowed by law and in any event until at least March 26, 2033. Such resale controls and/or rental restrictions shall generally be consistent with the requirements of Health and Safety Code Section 33334.3(f)(2). 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.

IJ. “Residential development” includes, without limitation, detached single-family dwellings, multiple dwelling structures, groups of dwellings, condominium or townhouse developments, condominium conversions, cooperative developments, mixed use developments that include housing units, and residential land subdivisions intended to be sold to the general public.

JK. “Residential project” includes contiguous or non-contiguous parcels that have one (1) or more applications filed within a twenty-four (24) month period and which are under the same ownership.

~~(Ord. 677-06 § 2, 2006; Ord. 670-06 § 3, 2006; Ord. 600-02 § 2 (Exh. A (part)), 2002)~~

18.33.030 General requirements.

A. Fifteen Percent (15%) Requirement. All residential development projects designed and intended for permanent occupancy located in any zoning district, for which an application for any use permit, site development permit or subdivision map is filed after the effective

date of the ordinance codified in this chapter, shall maintain fifteen percent (15%) of the total number of dwelling units or parcels within the development as affordable units, according to the terms of this chapter. The foregoing requirement shall be applied no more than once to an approved development, regardless of changes in the character or ownership of the development, provided the total number of units does not change. In projects located outside of the redevelopment project area where the calculation of the inclusionary requirement results in a fraction of a unit, such a fraction shall be paid in the form of an in-lieu fee, as set forth in Section 18.33.060(B) (Affordable Unit In-Lieu Fees). When the project is developed inside the redevelopment project area, all fractional numbers of units required (including numbers below 0.5) shall be rounded up to the next whole number and that resulting affordable unit shall be provided as set forth in this chapter. The City reserves the right, solely at the City's discretion, to negotiate with the project developer to adjust the required affordability levels of a particular project on a case-by-case basis if it is deemed necessary and appropriate by the City to maximize the best suited development for a site.

B. Affordability Levels. Affordable units provided pursuant to the fifteen percent (15%) requirement of subsection A of this section shall be made affordable to households with very low, low and moderate income pursuant to the minimum distributions included in the following table:

Income Level	Rental Units Distribution of Affordable Units Required to Be Built	Owner Units Distribution of Affordable Units Required to Be Built
Very Low Income	30%	Not Applicable
Low Income	70%	10%
Moderate Income—81 to 100%	Not Applicable	30%
Moderate Income—101 to 120%	Not Applicable	60%

For projects with seven (7) or more rental units, the application of the minimum distributions will be as set forth in the following table:

Total Number of Affordable Rental Units to Be Built	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Very Low Income Units	—	1	1	1	2	2	3	3	3	3	4	4	4	5	5
Low Income Units	1	1	2	3	3	4	4	5	6	7	7	8	9	9	10

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For projects with seven (7) or more owner units, the application of the minimum distributions will be as set forth in the following table:

Total Number of Affordable Owner Units to Be Built	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Low Income Units	–	–	–	1	1	1	1	1	1	1	2	2	2	2	2
Moderate Income Units (81—100%)	–	1	1	1	2	2	2	3	3	3	3	4	4	5	5
Moderate Income Units (101—120%)	1	1	2	2	2	3	4	4	5	6	6	6	7	7	8

For larger projects that exceed fifteen (15) required units to be built, the columns can be added to equal the total number, and the corresponding required units shall be built.

C. **Conditions of Approval.** Any tentative map, use permit or site development permit approving residential construction projects meeting the foregoing criteria shall contain conditions sufficient to ensure compliance with the provisions of this chapter. Such conditions shall specify the schedule of construction of affordable units, the number of affordable units, and appropriate resale controls and rental restrictions.

D. **Concurrent Construction.** All affordable units in a project or phase of a project shall be constructed concurrently with nonaffordable units.

E. **Design and Distribution of Affordable Units.** Unless the City, at its sole discretion, and in cooperation with the Developer, an alternate development plan for the affordable units is developed, all affordable units shall reflect the range of numbers of bedrooms provided in the project as a whole, and shall not be distinguished by exterior design, construction, or materials, and shall be reasonably dispersed throughout the project.

F. **Single-Family Housing Projects with Corner Lot Duplexes.** When affordable housing units are required in single-family developments, duplexes may be built on corner lots in the development. If a single-family residential development does include corner lot duplexes, no more than fifty percent (50%) of the affordable housing requirement for that project can be satisfied with the use of duplex units and no more than fifty percent (50%) of the total duplex units built can be affordable units. The remaining fifty percent (50%) of the affordable housing requirement for that project shall be provided in the single-family product as set forth in this chapter. Duplexes shall meet the setback standards of the zoning district in which they are located. Exceptions to the setback standards may be granted by approval of a Use Permit. The City may also consider other alternative affordable options, as set forth in Section 18.33.060(e).

~~(Ord. 677-06 § 2, 2006; Ord. 670-06 § 3, 2006; Ord. 600-02 § 2 (Exh. A (part)), 2002)~~

18.33.040 General procedures.

- A. Agreements. Prior to the issuance of a certificate of occupancy, resale restrictions and/or rental controls, as applicable, all of which must be acceptable to the Director and be consistent with the requirements of this chapter, shall be recorded against parcels having affordable units and shall be effective for the life of the project.
- B. Right of First Refusal. The resale restrictions shall provide that in the event of the sale of an affordable unit, the City shall have the right to purchase any affordable owner-occupancy unit at the maximum prices which could be charged to an eligible household.
- C. Selection Criteria. No household shall be permitted to occupy a unit which is required to be affordable under this chapter unless the City or its designee has approved the household's eligibility. Eligible potential occupants of affordable units will be qualified on the basis of household income, the median combined household income statistics published periodically by HUD, all sources of household income and assets, a relationship between household size and the size of available units, and any further criteria required by law. The developer shall use an equitable selection method established in conformance with the terms of this chapter. No distinction will be made between adults and children. All persons in each of the following categories of otherwise qualified persons shall be selected before persons from the next succeeding category are selected:
 - 1. First priority: Persons who have been displaced by the proposed project;
 - 2. Second priority: Persons who live or work within the City of Union City;
 - 3. Third priority: Persons who have immediate family living in the City of Union City;
 - 4. Fourth priority: All other eligible persons.

~~(Ord. 677-06 § 2, 2006; Ord. 670-06 § 3, 2006; Ord. 600-02 § 2 (Exh. A (part)), 2002)~~

18.33.050 Public subsidy assistance.

It is the intent of this chapter that its requirements of construction and maintenance of affordable units shall not depend upon the availability of any government subsidies. This is not to preclude the use of such programs or subsidies where available, however, and it is anticipated that subsidies of rental units may be available from HUD or State sources on an ongoing basis.

~~(Ord. 677-06 § 2, 2006; Ord. 670-06 § 3, 2006; Ord. 600-02 § 2 (Exh. A (part)), 2002)~~

18.33.060 Development options.

This chapter is not intended to place any unreasonable burden upon developers of residential projects, and for that reason confers significant economic and land use benefits thereon, as set forth below:

A. Density Bonus. The limitations upon residential density contained in Chapter 18.32 of this Code shall be deemed modified to the extent required by the terms of this chapter. The city, upon request, may approve an increase in the number of units permitted in a proposed residential development governed by this chapter, when such an increase in density is consistent with State density bonus law per Section 65915 of the State Government Code.

~~The City may provide for either a density bonus of at least twenty-five percent (25%) and at least one (1) other concession or incentive or other incentives of equivalent financial value to developers of housing developments that reserve at least twenty percent (20%) of their units for lower income households, ten percent (10%) for very low income households, or fifty percent (50%) for qualifying senior citizens. Developers receiving this density bonus must ensure the continued affordability of all lower income units for a minimum of thirty (30) years.~~ The dwelling units or parcels designated to meet the City's mandatory inclusionary housing requirement shall ~~not~~ count toward qualifying the proposed development for a density bonus.

B. Small Project In-Lieu Fees. The Director, upon request by the developer, may waive the requirements to provide affordable units pursuant to Section 18.33.030 (general requirements) in exchange for the payment of an affordable unit in-lieu fee; provided, that the proposed development is six (6) units or less. The developer may also have the option to pay the small project in-lieu fee where the calculation of the inclusionary requirement results in the fraction of a unit as set forth in Section 18.33.030(A). If fees are permitted to be paid in-lieu of providing affordable units, the fees shall be paid prior to issuance of the first building permit for the project, or secured at that time by an approved letter of credit or bond. The small project in-lieu fee shall be initially set at one hundred sixty thousand dollars (\$160,000.00) per each affordable unit that would have been required to be built for the entire project. This amount shall be multiplied by the fractional amount of the unit required to determine the actual fee to be paid by the developer. The small project in-lieu fee amount may be amended from time to time by the City Council by resolution, to meet inflationary increases, and the amount shall be set forth in the City's Master Fee Schedule. Any small project in-lieu fees collected from any project will be committed to an affordable housing project within five (5) years of being collected.

C. Optional In-Lieu Fee. The City, solely at its discretion, may waive the requirements to provide affordable owner units pursuant to Section 18.33.030 (general requirements) in exchange for the payment of an optional in-lieu fee for any or all required units. If fees are permitted to be paid in-lieu of providing affordable units, the fee shall be paid prior to the issuance of the first building permit for the project, or secured at that time by an approved letter of credit or bond. The optional in-lieu fee shall be initially set at one hundred eighty dollars (\$180.00) per square foot of the affordable units that would have been required to be built for the entire project, pursuant to this chapter. The City shall utilize the square

footage of the units that are required to be built, in the range of bedrooms, sizes and product styles that would be required to satisfy the requirements of Section 18.33.030 (general requirements). The optional in-lieu fee amount may be amended from time to time by the City Council by resolution, to meet inflationary increases, and the amount shall be set forth in the City's Master Fee Schedule. Any optional in-lieu fees collected from any project will be committed to an affordable housing project within five (5) years from being collected.

D. Waiver of Requirements. The City Council, at its discretion, may waive the requirements of this chapter if there are unusual development costs associated with the property that would otherwise prevent the project from proceeding. Typically, such a condition would involve excessive costs inherent on the property, such as environmental contamination.

E. Off-Site and Alternative Construction Options. Where affordable units are required by Section 18.33.030, the City may instead, at its sole discretion, consider the construction of units not physically contiguous to the development (off-site) or alternative on-site affordable housing development options, set forth in a binding agreement as set forth in 18.33.060(H), if the Planning Commission determines that:

1. A schedule for completion of the off-site units concurrently with completion of the related market-rate units is provided and agreed upon as a condition of approval for the project;
2. The off-site or alternative units are at least equal in basic amenities to other units in the project, with extra consideration given for the creation of additional affordable units, larger units or affordability to households with lower incomes; and
3. Off-site or alternative construction options will further affordable housing opportunities in the City to a greater extent than construction of the normally required units as part of the residential project in question;
4. When the original development is located in the redevelopment agency project area and the off-site location is located outside of the redevelopment project area, then two (2) units for every one (1) unit required to be built in the original location shall be developed. It may be determined by the City that working with a non-profit to develop higher density, rental units on or off-site may be a more efficient way to meet affordable needs at that point in time. In all cases, the affordable units must be built prior to or concurrently with the market rate development, unless a development agreement with a non-profit has been approved. The utilization of off-site and alternative housing will be considered relative to the inventory of available sites at that time.

F. Technical and Financial Assistance. Upon request, the City or its designee shall provide assistance to applicants concerning information regarding financial subsidy programs and economic analysis designed to indicate the most suitable methods by which the terms of this

chapter may be implemented. To the extent that funds may be available and consistent with applicable Federal and State regulations and policies, affordable unit project applicants may apply to receive Federal community development block grant or City redevelopment funds for purposes of defraying certain off-site improvement costs and other expenses. Such determination of eligibility shall be made by the Director and/or the Redevelopment Agency Manager. The City shall establish application and administration procedures and criteria by which eligible expenditures of such funds and their amounts shall be determined.

G. Priority Processing. All residential developments providing affordable units pursuant to the requirements of this chapter shall receive “priority processing” by which housing developments shall be reviewed and checked for all required City permit and other approvals in advance of other pending developments.

H. Contractually Binding Alternative Means of Compliance. The City Council, in its discretion, may permit an applicant to comply with the purpose of this chapter for a particular residential development project through implementation of an alternative affordable housing program instead of by compliance with the provisions of this chapter if:

1. Such alternative affordable housing program is set forth in a binding agreement, including, but not limited to, a government code development agreement, disposition and development agreement, disposition and development loan agreement, ~~or owner participation agreement,~~ or affordable housing agreement with the ~~City and/or the Community Redevelopment Agency of the~~ City of Union City; and
2. The City Council finds that such alternative affordable housing program meets the purpose of this chapter. The City Council, at its discretion, may require that the alternative affordable housing program include the payment of an in-lieu fee, the provision of affordable units, or a combination thereof. will provide an equal to or greater than level of affordable housing to the community as would be provided through adherence of the applicant to the requirements of this chapter.
3. Any affordable housing program that includes the payment of an in-lieu fee for any or all required affordable units, shall provide an in-lieu fee of no less than one hundred sixty thousand dollars (\$160,000.00) per each affordable unit that would have been required to be built, including fractional units.

~~(Ord. 712-08 § 2, 2008; Ord. 677-06 § 2, 2006; Ord. 670-06 § 3, 2006; Ord. 600-02 § 2 (Exh. A (part)), 2002)~~

18.33.070 Exemptions.

Residential developments consisting of only one (1) unit will be exempt from the requirements of this chapter; provided, that the unit is an owner-occupied single-family home, constructed by or for the property owner or the property owner’s immediate family members, and the owner or

immediate family member lives in the home for a minimum of five (5) years upon its completion.

~~(Ord. 677-06 § 2, 2006; Ord. 670-06 § 3, 2006; Ord. 600-02 § 2 (Exh. A (part)), 2002)~~

18.33.080 Enforcement.

A. The provisions of this chapter shall apply to all agents, successors and assignees of an applicant proposing a residential development governed by this chapter. No tentative map, use permit, special development permit or occupancy permit shall be issued for any residential development unless exempt from or in compliance with the terms of this chapter.

B. 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.

~~(Ord. 677-06 § 2, 2006; Ord. 670-06 § 3, 2006; Ord. 600-02 § 2 (Exh. A (part)), 2002)~~

18.33.090 Appeals.

A. Any person aggrieved by any action involving denial, suspension or revocation of an occupancy or other permit, or denial, suspension or revocation of any development approval, may appeal such action or determination in the manner provided for appeal of use permits, by Chapter 18.56.

B. Any applicant or other person who contends that his or her rights conferred by this chapter have been adversely affected by any determination or requirement of any agency designated by the City as its administrative agent may notify the chief executive officer of said agency to that effect in writing, stating relevant facts. All such contentions shall be considered exclusively by said agency in accordance with such procedures as they may be established. In instances in which violations of this chapter or any agreement with the City on the part of said agency is alleged, City shall take appropriate investigative and corrective actions.

~~(Ord. 677-06 § 2, 2006; Ord. 670-06 § 3, 2006; Ord. 600-02 § 2 (Exh. A (part)), 2002)~~

2613603.1

Exhibit B**Chapter 18.33 AFFORDABLE HOUSING****18.33.010 Purpose.**

The purpose of this chapter is to:

- A. Enhance the public welfare by ensuring that future residential developments contribute to the attainment of the affordable housing goals set forth in the Housing Element of the General Plan of the City of Union City.
- B. Increase the production of residential units in Union City that are affordable to households of very low, low, and moderate income.
- C. Facilitate a cooperative effort between the City of Union City and the housing development community for the provision of affordable housing to all economic segments of the community.
- D. Ensure that units affordable to households of very low, low and moderate income are distributed throughout the City's various neighborhoods.
- E. Comply with the requirements of Health and Safety Code Section 33341.3(b) within the redevelopment project area and elsewhere in the community as applicable.

18.33.020 Definitions.

As used in this chapter, each of the following terms is defined as follows:

- A. "Affordable housing program" means a method for providing the affordable housing units in the proposed project, a method for a payment in-lieu of providing affordable units, or a combination thereof, pursuant to Section 18.33.060(H).
- B. "Affordable unit" means an ownership or rental housing unit, including senior housing, affordable by households with very low, low or moderate incomes as defined in this chapter. The unit shall be deemed affordable if it meets the requirements of Health and Safety Code Section 50052.5(b) for owner occupied housing and Section 50053(b) for rental housing.
- C. "Applicant" means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which seeks city real property development permits or approvals.
- D. "Dwelling unit" means a dwelling designed and intended for occupancy by one (1) household.
- E. "Housing costs" means the monthly mortgage principal and interest, property taxes, homeowners' insurance, utility allowance and condominium fees, where applicable, for ownership units; and the monthly rent and utility allowance for rental units.
- F. "HUD" means the United States Department of Housing and Urban Development or its successor.
- G. "Very low, low and moderate income levels" means those income and eligibility levels determined periodically by the United States Department of Housing and Urban

Development based on the Oakland Standard Metropolitan Statistical Area (SMSA) median income levels by family size. Such levels shall be calculated on the basis of gross annual household income considering household size and number of dependents, income of all wage earners, elderly or disabled family members and all other sources of household income and will be recertified as set forth by local standards, State and Federal housing law.

1. “Very low income” means fifty percent (50%) or under of the SMSA median, adjusted for actual household size.
2. “Low income” means fifty-one (51%) to eighty percent (80%) of the SMSA median, adjusted for actual household size.
3. “Moderate income” means eighty-one (81%) to one hundred twenty percent (120%) of the SMSA median, adjusted for actual household size.

H. “Resale controls and/or rent restrictions” means legal restrictions, as set forth by the City of Union City, State and Federal law, by which the affordable units shall be restricted to ensure that the unit remains affordable to very low, low or moderate income households, as applicable, permanently or for the longest period allowed by law and in any event until at least March 26, 2033. Such resale controls and/or rental restrictions shall generally be consistent with the requirements of Health and Safety Code Section 33334.3(f)(2). 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.

I. “Residential development” includes, without limitation, detached single-family dwellings, multiple dwelling structures, groups of dwellings, condominium or townhouse developments, condominium conversions, cooperative developments, mixed use developments that include housing units, and residential land subdivisions intended to be sold to the general public.

J. “Residential project” includes contiguous or non-contiguous parcels that have one (1) or more applications filed within a twenty-four (24) month period and which are under the same ownership.

18.33.030 General requirements.

A. Fifteen Percent (15%) Requirement. All residential development projects designed and intended for permanent occupancy located in any zoning district, for which an application for any use permit, site development permit or subdivision map is filed after the effective date of the ordinance codified in this chapter, shall maintain fifteen percent (15%) of the total number of dwelling units or parcels within the development as affordable units, according to the terms of this chapter. The foregoing requirement shall be applied no more than once to an approved development, regardless of changes in the character or ownership of the development, provided the total number of units does not change. In projects located outside of the redevelopment project area where the calculation of the inclusionary

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requirement results in a fraction of a unit, such a fraction shall be paid in the form of an in-lieu fee, as set forth in Section 18.33.060(B) (Affordable Unit In-Lieu Fees). When the project is developed inside the redevelopment project area, all fractional numbers of units required (including numbers below 0.5) shall be rounded up to the next whole number and that resulting affordable unit shall be provided as set forth in this chapter. The City reserves the right, solely at the City's discretion, to negotiate with the project developer to adjust the required affordability levels of a particular project on a case-by-case basis if it is deemed necessary and appropriate by the City to maximize the best suited development for a site.

B. Affordability Levels. Affordable units provided pursuant to the fifteen percent (15%) requirement of subsection A of this section shall be made affordable to households with very low, low and moderate income pursuant to the minimum distributions included in the following table:

Income Level	Rental Units Distribution of Affordable Units Required to Be Built	Owner Units Distribution of Affordable Units Required to Be Built
Very Low Income	30%	Not Applicable
Low Income	70%	10%
Moderate Income—81 to 100%	Not Applicable	30%
Moderate Income—101 to 120%	Not Applicable	60%

For projects with seven (7) or more rental units, the application of the minimum distributions will be as set forth in the following table:

Total Number of Affordable Rental Units to Be Built	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Very Low Income Units	—	1	1	1	2	2	3	3	3	3	4	4	4	5	5
Low Income Units	1	1	2	3	3	4	4	5	6	7	7	8	9	9	10

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For projects with seven (7) or more owner units, the application of the minimum distributions will be as set forth in the following table:

Total Number of Affordable Owner Units to Be Built	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Low Income Units	–	–	–	1	1	1	1	1	1	1	2	2	2	2	2
Moderate Income Units (81—100%)	–	1	1	1	2	2	2	3	3	3	3	4	4	5	5
Moderate Income Units (101—120%)	1	1	2	2	2	3	4	4	5	6	6	6	7	7	8

For larger projects that exceed fifteen (15) required units to be built, the columns can be added to equal the total number, and the corresponding required units shall be built.

C. **Conditions of Approval.** Any tentative map, use permit or site development permit approving residential construction projects meeting the foregoing criteria shall contain conditions sufficient to ensure compliance with the provisions of this chapter. Such conditions shall specify the schedule of construction of affordable units, the number of affordable units, and appropriate resale controls and rental restrictions.

D. **Concurrent Construction.** All affordable units in a project or phase of a project shall be constructed concurrently with nonaffordable units.

E. **Design and Distribution of Affordable Units.** Unless the City, at its sole discretion, and in cooperation with the Developer, an alternate development plan for the affordable units is developed, all affordable units shall reflect the range of numbers of bedrooms provided in the project as a whole, and shall not be distinguished by exterior design, construction, or materials, and shall be reasonably dispersed throughout the project.

F. **Single-Family Housing Projects with Corner Lot Duplexes.** When affordable housing units are required in single-family developments, duplexes may be built on corner lots in the development. If a single-family residential development does include corner lot duplexes, no more than fifty percent (50%) of the affordable housing requirement for that project can be satisfied with the use of duplex units and no more than fifty percent (50%) of the total duplex units built can be affordable units. The remaining fifty percent (50%) of the affordable housing requirement for that project shall be provided in the single-family product as set forth in this chapter. Duplexes shall meet the setback standards of the zoning district in which they are located. Exceptions to the setback standards may be granted by approval of a Use Permit. The City may also consider other alternative affordable options, as set forth in Section 18.33.060(e).

18.33.040 General procedures.

- A. Agreements. Prior to the issuance of a certificate of occupancy, resale restrictions and/or rental controls, as applicable, all of which must be acceptable to the Director and be consistent with the requirements of this chapter, shall be recorded against parcels having affordable units and shall be effective for the life of the project.
- B. Right of First Refusal. The resale restrictions shall provide that in the event of the sale of an affordable unit, the City shall have the right to purchase any affordable owner-occupancy unit at the maximum prices which could be charged to an eligible household.
- C. Selection Criteria. No household shall be permitted to occupy a unit which is required to be affordable under this chapter unless the City or its designee has approved the household's eligibility. Eligible potential occupants of affordable units will be qualified on the basis of household income, the median combined household income statistics published periodically by HUD, all sources of household income and assets, a relationship between household size and the size of available units, and any further criteria required by law. The developer shall use an equitable selection method established in conformance with the terms of this chapter. No distinction will be made between adults and children. All persons in each of the following categories of otherwise qualified persons shall be selected before persons from the next succeeding category are selected:
 - 1. First priority: Persons who have been displaced by the proposed project;
 - 2. Second priority: Persons who live or work within the City of Union City;
 - 3. Third priority: Persons who have immediate family living in the City of Union City;
 - 4. Fourth priority: All other eligible persons.

18.33.050 Public subsidy assistance.

It is the intent of this chapter that its requirements of construction and maintenance of affordable units shall not depend upon the availability of any government subsidies. This is not to preclude the use of such programs or subsidies where available, however, and it is anticipated that subsidies of rental units may be available from HUD or State sources on an ongoing basis.

18.33.060 Development options.

This chapter is not intended to place any unreasonable burden upon developers of residential projects, and for that reason confers significant economic and land use benefits thereon, as set forth below:

A. Density Bonus. The limitations upon residential density contained in Chapter 18.32 of this Code shall be deemed modified to the extent required by the terms of this chapter. The city, upon request, may approve an increase in the number of units permitted in a proposed residential development governed by this chapter, when such an increase in density is consistent with State density bonus law per Section 65915 of the State Government Code. The dwelling units or parcels designated to meet the City's mandatory inclusionary housing requirement shall count toward qualifying the proposed development for a density bonus.

B. Small Project In-Lieu Fees. The Director, upon request by the developer, may waive the requirements to provide affordable units pursuant to Section 18.33.030 (general requirements) in exchange for the payment of an affordable unit in-lieu fee; provided, that the proposed development is six (6) units or less. The developer may also have the option to pay the small project in-lieu fee where the calculation of the inclusionary requirement results in the fraction of a unit as set forth in Section 18.33.030(A). If fees are permitted to be paid in-lieu of providing affordable units, the fees shall be paid prior to issuance of the first building permit for the project, or secured at that time by an approved letter of credit or bond. The small project in-lieu fee shall be initially set at one hundred sixty thousand dollars (\$160,000.00) per each affordable unit that would have been required to be built for the entire project. This amount shall be multiplied by the fractional amount of the unit required to determine the actual fee to be paid by the developer. The small project in-lieu fee amount may be amended from time to time by the City Council by resolution, to meet inflationary increases, and the amount shall be set forth in the City's Master Fee Schedule. Any small project in-lieu fees collected from any project will be committed to an affordable housing project within five (5) years of being collected.

C. Optional In-Lieu Fee. The City, solely at its discretion, may waive the requirements to provide affordable owner units pursuant to Section 18.33.030 (general requirements) in exchange for the payment of an optional in-lieu fee for any or all required units. If fees are permitted to be paid in-lieu of providing affordable units, the fee shall be paid prior to the issuance of the first building permit for the project, or secured at that time by an approved letter of credit or bond. The optional in-lieu fee shall be initially set at one hundred eighty dollars (\$180.00) per square foot of the affordable units that would have been required to be built for the entire project, pursuant to this chapter. The City shall utilize the square footage of the units that are required to be built, in the range of bedrooms, sizes and product styles that would be required to satisfy the requirements of Section 18.33.030 (general requirements). The optional in-lieu fee amount may be amended from time to time by the City Council by resolution, to meet inflationary increases, and the amount shall be set forth in the City's Master Fee Schedule. Any optional in-lieu fees collected from any project will be committed to an affordable housing project within five (5) years from being collected.

D. Waiver of Requirements. The City Council, at its discretion, may waive the requirements of this chapter if there are unusual development costs associated with the property that would otherwise prevent the project from proceeding. Typically, such a condition would involve excessive costs inherent on the property, such as environmental contamination.

E. Off-Site and Alternative Construction Options. Where affordable units are required by Section 18.33.030, the City may instead, at its sole discretion, consider the construction of units not physically contiguous to the development (off-site) or alternative on-site affordable housing development options, set forth in a binding agreement as set forth in 18.33.060(H), if the Planning Commission determines that:

1. A schedule for completion of the off-site units concurrently with completion of the related market-rate units is provided and agreed upon as a condition of approval for the project;
2. The off-site or alternative units are at least equal in basic amenities to other units in the project, with extra consideration given for the creation of additional affordable units, larger units or affordability to households with lower incomes; and
3. Off-site or alternative construction options will further affordable housing opportunities in the City to a greater extent than construction of the normally required units as part of the residential project in question;
4. When the original development is located in the redevelopment agency project area and the off-site location is located outside of the redevelopment project area, then two (2) units for every one (1) unit required to be built in the original location shall be developed. It may be determined by the City that working with a non-profit to develop higher density, rental units on or off-site may be a more efficient way to meet affordable needs at that point in time. In all cases, the affordable units must be built prior to or concurrently with the market rate development, unless a development agreement with a non-profit has been approved. The utilization of off-site and alternative housing will be considered relative to the inventory of available sites at that time.

F. Technical and Financial Assistance. Upon request, the City or its designee shall provide assistance to applicants concerning information regarding financial subsidy programs and economic analysis designed to indicate the most suitable methods by which the terms of this chapter may be implemented. To the extent that funds may be available and consistent with applicable Federal and State regulations and policies, affordable unit project applicants may apply to receive Federal community development block grant or City redevelopment funds for purposes of defraying certain off-site improvement costs and other expenses. Such determination of eligibility shall be made by the Director and/or the Redevelopment Agency

Manager. The City shall establish application and administration procedures and criteria by which eligible expenditures of such funds and their amounts shall be determined.

G. Priority Processing. All residential developments providing affordable units pursuant to the requirements of this chapter shall receive “priority processing” by which housing developments shall be reviewed and checked for all required City permit and other approvals in advance of other pending developments.

H. Contractually Binding Alternative Means of Compliance. The City Council, in its discretion, may permit an applicant to comply with the purpose of this chapter for a particular residential development project through implementation of an alternative affordable housing program instead of by compliance with the provisions of this chapter if:

1. Such alternative affordable housing program is set forth in a binding agreement, including, but not limited to, a government code development agreement, disposition and development agreement, disposition and development loan agreement, owner participation agreement, or affordable housing agreement with the City of Union City; and
2. The City Council finds that such alternative affordable housing program meets the purpose of this chapter. The City Council, at its discretion, may require that the alternative affordable housing program include the payment of an in-lieu fee, the provision of affordable units, or a combination thereof.
3. Any affordable housing program that includes the payment of an in-lieu fee for any or all required affordable units, shall provide an in-lieu fee of no less than one hundred sixty thousand dollars (\$160,000.00) per each affordable unit that would have been required to be built, including fractional units.

18.33.070 Exemptions.

Residential developments consisting of only one (1) unit will be exempt from the requirements of this chapter; provided, that the unit is an owner-occupied single-family home, constructed by or for the property owner or the property owner’s immediate family members, and the owner or immediate family member lives in the home for a minimum of five (5) years upon its completion.

18.33.080 Enforcement.

A. The provisions of this chapter shall apply to all agents, successors and assignees of an applicant proposing a residential development governed by this chapter. No tentative map, use permit, special development permit or occupancy permit shall be issued for any residential development unless exempt from or in compliance with the terms of this chapter.

B. 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.

18.33.090 Appeals.

A. Any person aggrieved by any action involving denial, suspension or revocation of an occupancy or other permit, or denial, suspension or revocation of any development approval, may appeal such action or determination in the manner provided for appeal of use permits, by Chapter 18.56.

B. Any applicant or other person who contends that his or her rights conferred by this chapter have been adversely affected by any determination or requirement of any agency designated by the City as its administrative agent may notify the chief executive officer of said agency to that effect in writing, stating relevant facts. All such contentions shall be considered exclusively by said agency in accordance with such procedures as they may be established. In instances in which violations of this chapter or any agreement with the City on the part of said agency is alleged, City shall take appropriate investigative and corrective actions.

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Agenda Item

DATE: 1/26/2016

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JOAN MALLOY, ECONOMIC & COMMUNITY DEVELOPMENT DIRECTOR

SUBJECT: AFFORDABLE HOUSING ORDINANCE UPDATE AND AFFORDABLE HOUSING POLICY DISCUSSION

The purpose of this staff report is to update the City Council on the implementation of the Affordable Housing Ordinance, to examine the goals of the Affordable Housing Ordinance, and to have a policy discussion on the City's affordable housing priorities. Staff is seeking City Council support to provide flexibility in the ordinance so that the City may generate funds to support extremely-low to low income affordable housing projects that could serve the greatest number of residents in a cost effective manner.

BACKGROUND

Home prices and rents have been increasing significantly over the last few years, which has resulted in the displacement of more families and highlighted the need for more affordable housing. More specifically, there has been a significant increase in the number of homeless families within Union City and a growing concern regarding the lack of shelter and transitional housing in Union City and the surrounding Tri-City area. Currently, there is an estimated 65 children in the New Haven Unified School District (NHUSD) that have no stable housing and are living in cars, motels, or other substandard arrangements. Earlier in the fall, this number was estimated to be over 90 NHUSD children that were homeless. The homeless families are within all NHUSD schools. Currently there are no homeless shelters or transitional housing in Union City. The only housing available in Union City, specifically for the homeless, is three permanent supportive housing units that are operated by Abode Services.

Adding to the affordable housing problem is the dissolution of the City's Redevelopment Agency (RDA) in 2011, which was the City's primary funding source for affordable housing. Prior to the RDA dissolution, the City was able to provide both rental and ownership housing at a wide range of affordability levels (See Exhibit A). The City relied heavily on RDA Housing Funds to construct 100% affordable, rental housing in partnership with non-profit developers for very-low and low income families and seniors. Examples of low-income rental housing include Mission Gateway, Station Center, Wisteria Place, and Rosewood Terrace. The City also used RDA Housing Funds to assist in the "buy-down" of several affordable ownership units.

Now, without RDA, the City has very limited capital to support new affordable housing projects and the only leverage the City has to provide affordable housing is the existing Affordable Housing Ordinance. Yet, the ordinance may not be supporting the type of affordable housing that the community needs most. With several

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residential developments in the pipeline, staff is recommending that the City Council prioritize what type(s) of affordable housing the City should focus on supporting and to this end evaluate the effectiveness of the Affordable Housing Ordinance to meet these priorities.

DISCUSSION

Affordable Housing Ordinance

Historically, the purpose of the City's Affordable Housing Ordinance was to create ownership housing for moderate-income households and rental housing for very-low and low-income households that were integrated into a market-rate project. The ordinance requires residential development projects to set aside fifteen percent (15%) of the total units as affordable or below market rate (BMR) units for very-low, low, and moderate income households. Initially, the ordinance was very successful and created 189 affordable units between 2001 and 2008: 123 ownership units and 66 rental units (See Exhibit A).

However, with the RDA dissolution, recent court rulings, and the increasing cost of both rental and ownership housing, the ordinance may not be meeting the goals of the community to effectively provide affordable housing, especially for very-low and low income residents. The following is a review of the ordinance and the market challenges:

- *Optional In-Lieu Fee*

The ordinance was conceived to prioritize the construction of affordable units that were on-site and integrated within the project. As such, the optional in-lieu fee was structured so that it was more expensive to pay the fee than provide actual units. Therefore, developers have opted to provide the affordable housing units rather than pay an in-lieu fee. Currently, the in-lieu fee is \$180 per square foot of the affordable units that would have been built. This was approximately equivalent to the actual cost of construction at the time the fee was set.

This approach to encourage construction of units worked well for market-rate rental housing. However, for single-family developments, the City often had to provide flexibility by allowing the affordable units to be built as smaller units, concentrating the units in higher densities (townhouses and duplex units), and/or directly assisting the developer with RDA Housing Funds. For example, 38 of the 123 ownership units that were created through the Ordinance received RDA Housing Funds.

The ordinance could be revised to make the optional in-lieu fee a more attractive alternative for developers, which would allow the City to accumulate funds to support any type of affordable housing. The optional in-lieu fee is further discussed below.

- *Rental Developments for Very-Low and Low Income Households*

Starting in 2009, multiple court cases eliminated the ability of California cities to require affordable housing be incorporated into rental housing developments. Therefore, the City cannot enforce the Affordable Housing Ordinance on rental developments. This has stopped the City's ability to create affordable housing for very-low and low-income households as part of market-rate rental housing projects. The Affordable Housing Ordinance had required fifteen percent (15%) of the units in a rental development accommodate the following income distribution:

Table 1

Rental Developments

Affordable Unit

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Income Level*	Distribution
Very Low Income 50% AMI or Less	30%
Low Income 51-80% AMI	70%
Moderate Income 81-100% AMI	Not Applicable
Moderate Income 101-120% AMI	Not Applicable

**For additional information regarding income levels, see Exhibit B – 2015 Income Limits.
AMI = Area Median Income*

- *Ownership Units for Low and Moderate Income Households*
Per the Affordable Housing Ordinance, developers building for-sale units are required to provide the following levels of affordability:

Table 2

Ownership Developments

Income Level*	Affordable Unit Distribution
Very Low Income 50% AMI or Less	Not Applicable
Low Income 51-80% AMI	10%
Moderate Income 81-100% AMI	30%
Moderate Income 101-120% AMI	60%

**For additional information regarding income levels, see Exhibit B – 2015 Income Limits.
AMI = Area Median Income*

As previously mentioned, the City has had to provide some flexibility with the requirement to provide affordable, ownership housing. This flexibility included either direct subsidy or higher densities (townhouses and duplexes). While some small lot single-family developments created the units without any subsidies or other modifications, the City has not required ownership housing to be provided when it is impractical, such as with large, luxury homes. Although the large, luxury units would be sold at affordable prices, the other costs associated with owning a large, luxury home such as property taxes, insurance, maintenance, and Homeowners Association (HOA) fees are unreasonable expenses for low to moderate income households.

- *Conversion of Affordable Units to Market Rate*
There have also been some issues with affordable units converting to market-rate units. Of the 123 ownership units that were created by the ordinance, sixteen (16) units have converted to market rate due to foreclosures.

Separately from the City's Affordable Housing Ordinance, three (3) apartment complexes that provided affordable rental units (116 units total) converted to market-rate in the last five years. These apartments are privately-owned; however, the owners had received Multifamily Housing Revenue Bonds from the State, which required a portion of the units be set aside as affordable. The bond funds were recently repaid and the affordability restrictions were removed. These apartment complexes include Mission

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Sierra Apartment Homes (formerly Sierra Green) on Mission Boulevard, Greenhaven Apartment Homes on Alvarado Boulevard in Four Corners, and the Skylark Apartments on Skylark Drive. (See Exhibit A)

- *Management of Affordable Ownership Units*

Once, the affordable units are initially sold, the City is responsible for managing the affordable units. This includes resale and subordination processing and compliance monitoring. The administration of these units can be time intensive and expensive. For example, it costs the City around \$5,000 per BMR resale to hire a consultant to help screen and income qualify potential buyers. As the City's BMR portfolio grows, this will add additional administrative time and expenses onto the City.

- *Slow Accumulation of Ownership Affordable Units*

The majority of the City's future residential developments will be in-fill projects, which means most projects will be smaller and result in fewer units being set aside as affordable (e.g. a 60 unit project will only result in 9 affordable units). It takes several projects before a significant number of affordable units are generated. For example, it took 11 projects and the construction of 795 units, over the span of eight years, to generate the City's existing 123 affordable ownership units. In contrast, the City can contribute funds to an affordable rental project that can generate between 50-150 affordable units at one time.

Ordinance Evaluation

If the City Council's top priority is to support moderate-income, ownership housing then staff recommends keeping the ordinance as is and slowly increasing the moderate income, ownership unit portfolio. However, the City has very limited capital (see Table 3 below) and will not be able to build any rental housing for families, which is becoming more urgent as discussed in the Background Section of this report.

Table 3				
City Housing Funds				
Funding Source	Amount	Income Restrictions		Notes
		Category	Level	
2010 Housing Bond Funds	\$1,092,058	Extremely Low Very Low Low	30%-80% of AMI	Spending Limitations 30% of Funds Extremely Low 50% of Funds Very Low Income 20% of Funds Low Income
Low/Mod Income Housing (Former RDA Housing Funds)	\$1,324,835	Extremely Low Very Low Low	30%-80% of AMI	Spending Limitations 30% of Funds Extremely Low 50% of Funds Very Low Income 20% of Funds Low Income
Housing In-Lieu Funds	\$108,393*	Very Low Low Moderate	50%-120% of AMI	Funds generated by the City's Affordable Housing Ordinance

**The City will be receiving an in-lieu payment from Pulte Homes which will be added to the Housing In-Lieu Fund.*

Staff suggests that the Council consider prioritizing family housing for extremely-low to low income families,

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especially transitional housing for displaced families. Staff believes this would be a more efficient use of public funds rather than adding to the inventory of moderate-income, ownership units. To create a larger pool of funds, staff recommends revising the ordinance's optional in-lieu fee to make it a more attractive alternative for developers. Below are alternatives that the Council could consider:

1. *Profit Sharing Model*

Recently, the City opted for an alternative, profit sharing option for the Pulte Homes project, a large, single-family development located at the old Cabello School site. The project would have required seven (7) affordable units to be built however providing luxury homes as affordable units proved to be impractical and the optional in-lieu fee was cost prohibitive to the project. Further, with the RDA dissolution, the City was looking for ways to generate more funds for affordable housing. Therefore, the City entered into a profit sharing agreement with Pulte Homes. The agreement calls for all units being sold at market rate and the City splitting the profits 50/50 with Pulte for seven (7) of the units. The agreement, also calls for a minimum fee of \$100,000 per affordable unit that would have been built, for a total of \$700,000. The City anticipates receiving well over the minimum fee and should have a finalized amount in the next few months. This is an attractive alternative for developers as it results in the developer only giving up profits rather than paying a direct cost, which reduces some of the developer's risk.

This profit sharing methodology has also been discussed with other developers, with the goal of accumulating funds to support affordable housing projects. More specifically, the City Ventures townhouse project at Union City Boulevard has been conditioned to reflect a similar profit sharing model in lieu of the existing Affordable Housing Ordinance requirements. Staff recommends the City Council consider approving a profit sharing arrangement with City Ventures and consider the profit sharing model for other development projects in the pipeline.

2. *Reducing the Existing Optional In-Lieu Fee*

Alternatively, the City Council could reduce the amount of the current optional in-lieu fee to make it a more viable option for developers. Currently, the fee is \$180 per square foot of the affordable units that would have been built for developments with 7 or more units. For small projects (6 units or less) the fee is \$160,000 per affordable unit. For example, a 60 unit project with 2,000 sf units would require a fee of approximately \$3.25 million, which is more expensive than providing affordable units. For a six unit development, the in-lieu would be \$160,000 for the entire project.

3. *Alternative Methodologies to Calculate the In-Lieu Fee*

Additionally, there are several other methodologies the City could implement for the optional in-lieu fee. Included as Exhibit C, is a summary of the optional in-lieu fees neighboring jurisdictions charge. At the City Council's direction, staff can further research other optional in-lieu fee methodologies.

Options 1-3 would potentially be short term options since the City is currently participating in a multi-jurisdictional affordable housing nexus study, as discussed below.

4. *Establish an Affordable Housing Impact Fee*

The affordable housing nexus study will serve as the legal justification for an affordable housing impact fee on commercial and residential developments, including rental and ownership. The study is estimated to be completed by fall 2016, at which time the City Council will decide whether to enact an affordable housing impact fee on commercial and/or residential developments. More specifically, the City will be able to enact this fee on rental housing developments, which are no longer subject to the Affordable Housing Ordinance. Furthermore, once the study is complete staff will return to City Council with information on how the nexus study would impact ownership housing developments and the Affordable Housing Ordinance.

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The nexus study will evaluate the relationship between new development and the need for more affordable housing along with quantifying the maximum fees that can be legally charged. The study will also make suggestions for appropriate fee levels based on local conditions (e.g. current fees, market strength, project density, etc.). The basis for the relationship between development and affordable housing is as follows:

- o *Commercial Development:* A portion of the jobs created by new commercial development will pay low income wages and thus create a direct demand for new affordable housing.
- o *Residential Development:* Residential development results in new jobs to service the new homes and residents. For example, landscapers, childcare workers, and food service worker jobs will be created as a result of new development. Because many of these jobs pay low-income wages, there will be a resulting demand for new affordable housing.

Ordinance Amendment Process

- Should the City Council wish to revise Affordable Housing Ordinance or establish an Affordable Housing Impact Fee, it will take approximately 3 to 6 months to go into effect. The amendment process includes: a public hearing at the Planning Commission, a public hearing at the City Council, and two readings of the ordinance. It would become effective 30 days after the second reading. Staff will also work with the City Attorney's Office to ensure that any proposed amendment(s) to the ordinance comply with state and federal law as recently addressed by the California case law.

Summary

- In summary, as reported by New Haven Unified School District, there is a significant increase in homeless families in Union City but no shelters or transitional housing available for these families. Therefore, staff recommends that the City Council prioritize supporting transitional housing and affordable rental housing for extremely low to low income families.

In addition, the City currently has limited funding and no opportunities to generate new funds. Thus, staff recommends revising the Affordable Housing Ordinance's optional in-lieu fee provision to generate more funding. Below are the methodologies the City could implement to revise the optional in-lieu fee:

1. Profit Sharing Model
2. Reducing the Existing Optional In-Lieu Fee
3. Explore Alternative Methodologies to Calculate the In-Lieu Fee
4. Establish an Affordable Housing Impact Fee

As an interim solution, staff recommends revising the optional in-lieu fee to a profit sharing model as it's an attractive alternative for developers and staff expect developers would opt to pay the in-lieu fee rather than provide units. This will allow the City to generate funds from residential projects that are in the pipeline since these projects may come before Council before the affordable housing nexus study is complete.

Finally, once the affordable housing nexus study is complete, staff will return to the City Council with information on how the nexus study would impact ownership housing developments and the Affordable Housing Ordinance.

FISCAL IMPACT

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There is no fiscal impact as a result of receiving this report. The report identifies some options that may result in a fiscal impact, which if staff is directed to pursue will be reported at a future date.

RECOMMENDATION

It is recommended that the City Council 1) engage in a policy discussion regarding the City's affordable housing priorities and provide direction to staff on the City's priorities; 2) consider revising the Affordable Housing Ordinance's optional in-lieu fee to give the City greater flexibility which could generate funds to support very-low and low income affordable housing projects; and 3) consider the profit sharing model is an acceptable in-lieu fee approach and direct staff, with the review of the City Attorney's Office, to proceed with amending the Affordable Housing Ordinance.

2595147.1

Prepared by:

Alin Lancaster, Housing & Community Development Coordinator

Submitted by:

Joan Malloy, Economic & Community Development Director

ATTACHMENTS:

Description	Type
☐ Exhibit A - Affordable Housing Inventory	Exhibit
☐ Exhibit B - 2015 Income Limits	Exhibit
☐ Exhibit C - Neighboring Jurisdictions' In-Lieu Fees	Exhibit

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Exhibit A - Affordable Housing Inventory

Name of Development	Developer/ Owner	Address	Year Built	Total Units	Original # of Affordable Units	Current # of Affordable Units	Affordability Status	Affordability Requirement	Income Level	Property Type	Occupant Type	Notes
FAMILY HOUSING - RENTAL*												
Avalon	Avalon	24 Union Square	2009	380	66	66	Active	Affordable Housing Ordinance	Very Low Low	Rental	Family	
PACH Inc	Housing Authority	Scattered Sites	N/A	58	58	58	Active	Housing Authority	Very Low Low	Rental	Family	Project-based Vouchers
E Street housing	Housing Authority	Scattered Sites in Decoto	N/A	1	1	1	Active	Housing Authority	Very Low	Rental	Family	
Greenhaven Apartments	Greenhaven Apartments, LLC Greystar (Property Management)	31770 Alvarado Blvd	1983	250	50	0	Affordability Expired	Housing Bond Funds	Low	Rental	Family	Owner repaid Housing Bond funds in 2010/2011 therefore the affordability restrictions were removed
Abode Services	Abode Services	33914 13th St	1973	3	3	3	Active	Non-Profit Affordable Housing Developer	Very Low	Rental	Family	
Los Robles	EAH Housing	32300 Almaden	1972	140	140	140	Active	Non-Profit Affordable Housing Developer	Very Low Low	Rental	Family	
Mission Gateway	MidPen	33155 Mission Blvd	2004	120	120	120	Active	- Non-Profit Affordable Housing Developer - RDA Housing Funds	Very Low Low	Rental	Family	
Mission Sierra (formerly Sierra Green)	Legacy Partners	3464 Mission Blvd.	1986	150	31	0	Affordability Expired	Housing Bond Funds	Low	Rental	Family	Owner repaid Housing Bond funds in 2014 therefore the affordability restrictions were removed
Mission View	Housing Authority (Public Housing)	4125 Dyer Street	N/A	36	36	36	Active	Housing Authority	Very Low Low	Rental	Family	Public Housing
Skylark Apartments	Equity Residential	34655 Skylark Drive	1986	176	35	0	Affordability Expired	Housing Bond Funds	Low	Rental	Family	Owner repaid Housing Bond funds in 2010/2011 therefore the affordability restrictions were removed
Station Center Family Housing	MidPen	11th Street and Cheeves Way	2011 2012	157	155	155	Active	- Non-Profit Affordable Housing Developer - RDA Housing Funds -Project-based Vouchers	Very Low	Rental	Family	
Family Rental Subtotal				1471	695	579						

*This chart does not include 746 Section 8 Housing Choice Vouchers, 6 Shelter Plus Care Vouchers, and 2 Veterans Affairs Supportive Housing (VASH) Vouchers that are located in Union City

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Exhibit A - Affordable Housing Inventory

Name of Development	Developer/ Owner	Address	Year Built	Total Units	Original # of Affordable Units	Current # of Affordable Units	Affordability Status	Affordability Requirement	Income Level	Property Type	Occupant Type	Notes
FAMILY HOUSING - OWNERSHIP												
Alvarado Square	Pinn Brothers	Union City Blvd	2007	22	4	4	Active	Affordable Housing Ordinance	Moderate	Condo	Family	
Brookstone	Standard Pacific	Firebrick, Rumford, Travertine, European, Flagstone	1997	84	8	8	Active	Development Agreement	Moderate	Townhouse	Family	
Central Park West (modular homes)	City of Union City	Parkside Drive	N/A	6	6	6	Active	- City-Owned Units - RDA Housing Funds	Very Low Low	Modular Home	Family	Sold six City-owned modular homes to low income residents
Decoto Scattered Site	Stern & Champion	Fourth - Sixth St	1997	12	8	7	Active	- Development Agreement -RDA Housing Funds	Moderate	Single Family	Family	Unit(s) converted to market rate due to foreclosure
E Street Homes	Stern & Company	Second, Third, Sixth	1996	5	4	3	Active	- Development Agreement -RDA Housing Funds	Moderate	Single Family	Family	Unit(s) converted to market rate due to foreclosure
Former-City Owned Property	City of Union City	4th, 7th, Monterra Circle	N/A	3	3	3	Active	- City-Owned Units - RDA Housing Funds	Moderate	Single Family Condo	Family	Two City-owned single family homes and one City-owned condo were sold to low income residents
Glenwood Terrace	Ryland Homes	Glenwood Terrace	2001	30	4	0	Affordability Removed	Affordable Housing Ordinance	Moderate	Condo	Family	
Ivywood	Braddock & Logan	Condor Drive Dowe Drive	2004	33	4	4	Active	Affordable Housing Ordinance	Moderate	Single Family Duplex	Family	Affordable Unit Mix 2 duplex units 2 single family units
Kenita	Pancal Development	Kenita Way	2007 2008	15	2	2	Active	Affordable Housing Ordinance	Moderate	Single Family Duplex	Family	Affordable units are all duplex units
Monta Vista	Pinn Brothers	Monterra Circle	2001	157	24	18	Active	Affordable Housing Ordinance	Moderate	Condo	Family	Unit(s) converted to market rate due to foreclosure
Nor Cal Infill	Stern & Company	Torrey Pine Lane Larkspur Ct	2008	8	8	8	Active	- Affordable Housing Ordinance - RDA Housing Funds	Moderate	Single Family	Family	
Pacific Landing	Pacific Gold	Meteor Drive	2011	15	3	0	Affordability Removed	Affordable Housing Ordinance	Moderate	Townhouse	Family	Project not completed
Pacific Terrace	KB Homes	Carnelian, Chalcedony, Emerald, Jade, Aquamarine Terrace, Onyx, Green, Pearl, Moonstone, Sapphire, Turqoiuse, Tourmaline, Amethyst	2007	216	30	27	Active	- Affordable Housing Ordinance - RDA Housing Funds	Moderate	Townhouse	Family	Unit(s) converted to market rate due to foreclosure
Ponderosa Cove II	Ponderosa	Garfinkle, Novato, Fernandez, Martin	2004	43	6	6	Active	Affordable Housing Ordinance	Moderate	Single Family Duplex	Family	Affordable units are all duplex units
Talavera	Summerhill	Niland St, Martin St, Arce St, Fernandez St, Novato St, Navarro Dr, Zaner Way, Seeger Way	2007 2008	194	28	28	Active	Affordable Housing Ordinance	Moderate	Single Family Duplex	Family	Affordable units are all duplex units
Wild Rose	Braddock & Logan	Dutra-Vernaci, Elias, Governo, Myrtle, Soto, Valle Drive	2003 2004	62	10	10	Active	Affordable Housing Ordinance	Moderate	Single Family Duplex	Family	Affordable Unit Mix 4 duplex units 6 single family units
Family Ownership Subtotal				905	152	134						

Total Family Housing	2376	847	713
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ATTACHMENT 2

Exhibit A - Affordable Housing Inventory

Name of Development	Developer/ Owner	Address	Year Built	Total Units	Original # of Affordable Units	Current # of Affordable Units	Affordability Status	Affordability Requirement	Income Level	Property Type	Occupant Type	Notes
SENIOR HOUSING - RENTAL												
Acacia Creek	Masonic Homes	34400 Mission Boulevard	2010	223	0	0	Market Rate	Not Applicable	Market Rate	Rental Assisted Living	Senior	193 Independent living units, 30 memory care units
Dyer Street Apartments	Housing Authority	4131-4183 Dyer Street	1977	49	49	49	Active	Housing Authority	Very Low	Rental	Senior	Project-based Vouchers
Masonic Homes	Masons of California	34400 Mission Boulevard	1928	174	0	0	Market Rate	Not Applicable	Market Rate	Rental Assisted Living	Senior	84 independent living apts, 74 assisted living apts, and 16 Alzheimer's/dementia care units. Unit count doesn't include a skilled nursing facility with 125 beds.
Nidus Court	Housing Authority	Nidus Court	1977	50	49	49	Active	Housing Authority	Very Low	Rental	Senior	Project-based Vouchers
Pacifica Senior Living (formerly Alma Via)	Pacifica (formerly Alma Via)	33883 Alvarado-Niles	2005 2006	91	28	0	Affordability Removed	RDA Housing Funds	Very Low Low Moderate	Rental Assisted Living	Senior	Former owner filed bankruptcy. Affordability Restrictions were lost.
Rosewood Terrace	Eden Housing	33935 Alvarado-Niles	1999	45	45	45	Active	- Non-Profit Affordable Housing Developer - RDA Housing Funds	Very Low	Rental	Senior	
Vintage Court	USA Multifamily	2499 Decoto	1998	125	125	125	Active	- Non-Profit Affordable Housing Developer	Low	Rental	Senior	
Wisteria Place	Eden Housing	33821 Alvarado-Niles	2004	40	39	39	Active	- Non-Profit Affordable Housing Developer - RDA Housing Funds	Very Low	Rental	Senior	
Senior Rental Subtotal				797	335	307						

SENIOR HOUSING - OWNERSHIP												
Tropics Mobile Home Park	Millennium Housing	33000 Almaden	N/A	544	141	140	Active	RDA Housing Funds	Extremely Low Very Low	Owner	Senior	- Rent subsidies are provided for 140 units - Former RDA had purchased one modular home and it was sold as an affordable unit however that unit has since converted to market-rate
Senior Ownership Subtotal				544	141	140						

Total Senior Housing				1341	476	447						
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FAMILY & SENIOR HOUSING												
Total Rental				2,268	1,030	886						
Total Ownership				1,449	293	274						
TOTAL (RENTAL & OWNERSHIP)				3,717	1,323	1,160						

ATTACHMENT 2

Exhibit B 2015 Income Limits

Alameda County: 4-person Household Area Median Income (AMI) - \$93,500

Income Category	Income Level	Number of People in a Household							
		1	2	3	4	5	6	7	8
Extremely Low	30% of AMI	\$ 19,650	\$ 22,450	\$ 25,250	\$ 28,050	\$ 30,300	\$ 32,570	\$ 36,730	\$ 40,890
Very Low Income	50% of AMI	\$ 32,750	\$ 37,400	\$ 42,100	\$ 46,750	\$ 50,500	\$ 54,250	\$ 58,000	\$ 61,750
Low Income	80% of AMI	\$ 50,150	\$ 57,300	\$ 64,450	\$ 71,600	\$ 77,350	\$ 83,100	\$ 88,800	\$ 94,550
Median Income	100% of AMI	\$ 65,450	\$ 74,800	\$ 84,150	\$ 93,500	\$ 101,000	\$ 108,450	\$ 115,950	\$ 123,400
Moderate Income	120% of AMI	\$ 78,550	\$ 89,750	\$ 101,000	\$ 112,200	\$ 121,200	\$ 130,150	\$ 139,150	\$ 148,100

AMI = Area Median Income

Income Limits are published annually by the California Department of Housing and Community Development (HCD)

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Exhibit C

Optional In-Lieu Fees

City	% of Units Required to be Affordable	In-Lieu Fee
Fremont*	<p>3.5-4.5% of units must be set aside as affordable plus the developer must pay an impact fee.</p> <p>Developer may opt out of providing units but will have to pay an additional impact fee</p>	<p>Fee is charged per habitable square foot of market-rate units built</p> <p><u>Ownership</u> Low Income (attached) - \$11 Low Income (detached) - \$11 Mod Income - \$8.50</p> <p><u>Rental (w/out subdivision map)</u> Units Greater than 700 sf - \$17.50 Units Less than 700 sf - \$8.75</p> <p><u>Rental (w/ subdivision map)</u> \$19.50</p>
Hayward	15%	<p>Fee is charged per habitable square foot of market-rate units built</p> <p><u>Ownership</u> Detached Unit - \$4 Attached - \$3.24</p> <p><u>Rental</u> \$3.24</p>
Livermore	<p>15% - General Plan Area 10% - Downtown Plan Area</p>	<p>Fee is charged per market-rate unit</p> <p><u>Fee Rate</u> 15% of the difference between the development cost for a market-rate unit and the maximum affordable purchase price.</p> <p><u>Maximum Fee</u> 15% of the estimated development cost of constructing a three-bedroom detached housing unit</p>
Newark	Has a Housing Impact Fee rather than an inclusionary housing ordinance. However, developers may opt to provide actual affordable units instead of paying the fee	\$20 per square foot of floor area is charged for the first 1,000 square feet; and \$8 per square foot is charged above 1,000 square feet, excluding garages, carports or common areas.
San Leandro	15%	<p>In-Lieu fee only allowed in combination with one or more of the following alternatives: off-site construction, land dedication, or credit transfer.</p> <p>In-Lieu fee payment has only been allowed twice during the housing market crash in 2008</p>
Union City	15%	<p><u>Small Projects (6 units or less)</u> \$160,000 per affordable unit that would have been built (includes fractional units)</p> <p><u>Large Projects (7 units or more)</u> \$180 per sf of the affordable units that would have been built</p>

*Fremont - fee terms listed are for 2016, fees increase in 2017

ATTACHMENT 3

**CITY OF UNION CITY
MINUTES FOR THE REGULAR PLANNING COMMISSION MEETING
ON THURSDAY, MARCH 3, 2016, 7:00 P.M.
IN THE COUNCIL CHAMBERS OF CITY HALL
34009 ALVARADO-NILES ROAD, UNION CITY, CALIFORNIA**

**I. ROLL CALL: Chairperson Ray Gonzales Jr., Vice Chair Harpal Mann
Commissioners Lee Guio, Jo Ann Lew, Dave Sweilem**

STAFF: Joan Malloy (Economic and Community Development Director); Alin Lancaster (HCD Coordinator); Farooq Azim (Principle Engineer); Kris Kokotaylo (Deputy City Attorney); Kris Fitzgerald (Administrative Assistant).

II. APPROVAL OF MINUTES:

- A.** The minutes for the Special Joint Session of the City Council and Planning Commission of February 4, 2016 were approved as submitted.
- B.** The regular Planning Commission minutes of February 4, 2016 were approved as submitted.

III. ORAL COMMUNICATIONS: None.

IV. WRITTEN COMMUNICATIONS: None.

V. PUBLIC HEARINGS:

A. CONTINUED HEARINGS: None.

B. NEW HEARINGS:

- 1. CITYWIDE, Zoning Text Amendment AT-16-001** - The City of Union City is proposing to modify Title 18, Zoning, of the Municipal Code and Chapter 18.33, Affordable Housing, to:

- Amend the Density Bonus provision to comply with requirements listed in State law and the City's current Housing Element;
- Amend the Contractually Binding Alternative Means of Compliance Provision of the Affordable Housing Ordinance to provide greater flexibility to generate funds to support affordable housing development;

The Planning Commission will consider a proposed California Environmental Quality Act (CEQA) determination that the proposed amendments are exempt from environmental review in accordance with CEQA Guidelines Section 15061(b)(3), the general exemption for projects with no potential for significant effect on the environment.

Alin Lancaster, HCD Coordinator, presented the staff report.

Commissioner Guio referred to the Fremont program and asked if the Union City program is comparable.

ATTACHMENT 3

Ms. Lancaster replied that Fremont requires a range of 3.5 to 4.5 percent of the units be provided as actual units and then there is an additional impact fee. Ms. Lancaster stated that there are some variations and their fees will be increasing in 2017.

Commissioner Guio asked if it is correct that it is up to the City Council to determine on a case-by-case basis whether it is a profit-split or a fee or a combination of the two.

Ms. Lancaster replied that is correct.

Joan Malloy, Economic and Community Development Director, stated that currently the ordinance requires that 15% of the units must be provided or as an alternative that \$180 per square foot that can be paid so for a 2,000 square foot unit in today's ordinance it would be \$360,000.00 per affordable unit. Ms. Malloy stated that staff is suggesting that the City establish a base cost of \$160,000.00 per unit and the reason that number was chosen is because it is already in the ordinance as required for small projects of six units or less. Ms. Malloy stated that if there was a profit sharing agreement then \$160,000.00 per unit would be the base and the City would not accept anything less. Ms. Malloy stated that if the market tanked it would be at least that amount. Ms. Malloy stated that if there was profit sharing then it would be more.

Commissioner Guio asked if there will be a grace period or grandfathering for any projects that are currently in the pipeline.

Ms. Malloy replied that there are not any current formal projects. Ms. Malloy stated that the ordinance does currently allow the council to make exceptions and that language is in Exhibit A - Item 18.33.060.H. Ms. Malloy stated that it is part of the reason that staff came forward with the amendment was to clarify so we would have a level playing field. Ms. Malloy stated that there is also a waiver in Section D – waiver of requirements. Ms. Malloy stated that the council's goals have shifted to wanting to collect funds to begin to build a fund source for future affordable housing projects. Ms. Malloy stated that as proposed this is a less expensive approach than it would be to provide the units, however, the council also indicated that they did not want to give up on providing affordable units so the way that this is structured is that it is at the council's discretion as to whether they accept an in lieu fee or provide the units.

Commissioner Guio asked how does this compare to how we were doing it when we had redevelopment as far as affordable units.

Ms. Malloy replied that redevelopment was very successful at providing affordable units especially on the rental side. Ms. Malloy stated that prior to the legal ruling that prohibited the City from requiring rental affordable housing from rental developments the City had Mission Gateway, Station Center and AvalonBay.

Commissioner Guio asked for clarification that the City cannot require rentals yet it is the highest priority.

Kris Kokotaylo, Deputy City Attorney, replied that the California Courts have held is that requiring inclusionary housing for rental units amounts to rent control. Mr. Kokotaylo stated that under State law the Costa-Hawkins Act, rent control cannot be imposed on units that are built after 1995 or 1996. Mr. Kokotaylo stated that what that ruling means is that the City cannot enforce the inclusionary housing ordinance on rental developments. Mr. Kokotaylo stated that if there was a nexus study showing that there is a particular impact by a residential development whether it is owner occupied or not or a commercial development and we could tie that to the need for affordable housing then we could have an impact fee similar to other impact fees that the City imposes such as park impact, street impact fees etc. but we would need that study and then we would have to comply with the mitigation fee act. Mr.

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Kokotaylo stated that it is a different way of collecting a fee that would be allowed but requiring inclusionary units is essentially a form of rent control as the courts have ruled.

Commissioner Guio asked for clarification that if there were some forcing issue the City could enact impact fees which could then be used to reduce rents or offer affordable rents for part of the population.

Mr. Kokotaylo replied that is correct. Mr. Kokotaylo stated that those fees could be used towards affordable housing.

Ms. Malloy stated that the issue before the commission this evening really impacts ownership housing and until the nexus study is done rental housing is off the board.

Commissioner Mann referred to past projects in Union City and asked what is the percentage of developers that have actually provided 15% units versus paying a fee.

Ms. Malloy replied that for the past year or so staff has been pushing for the fee. Ms. Malloy stated that units have not been provided since Station Center was built in 2011.

Commissioner Mann asked in order to comply with State law does the City have enough funds to be able to meet the affordable housing requirement.

Ms. Lancaster clarified that he meant the Regional Housing Needs Assessment (RHNA) and replied that at this point the City does not have enough funds.

Commissioner Mann asked do we have the units either.

Ms. Lancaster replied no.

Ms. Malloy stated that the Housing Element does comply with State law and the City does provide the opportunity for those units to be built but the City does not have the funding resources to build the units.

Commissioner Mann asked what is the criteria for who is selected to occupy the affordable housing units.

Ms. Lancaster replied that each project has different funding sources that dictate what their eligibility requirements are but the primary one is income. Ms. Lancaster stated that in the staff report there is an income limits chart that shows what the different income limit thresholds are per family or household size. Ms. Lancaster stated that for most rental projects the maximum income is 80% of median income for the area, which is considered low-income.

Commissioner Mann asked what is the limit for ownership units.

Ms. Lancaster replied that it goes up to 120% of area median income so for a family of four it would be an income limit of \$112,000.00 per year.

Commissioner Mann asked if they are giving the City Council the flexibility for these fees.

Ms. Malloy replied yes.

Commissioner Mann asked if there any formula considering the fact that prices in Union City have gone up significantly over the past year.

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Ms. Malloy replied that the number has not been adjusted for 15 years so essentially \$160,000.00 for the small projects was established when this ordinance was adopted in 2001. Ms. Malloy stated that \$160,000.00 is the suggested floor if this were a profit sharing agreement it could be more. Ms. Malloy stated that the council could set a higher floor.

Commissioner Mann asked if the City Council sets the floor.

Ms. Malloy replied that the ordinance would set the floor but the council could change it at their discretion. Ms. Malloy stated that currently the ordinance states that if you want to pay an in-lieu fee it would be \$180.00 per square foot which is about \$360,000.00 per unit. Ms. Malloy stated that the way the ordinance is set-up is to encourage the provision of the units to moderate income families and that was the intent of the ordinance was to be sure the units were provided. Ms. Malloy stated that because the landscape has changed so much the City is looking at other ways to generate funds and by providing an alternative to developers rather than providing the units, setting a floor and consider a profit-sharing model.

Commissioner Mann asked if this is something that will impact the General Plan.

Ms. Malloy replied this would be an ordinance; it is just an implementation tool as opposed to a policy position.

Commissioner Lew clarified that if all goes well this ordinance would go into effect on May 12, 2016 and asked if, hypothetically, City Ventures came back after May 12, 2016 and asked for changes to their project could this newly passed ordinance be applied to their project.

Ms. Malloy replied that if they opened up their project for review again it would be up for discussion.

Mr. Kokotaylo stated that it would depend on what they are doing but it would be a possibility.

Commissioner Lew asked if it would be up to staff to raise the issue.

Ms. Malloy replied that it would be a highlight and up for discussion.

Commissioner Lew stated that she thinks this is absolutely needed because the City doesn't have the money to build affordable housing and this is a good first step. Commissioner Lew stated that this is needed all over the Bay Area.

Commissioner Sweilem asked if the \$160,000.00 fee has been reevaluated to see if it is a necessary number or is it too low of a number.

Ms. Malloy replied that a full evaluation has not been done. Ms. Malloy stated that part of the nexus study will provide the City with better data. Ms. Malloy stated that what the City was seeking to do was provide a stopgap measure between now and when the nexus study is completed.

Commissioner Sweilem asked when will the nexus study be completed.

Ms. Lancaster replied it is estimated to be completed in the fall.

Commissioner Sweilem asked what basis does the City Council use for discretion on changing this fee.

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Mr. Kokotaylo replied that it is up to the City Council. Mr. Kokotaylo stated that there are a number of factors that they may consider; what the homes are likely to sell for. Mr. Kokotaylo stated that the in-lieu option is optional and the council may decide that they don't want to do any fee amount and want to see units instead. Mr. Kokotaylo stated that they may consider whether it makes sense to have units in the development with 3,000 square foot homes; does it make sense to have units in developments with half the square footage. Mr. Kokotaylo stated that these are all the things that the council can consider in terms of not just setting the minimum whether it is 180 or 200 but whether to accept the request for an in-lieu fee option at all.

Commissioner Sweilem asked what is the percentage of homeless families in Union City.

Ms. Lancaster replied that is a difficult question to answer. Ms. Lancaster stated that every two years Alameda County does a county-wide homeless count. Ms. Lancaster stated that one was done in 2015 but the County has not released the report. Ms. Lancaster stated that the numbers that Kidzone provided are pretty accurate.

Commissioner Sweilem asked when units are available for affordable housing do the applicants have to be Union City residents to apply.

Ms. Lancaster replied that there is a preference system; so it would be Union City residents, people who work in Union City, people who have close relatives in Union City and then open to the general public.

Chairperson Gonzales asked if it is correct that the law prohibits cities enforcing developer's from building low income units they cannot force them to which is the alternative in the past or currently they could pay an in-lieu fee.

Mr. Kokotaylo replied that it just applies to non-owner occupied or rental units. Mr. Kokotaylo stated that the City cannot enforce the inclusionary housing ordinance as to rental developments.

Chairperson Gonzales asked for clarification that the City would prefer getting funds because then they could disburse them in more alternative options.

Ms. Malloy replied that the point of collecting more funds would be to partner with an affordable housing developer to construct units.

Chairperson Gonzales asked how far away is the City from being able to fund new projects.

Ms. Lancaster replied that we are very far away. Ms. Lancaster stated that she thinks that the City's goal at this point is to have enough funds to support one project similar to Mission Gateway or Station Center.

Chairperson Gonzales stated that the profit sharing model would let the City retain the excess sale proceeds above a target value of a home.

Ms. Malloy replied that profit sharing would be benefit to both the City and the developer.

Chairperson Gonzales stated that hopefully it would exceed the \$160,000.00 floor and that would benefit everyone. Chairperson Gonzales asked if the developer would have three options for the affordable housing.

Ms. Malloy replied that the developer could pay \$180.00 per square foot if they want or they could build the units. Ms. Malloy stated that is the way the ordinance is setup is that the units be provided then

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secondarily the developer could pay the \$180.00 per square foot or third they could request from the council an alternative approach which would be the minimum of \$160,000.00 and then the profit sharing on top of that.

Mr. Kokotaylo stated that options b and c are subject to approval from the City Council. Mr. Kokotaylo stated that providing the units is allowed and the other options are up to the City Council.

Commissioner Guio posited if a hypothetical developer is building one hundred units and states that he wants to build five affordable units and pay fees or split profits on ten of the units and asked if there are residency requirements on the low income units and how do we guarantee that those low income units remain low income units.

Ms. Lancaster replied that a lottery would be held to sell the units initially. Ms. Lancaster stated that the buyers would sign a resale restriction agreement which is recorded against the property and places restrictions on the unit that when it is resold it must be sold to another qualified low income buyer. Ms. Lancaster stated that there is a restriction that the unit must be owner occupied they cannot rent it out.

Commissioner Guio asked if the City is required to spend the affordable housing fee on low income housing.

Ms. Lancaster replied yes.

Commissioner Guio referred to the desk item and asked whether staff wants the commission to consider different fees for single-family and multi-family units.

Ms. Malloy asked if he was referring to the letter with the desk item.

Commissioner Guio replied yes.

Ms. Lancaster replied that the reason that they proposed the \$160,000.00 fee is because small projects, which are six units or less, are subject to the per unit fee and staff wanted to provide equal treatment to small and large projects and be consistent. Ms. Lancaster stated that they wanted to make this alternative attractive to developers but ensure that the City is receiving an impactful fee.

Commissioner Sweilem asked if the purchaser of a low income unit is required to stay in it for a certain length of time.

Ms. Lancaster replied that the deed restriction is on the property for 45 years so they can sell it whenever they want but they must live in it while they own it.

Commissioner Sweilem asked if they have to get approval from the City on the sale price.

Ms. Lancaster replied yes.

Commissioner Lew referred to attachment 2 page 588 and asked what happened to the sixteen units that converted to market rate due to foreclosures.

Ms. Lancaster replied that if the unit is foreclosed upon then all the restrictions are removed.

Commissioner Lew asked which units were foreclosed.

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Ms. Lancaster stated that they were scattered throughout the City.

Commissioner Lew asked if the City didn't want to save them.

Ms. Lancaster stated that this occurred around the time that the Redevelopment Agency was dissolved so the City didn't have the funding to purchase the units.

Mr. Kokotaylo stated that when the unit does go into foreclosure there is typically have a provision in the resale agreement that provides that excess proceeds go to the City. Mr. Kokotaylo stated that to the extent that it sells over the deed restricted price the City would get the excess proceeds the problem is that after all the back fees are paid there is very little to nothing left to give back to the City.

Commissioner Lew asked what happened to the families.

Ms. Lancaster replied that she did not know.

Commissioner Lew asked how much is the City getting from Pulte Homes for the Cabello project.

Ms. Lancaster replied that it is estimated to be about \$180,000 per unit for the seven units that they would have provided.

Chairperson Gonzales opened the public hearing.

Dennis Martin, BIA Bay Area Building Industry Association, stated that they represent developers of for sale and rental projects throughout the Bay Area. Mr. Martin stated they sent in a letter which was given to the Planning Commission as a desk item. Mr. Martin stated that the issue is a severe housing shortage. Mr. Martin stated that is causing a terrific crisis on people with less means. Mr. Martin stated the City should be looking at ways to increase housing supply not just to provide affordable housing programs through the taxing of market rate housing. Mr. Martin stated that it is a way to offer housing to lower income individuals and families and so we want to complement the City on providing a flexible alternative approach the provision of this affordable housing and meeting this requirement through profit sharing of the sale of the units. Mr. Martin stated that they believe that the minimum fee is more appropriately toward single-family homes where the profit margin is much greater and the sales prices are higher and the ability of the developer to provide funding for this equity split is greater. Mr. Martin stated that in more dense projects which we are looking at throughout the Bay Area because of the lack of available land to build on and the difficulty of getting housing projects through the entitlement process we are looking at smaller projects, smaller units, and more dense units. Mr. Martin stated that those units carry a lower profit margin so meeting a minimum fee of \$160,000 a unit at this time might be more difficult. Mr. Martin stated that the developer might pay the fee or might make some other arrangement or perhaps passing on the project. Mr. Martin encouraged the commission to think outside the box and perhaps provide some flexibility for smaller units, more dense units and the kinds of projects that are going to be needed now and in the future to meet our growing demand. Mr. Martin stated that there are projects that are moving through the phase to buy land, design projects and to make proposals to the City and he would like the commission to consider making exceptions to the ordinance to allow projects that are moving through that process to be grandfathered in.

Vince Fletcher, DR Horton Company, 5050 Hopyard Road, Pleasanton, CA, stated that they entered into an agreement on the Soares Ranch property roughly six months ago and during that time when they were analyzing the purchase of the property they had conversations with Vernon Smith and they asked him how they should underwrite the property. Mr. Fletcher stated that Mr. Smith told them that it would be the City's preference to do an affordable housing agreement similar to the one that Pulte Homes had done.

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Mr. Fletcher stated that they underwrote the project six months ago with that understanding in mind. Mr. Fletcher stated that their minimum fee per unit on their 45 unit project was \$100,000.00 and they have seven units of affordable. Mr. Fletcher stated that their project which has been submitted as a preliminary map to the City has roughly 65 townhouse units that range from 1,400 square feet to 2,100 square feet. Mr. Fletcher stated that this is supposed to be an affordable housing project by design and they underwrote their project based on the profit sharing agreement contract that Mr. Smith gave them with a minimum fee of \$100,000 for the ten units of affordable housing which would be \$1,000,000.00. Mr. Fletcher stated that they are requesting to have that amount as their base. Mr. Fletcher stated that they could afford to do the \$160,000.00 but it is not what they were led to believe it would be. Mr. Fletcher stated that it would be painful and a financial hardship. Mr. Fletcher stated that these units will be selling the \$500,000.00 to \$600,000.00 range and Pulte's homes are averaging \$1.4 million and are twice the size of the proposed units. Mr. Fletcher stated that they have received comments from staff on the preliminary tentative map and prefer to not submit a formal tentative map application until we have addresses all the concerns of traffic, fire, planning, engineering and police and they think they are very close to that. Mr. Fletcher complimented staff that they have been working with. Mr. Fletcher stated that they are respectfully requesting that their minimum fee be set at \$100,000.00 per the ten units of affordable units that will be required. Mr. Fletcher stated that when Mr. Smith was explaining this to them he was under the belief that it would be roughly 50% of the profit on 10 of the units. Mr. Fletcher stated that he thinks that their profit probably won't reach \$155,000.00 per unit but that is what they underwrote it to and if they split the profit on that it would be \$75,000.00 for the City per ten units but they could live with the \$100,000.00 fee.

Commissioner Lew stated that her understanding is that anything that they are requesting is still at the discretion of the City Council and not the Planning Commission and as much as we appreciate your coming tonight, her belief is still that this is at the City Council discretion.

Mr. Kokotaylo replied that is accurate.

Chairperson Gonzales closed the public hearing.

Commissioner Guio stated that he has heard at different places in the city people talking about rent control and he thinks this is related and so hopefully we can do our job well enough but he doesn't know what will happen in the future. Commissioner Guio stated that there is a need for affordable housing for people with low-income.

Chairperson Gonzales asked if the \$160,000.00 was on the books during the recession years.

Ms. Malloy replied that it was.

Chairperson Gonzales asked if it was a large impact on developers during those years.

Ms. Malloy replied that there was really no development during the depths of the recession.

Chairperson Gonzales asked if in the future if there is another recession could the City Council move that number lower, higher, or keep it the same.

Mr. Kokotaylo replied that the City Council could amend the ordinance to lower that floor. Mr. Kokotaylo stated that there is also a provision to completely waive the requirements for having inclusionary units.

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Commissioner Sweilem made a motion that the Planning Commission recommend to the City Council approval of Zoning Text Amendment AT-16-001, making findings 1 - 4, and adopt a resolution confirming this action.

Commissioner Lew seconded the motion.

AYES	5 (Gonzales, Guio, Lew, Mann, Sweilem)
NOES	0
ABSENT	0
ABSTAIN	0

Ms. Malloy stated that this will be heard as a public hearing at the City Council meeting on Tuesday, March 22, 2016.

VI. SUPPLEMENTAL STAFF REPORTS:

A. CONTINUED REPORTS: None.

B. NEW REPORTS: None.

VII. ECONOMIC DEVELOPMENT REPORTS: None.

VIII. COMMISSION MATTERS:

A. Follow-up on Planning Commission referrals to the City Council.

B. Upcoming applications for the Regular Planning Commission meeting for March 17, 2016.

IX. GOOD OF THE ORDER:

Commissioner Sweilem thanked the City for allowing them to attend the Planner's Academy conference. It has been very informative and educational.

Commissioner Lew stated that she also really appreciates being able to attend the Planner's Academy conference.

Commissioner Lew asked about the news of Sports Authority bankruptcy and if the Union City store will be closed.

Ms. Malloy replied that the Union City store is not on the list for stores to be closed.

Chairperson Gonzales stated that he has worked with the store for youth sports and they have been good to work with.

Commissioner Mann stated that he has also attended interesting sessions at the Planner's Academy conference.

Commissioner Mann stated that he attended the California Democratic convention and spoke about what he heard there.

ATTACHMENT 3

Commissioner Mann stated that there are two abandoned pick-up trucks; one on Sandburg Drive and one on Chesapeake Drive.

Commissioner Guio also spoke about information that he had learned at the Planner's Academy conference.

Commissioner Guio gave an update about the last EDAT meeting.

Commissioner Guio stated that the Alvarado Historic District Merchant's Association is having an egg hunt on Saturday, March 19, 2016 at 10:00 a.m. Commissioner Guio stated that they are hosting a social media workshop on March 24, 2016 at 6:30 p.m.

Chairperson Gonzales stated that he is also enjoying attending the Planner's Academy.


Ms. Malloy stated that there is a General Plan workshop on Saturday, March 19, 2016 and also on Thursday, March 31, 2016 in the evening. Ms. Malloy stated that there is a briefing to the City Council regarding transportation on Tuesday, March 22, 2016 at 6:00 p.m.

X. **ADJOURNMENT:** 8:35 p.m.

APPROVED:

RAY GONZALES, JR., CHAIRPERSON

ATTEST:



JOAN MALLOY, SECRETARY

PLANNING COMMISSION RESOLUTION NUMBER #05-16

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF UNION CITY
RECOMMENDING APPROVAL TO THE CITY COUNCIL OF MUNICIPAL CODE
AMENDMENT, AT-16-001, TO AMEND CHAPTER 18.33, AFFORDABLE HOUSING
ORDINANCE, TO AMEND THE DENSITY BONUS PROVISION TO COMPLY WITH
REQUIREMENTS LISTED IN STATE LAW AND THE CITY'S CURRENT HOUSING
ELEMENT AND TO AMEND THE CONTRACTUALLY BINDING ALTERNATIVE
MEANS OF COMPLIANCE PROVISION TO PROVIDE GREATER FLEXIBILITY TO
GENERATE FUNDS TO SUPPORT AFFORDABLE HOUSING DEVELOPMENT**

WHEREAS, the City of Union City is proposing Municipal Code Amendment, AT-16-001, to amend provisions listed in Chapter 18.33 (the "Affordable Housing Ordinance") to amend the density bonus provision to comply with requirements listed in State law and the City's current Housing Element and to amend the contractually binding alternative means of compliance provision to provide greater flexibility to generate funds to support affordable housing development; and

WHEREAS, the California Constitution, Article XI, Section 7, provides cities and counties with the authority to enact ordinances to protect the health, safety, welfare, and morals of their citizens; and

WHEREAS, the City's current Housing Element provides that the City will update the density bonus provision of the Affordable Housing Ordinance in 2016 to comply with State law requirements; and

WHEREAS, the existing density bonus provision of the Affordable Housing Ordinance is not compliant with State law requirements; and

WHEREAS, the City desires to amend the density bonus provision of the Affordable Housing Ordinance to allow units that are required to be affordable pursuant to the Affordable Housing Ordinance to be considered restricted affordable units for the purposes of determining whether a housing development qualifies for a density bonus and to reference State law requirements for density bonus eligibility; and

WHEREAS, the California Supreme Court has affirmed the power of a city to enact a broad inclusionary housing ordinance to increase the amount of affordable housing provided that the ordinance is reasonably related to the broad general welfare purposes of the ordinance in California Bldg. Industry Assn. v. City of San Jose (2015) 61 Cal.4th 435; and

WHEREAS, the City's Redevelopment Agency dissolved in 2011 pursuant to State law; and

WHEREAS, the City relied upon Redevelopment Agency Housing Funds to construct affordable rental housing; and

WHEREAS, the Affordable Housing Ordinance requires ownership developments to provide affordable units for moderate income households; and

WHEREAS, the Affordable Housing Ordinance also requires rental developments to provide affordable units for very-low and low income households. However, this provision is unenforceable pursuant to the California Court of Appeal decision in Palmer/Sixth Street Properties, LP v. City of Los Angeles (2009) 175 Cal.App.4th 1396; and

WHEREAS, the dissolution of the City's Redevelopment Agency and recent California case law has limited the City's ability to provide affordable housing for very-low and low income households; and

WHEREAS, the City desires to amend the Affordable Housing Ordinance to provide more flexibility and City discretion to accept a contractually binding alternative means of compliance; and

WHEREAS, the Planning Commission held a duly noticed public hearing on the proposed Municipal Code Amendments on March 3, 2016 at which time all interested parties had the opportunity to be heard. The Planning Commission considered a staff report dated March 3, 2016 and all written and oral testimony; and

WHEREAS, the amendments to the Municipal Code propose to amend Chapter 18.33.060 as shown in Exhibit A and in red-lined version in Exhibit B for reference, which exhibits are attached and incorporated herein by reference.

NOW, THEREFORE, BE IT RESOLVED, that the foregoing recitals are true and correct and made a part of this Resolution.

BE IT FURTHER RESOLVED that the Planning Commission of the City of Union City hereby recommends that the City Council adopt an ordinance amending Chapter 18.33.060 of the Municipal Code to amend provisions related to density bonuses and contractually binding alternative means of compliance, and does hereby find as follows:

1. That approval of the Municipal Code Amendments is exempt from further environmental review under the general rule in California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) that CEQA only applies to projects that have the potential for causing a significant effect on the environment. As a series of text amendments and additions, it can be seen with certainty that there is no possibility that the Municipal Code Amendment (AT-16-001) will have a significant effect on the environment; and
2. That the proposed Municipal Code Amendments should be granted because it will ensure the Affordable Housing Ordinance complies with State law, the City fulfills implementation program HE-B.c of the City's current Housing Element, and the City has greater flexibility to generate funds to support affordable housing development; and
3. That the proposed Municipal Code Amendments amending Title 18 are consistent with the General Plan, and any applicable specific plans, because the amendments would encourage

construction and maintenance of affordable housing by allowing the City to obtain funds to provide financial support for the development of affordable housing and update the density bonus provisions to comply with State law; and

4. That the proposed Municipal Code Amendments are necessary and desirable to achieve the purposes of Title 18.

BE IT FURTHER RESOLVED, that the Planning Commission of the City of Union City hereby recommends approval of the proposed text amendments, AT-16-001, as shown in Exhibit A and incorporated herein by reference, to the City Council.

I HEREBY CERTIFY that the foregoing resolution was introduced and adopted at a regular meeting of the Planning Commission of the City of Union City held on March 3, 2016, by the following vote:

AYES	5(Gonzales, Guio, Lew, Mann, Sweilem)
NOES	0
ABSTAIN	0
ABSENT	0

MOVED:	Commissioner Sweilem
SECONDED:	Commissioner Lew

APPROVED

RAYMOND GONZALES, JR.,
CHAIRPERSON

ATTEST:



JOAN MALLOY, SECRETARY

Exhibit A

Chapter 18.33 AFFORDABLE HOUSING

18.33.010 Purpose.

The purpose of this chapter is to:

- A. Enhance the public welfare by ensuring that future residential developments contribute to the attainment of the affordable housing goals set forth in the Housing Element of the General Plan of the City of Union City.
- B. Increase the production of residential units in Union City that are affordable to households of very low, low, and moderate income.
- C. Facilitate a cooperative effort between the City of Union City and the housing development community for the provision of affordable housing to all economic segments of the community.
- D. Ensure that units affordable to households of very low, low and moderate income are distributed throughout the City's various neighborhoods.
- E. Comply with the requirements of Health and Safety Code Section 33341.3(b) within the redevelopment project area and elsewhere in the community as applicable.

18.33.020 Definitions.

As used in this chapter, each of the following terms is defined as follows:

- A. "Affordable housing program" means a method for providing the affordable housing units in the proposed project, a method for a payment in-lieu of providing affordable units, or a combination thereof, pursuant to Section 18.33.060(H).
- B. "Affordable unit" means an ownership or rental housing unit, including senior housing, affordable by households with very low, low or moderate incomes as defined in this chapter. The unit shall be deemed affordable if it meets the requirements of Health and Safety Code Section 50052.5(b) for owner occupied housing and Section 50053(b) for rental housing.
- C. "Applicant" means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which seeks city real property development permits or approvals.
- D. "Dwelling unit" means a dwelling designed and intended for occupancy by one (1) household.
- E. "Housing costs" means the monthly mortgage principal and interest, property taxes, homeowners' insurance, utility allowance and condominium fees, where applicable, for ownership units; and the monthly rent and utility allowance for rental units.
- F. "HUD" means the United States Department of Housing and Urban Development or its successor.

G. “Very low, low and moderate income levels” means those income and eligibility levels determined periodically by the United States Department of Housing and Urban Development based on the Oakland Standard Metropolitan Statistical Area (SMSA) median income levels by family size. Such levels shall be calculated on the basis of gross annual household income considering household size and number of dependents, income of all wage earners, elderly or disabled family members and all other sources of household income and will be recertified as set forth by local standards, State and Federal housing law.

1. “Very low income” means fifty percent (50%) or under of the SMSA median, adjusted for actual household size.
2. “Low income” means fifty-one (51%) to eighty percent (80%) of the SMSA median, adjusted for actual household size.
3. “Moderate income” means eighty-one (81%) to one hundred twenty percent (120%) of the SMSA median, adjusted for actual household size.

H. “Resale controls and/or rent restrictions” means legal restrictions, as set forth by the City of Union City, State and Federal law, by which the affordable units shall be restricted to ensure that the unit remains affordable to very low, low or moderate income households, as applicable, permanently or for the longest period allowed by law and in any event until at least March 26, 2033. Such resale controls and/or rental restrictions shall generally be consistent with the requirements of Health and Safety Code Section 33334.3(f)(2). 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.

I. “Residential development” includes, without limitation, detached single-family dwellings, multiple dwelling structures, groups of dwellings, condominium or townhouse developments, condominium conversions, cooperative developments, mixed use developments that include housing units, and residential land subdivisions intended to be sold to the general public.

J. “Residential project” includes contiguous or non-contiguous parcels that have one (1) or more applications filed within a twenty-four (24) month period and which are under the same ownership.

18.33.030 General requirements.

A. Fifteen Percent (15%) Requirement. All residential development projects designed and intended for permanent occupancy located in any zoning district, for which an application for any use permit, site development permit or subdivision map is filed after the effective date of the ordinance codified in this chapter, shall maintain fifteen percent (15%) of the total number of dwelling units or parcels within the development as affordable units, according to the terms of this chapter. The foregoing requirement shall be applied no more than once to an approved development, regardless of changes in the character or ownership

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of the development, provided the total number of units does not change. In projects located outside of the redevelopment project area where the calculation of the inclusionary requirement results in a fraction of a unit, such a fraction shall be paid in the form of an in-lieu fee, as set forth in Section 18.33.060(B) (Affordable Unit In-Lieu Fees). When the project is developed inside the redevelopment project area, all fractional numbers of units required (including numbers below 0.5) shall be rounded up to the next whole number and that resulting affordable unit shall be provided as set forth in this chapter. The City reserves the right, solely at the City's discretion, to negotiate with the project developer to adjust the required affordability levels of a particular project on a case-by-case basis if it is deemed necessary and appropriate by the City to maximize the best suited development for a site.

B. Affordability Levels. Affordable units provided pursuant to the fifteen percent (15%) requirement of subsection A of this section shall be made affordable to households with very low, low and moderate income pursuant to the minimum distributions included in the following table:

Income Level	Rental Units Distribution of Affordable Units Required to Be Built	Owner Units Distribution of Affordable Units Required to Be Built
Very Low Income	30%	Not Applicable
Low Income	70%	10%
Moderate Income—81 to 100%	Not Applicable	30%
Moderate Income—101 to 120%	Not Applicable	60%

For projects with seven (7) or more rental units, the application of the minimum distributions will be as set forth in the following table:

Total Number of Affordable Rental Units to Be Built	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Very Low Income Units	—	1	1	1	2	2	3	3	3	3	4	4	4	5	5
Low Income Units	1	1	2	3	3	4	4	5	6	7	7	8	9	9	10

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For projects with seven (7) or more owner units, the application of the minimum distributions will be as set forth in the following table:

Total Number of Affordable Owner Units to Be Built	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Low Income Units	—	—	—	1	1	1	1	1	1	1	2	2	2	2	2
Moderate Income Units (81—100%)	—	1	1	1	2	2	2	3	3	3	3	4	4	5	5
Moderate Income Units (101—120%)	1	1	2	2	2	3	4	4	5	6	6	6	7	7	8

For larger projects that exceed fifteen (15) required units to be built, the columns can be added to equal the total number, and the corresponding required units shall be built.

C. **Conditions of Approval.** Any tentative map, use permit or site development permit approving residential construction projects meeting the foregoing criteria shall contain conditions sufficient to ensure compliance with the provisions of this chapter. Such conditions shall specify the schedule of construction of affordable units, the number of affordable units, and appropriate resale controls and rental restrictions.

D. **Concurrent Construction.** All affordable units in a project or phase of a project shall be constructed concurrently with nonaffordable units.

E. **Design and Distribution of Affordable Units.** Unless the City, at its sole discretion, and in cooperation with the Developer, an alternate development plan for the affordable units is developed, all affordable units shall reflect the range of numbers of bedrooms provided in the project as a whole, and shall not be distinguished by exterior design, construction, or materials, and shall be reasonably dispersed throughout the project.

F. **Single-Family Housing Projects with Corner Lot Duplexes.** When affordable housing units are required in single-family developments, duplexes may be built on corner lots in the development. If a single-family residential development does include corner lot duplexes, no more than fifty percent (50%) of the affordable housing requirement for that project can be satisfied with the use of duplex units and no more than fifty percent (50%) of the total duplex units built can be affordable units. The remaining fifty percent (50%) of the affordable housing requirement for that project shall be provided in the single-family product as set forth in this chapter. Duplexes shall meet the setback standards of the zoning district in which they are located. Exceptions to the setback standards may be granted by approval of a Use Permit. The City may also consider other alternative affordable options, as set forth in Section 18.33.060(e).

18.33.040 General procedures.

- A. Agreements. Prior to the issuance of a certificate of occupancy, resale restrictions and/or rental controls, as applicable, all of which must be acceptable to the Director and be consistent with the requirements of this chapter, shall be recorded against parcels having affordable units and shall be effective for the life of the project.
- B. Right of First Refusal. The resale restrictions shall provide that in the event of the sale of an affordable unit, the City shall have the right to purchase any affordable owner-occupancy unit at the maximum prices which could be charged to an eligible household.
- C. Selection Criteria. No household shall be permitted to occupy a unit which is required to be affordable under this chapter unless the City or its designee has approved the household's eligibility. Eligible potential occupants of affordable units will be qualified on the basis of household income, the median combined household income statistics published periodically by HUD, all sources of household income and assets, a relationship between household size and the size of available units, and any further criteria required by law. The developer shall use an equitable selection method established in conformance with the terms of this chapter. No distinction will be made between adults and children. All persons in each of the following categories of otherwise qualified persons shall be selected before persons from the next succeeding category are selected:
1. First priority: Persons who have been displaced by the proposed project;
 2. Second priority: Persons who live or work within the City of Union City;
 3. Third priority: Persons who have immediate family living in the City of Union City;
 4. Fourth priority: All other eligible persons.

18.33.050 Public subsidy assistance.

It is the intent of this chapter that its requirements of construction and maintenance of affordable units shall not depend upon the availability of any government subsidies. This is not to preclude the use of such programs or subsidies where available, however, and it is anticipated that subsidies of rental units may be available from HUD or State sources on an ongoing basis.

18.33.060 Development options.

This chapter is not intended to place any unreasonable burden upon developers of residential projects, and for that reason confers significant economic and land use benefits thereon, as set forth below:

- A. Density Bonus. The limitations upon residential density contained in Chapter 18.32 of this Code shall be deemed modified to the extent required by the terms of this chapter. The

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city, upon request, may approve an increase in the number of units permitted in a proposed residential development governed by this chapter, when such an increase in density is consistent with State density bonus law per Section 65915 of the State Government Code. The dwelling units or parcels designated to meet the City's mandatory inclusionary housing requirement shall count toward qualifying the proposed development for a density bonus.

B. Small Project In-Lieu Fees. The Director, upon request by the developer, may waive the requirements to provide affordable units pursuant to Section 18.33.030 (general requirements) in exchange for the payment of an affordable unit in-lieu fee; provided, that the proposed development is six (6) units or less. The developer may also have the option to pay the small project in-lieu fee where the calculation of the inclusionary requirement results in the fraction of a unit as set forth in Section 18.33.030(A). If fees are permitted to be paid in-lieu of providing affordable units, the fees shall be paid prior to issuance of the first building permit for the project, or secured at that time by an approved letter of credit or bond. The small project in-lieu fee shall be initially set at one hundred sixty thousand dollars (\$160,000.00) per each affordable unit that would have been required to be built for the entire project. This amount shall be multiplied by the fractional amount of the unit required to determine the actual fee to be paid by the developer. The small project in-lieu fee amount may be amended from time to time by the City Council by resolution, to meet inflationary increases, and the amount shall be set forth in the City's Master Fee Schedule. Any small project in-lieu fees collected from any project will be committed to an affordable housing project within five (5) years of being collected.

C. Optional In-Lieu Fee. The City, solely at its discretion, may waive the requirements to provide affordable owner units pursuant to Section 18.33.030 (general requirements) in exchange for the payment of an optional in-lieu fee for any or all required units. If fees are permitted to be paid in-lieu of providing affordable units, the fee shall be paid prior to the issuance of the first building permit for the project, or secured at that time by an approved letter of credit or bond. The optional in-lieu fee shall be initially set at one hundred eighty dollars (\$180.00) per square foot of the affordable units that would have been required to be built for the entire project, pursuant to this chapter. The City shall utilize the square footage of the units that are required to be built, in the range of bedrooms, sizes and product styles that would be required to satisfy the requirements of Section 18.33.030 (general requirements). The optional in-lieu fee amount may be amended from time to time by the City Council by resolution, to meet inflationary increases, and the amount shall be set forth in the City's Master Fee Schedule. Any optional in-lieu fees collected from any project will be committed to an affordable housing project within five (5) years from being collected.

D. Waiver of Requirements. The City Council, at its discretion, may waive the requirements of this chapter if there are unusual development costs associated with the property that

would otherwise prevent the project from proceeding. Typically, such a condition would involve excessive costs inherent on the property, such as environmental contamination.

E. Off-Site and Alternative Construction Options. Where affordable units are required by Section 18.33.030, the City may instead, at its sole discretion, consider the construction of units not physically contiguous to the development (off-site) or alternative on-site affordable housing development options, set forth in a binding agreement as set forth in 18.33.060(H), if the Planning Commission determines that:

1. A schedule for completion of the off-site units concurrently with completion of the related market-rate units is provided and agreed upon as a condition of approval for the project;
2. The off-site or alternative units are at least equal in basic amenities to other units in the project, with extra consideration given for the creation of additional affordable units, larger units or affordability to households with lower incomes; and
3. Off-site or alternative construction options will further affordable housing opportunities in the City to a greater extent than construction of the normally required units as part of the residential project in question;
4. When the original development is located in the redevelopment agency project area and the off-site location is located outside of the redevelopment project area, then two (2) units for every one (1) unit required to be built in the original location shall be developed. It may be determined by the City that working with a non-profit to develop higher density, rental units on or off-site may be a more efficient way to meet affordable needs at that point in time. In all cases, the affordable units must be built prior to or concurrently with the market rate development, unless a development agreement with a non-profit has been approved. The utilization of off-site and alternative housing will be considered relative to the inventory of available sites at that time.

F. Technical and Financial Assistance. Upon request, the City or its designee shall provide assistance to applicants concerning information regarding financial subsidy programs and economic analysis designed to indicate the most suitable methods by which the terms of this chapter may be implemented. To the extent that funds may be available and consistent with applicable Federal and State regulations and policies, affordable unit project applicants may apply to receive Federal community development block grant or City redevelopment funds for purposes of defraying certain off-site improvement costs and other expenses. Such determination of eligibility shall be made by the Director and/or the Redevelopment Agency Manager. The City shall establish application and administration procedures and criteria by which eligible expenditures of such funds and their amounts shall be determined.

G. Priority Processing. All residential developments providing affordable units pursuant to the requirements of this chapter shall receive “priority processing” by which housing developments shall be reviewed and checked for all required City permit and other approvals in advance of other pending developments.

H. Contractually Binding Alternative Means of Compliance. The City Council, in its discretion, may permit an applicant to comply with the purpose of this chapter for a particular residential development project through implementation of an alternative affordable housing program instead of by compliance with the provisions of this chapter if:

1. Such alternative affordable housing program is set forth in a binding agreement, including, but not limited to, a government code development agreement, disposition and development agreement, disposition and development loan agreement, owner participation agreement, or affordable housing agreement with the City of Union City; and
2. The City Council finds that such alternative affordable housing program meets the purpose of this chapter. The City Council, at its discretion, may require that the alternative affordable housing program include the payment of an in-lieu fee, the provision of affordable units, or a combination thereof. Any affordable housing program that includes the payment of an in-lieu fee for any or all required affordable units, shall provide an in-lieu fee of no less than one hundred sixty thousand dollars (\$160,000.00) per each affordable unit that would have been required to be built, including fractional units.

18.33.070 Exemptions.

Residential developments consisting of only one (1) unit will be exempt from the requirements of this chapter; provided, that the unit is an owner-occupied single-family home, constructed by or for the property owner or the property owner’s immediate family members, and the owner or immediate family member lives in the home for a minimum of five (5) years upon its completion.

18.33.080 Enforcement.

- A. The provisions of this chapter shall apply to all agents, successors and assignees of an applicant proposing a residential development governed by this chapter. No tentative map, use permit, special development permit or occupancy permit shall be issued for any residential development unless exempt from or in compliance with the terms of this chapter.
- B. 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.

18.33.090 Appeals.

A. Any person aggrieved by any action involving denial, suspension or revocation of an occupancy or other permit, or denial, suspension or revocation of any development approval, may appeal such action or determination in the manner provided for appeal of use permits, by Chapter 18.56.

B. Any applicant or other person who contends that his or her rights conferred by this chapter have been adversely affected by any determination or requirement of any agency designated by the City as its administrative agent may notify the chief executive officer of said agency to that effect in writing, stating relevant facts. All such contentions shall be considered exclusively by said agency in accordance with such procedures as they may be established. In instances in which violations of this chapter or any agreement with the City on the part of said agency is alleged, City shall take appropriate investigative and corrective actions.

Exhibit B**Chapter 18.33 AFFORDABLE HOUSING****18.33.010 Purpose.**

The purpose of this chapter is to:

- A. Enhance the public welfare by ensuring that future residential developments contribute to the attainment of the affordable housing goals set forth in the Housing Element of the General Plan of the City of Union City.
- B. Increase the production of residential units in Union City that are affordable to households of very low, low, and moderate income.
- C. Facilitate a cooperative effort between the City of Union City and the housing development community for the provision of affordable housing to all economic segments of the community.
- D. Ensure that units affordable to households of very low, low and moderate income are distributed throughout the City's various neighborhoods.
- E. Comply with the requirements of Health and Safety Code Section 33341.3(b) within the redevelopment project area and elsewhere in the community as applicable.

18.33.020 Definitions.

As used in this chapter, each of the following terms is defined as follows:

- A. "Affordable housing program" means a method for providing the affordable housing units in the proposed project, a method for a payment in-lieu of providing affordable units, or a combination thereof, as defined herein, pursuant to Section 18.33.060(H).
- B. "Affordable unit" means an ownership or rental housing unit, including senior housing, affordable by households with very low, low or moderate incomes as defined in this chapter. The unit shall be deemed affordable if it meets the requirements of Health and Safety Code Section 50052.5(b) for owner occupied housing and Section 50053(b) for rental housing.
- C. "Applicant" means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which seeks city real property development permits or approvals.
- D. "Dwelling unit" means a dwelling designed and intended for occupancy by one (1) household.
- E. "Housing costs" means the monthly mortgage principal and interest, property taxes, homeowners' insurance, utility allowance and condominium fees, where applicable, for ownership units; and the monthly rent and utility allowance for rental units.
- F. "HUD" means the United States Department of Housing and Urban Development or its successor.
- ~~G. "Level of affordable housing" means the total number of affordable units and the distribution of those affordable housing units in the income ranges provided herein.~~

GH. “Very low, low and moderate income levels” means those income and eligibility levels determined periodically by the United States Department of Housing and Urban Development based on the Oakland Standard Metropolitan Statistical Area (SMSA) median income levels by family size. Such levels shall be calculated on the basis of gross annual household income considering household size and number of dependents, income of all wage earners, elderly or disabled family members and all other sources of household income and will be recertified as set forth by local standards, State and Federal housing law.

1. “Very low income” means fifty percent (50%) or under of the SMSA median, adjusted for actual household size.
2. “Low income” means fifty-one (51%) to eighty percent (80%) of the SMSA median, adjusted for actual household size.
3. “Moderate income” means eighty-one (81%) to one hundred twenty percent (120%) of the SMSA median, adjusted for actual household size.

HI. “Resale controls and/or rent restrictions” means legal restrictions, as set forth by the City of Union City, State and Federal law, by which the affordable units shall be restricted to ensure that the unit remains affordable to very low, low or moderate income households, as applicable, permanently or for the longest period allowed by law and in any event until at least March 26, 2033. Such resale controls and/or rental restrictions shall generally be consistent with the requirements of Health and Safety Code Section 33334.3(f)(2). 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.

IJ. “Residential development” includes, without limitation, detached single-family dwellings, multiple dwelling structures, groups of dwellings, condominium or townhouse developments, condominium conversions, cooperative developments, mixed use developments that include housing units, and residential land subdivisions intended to be sold to the general public.

JK. “Residential project” includes contiguous or non-contiguous parcels that have one (1) or more applications filed within a twenty-four (24) month period and which are under the same ownership.

18.33.030 General requirements.

A. Fifteen Percent (15%) Requirement. All residential development projects designed and intended for permanent occupancy located in any zoning district, for which an application for any use permit, site development permit or subdivision map is filed after the effective date of the ordinance codified in this chapter, shall maintain fifteen percent (15%) of the total number of dwelling units or parcels within the development as affordable units, according to the terms of this chapter. The foregoing requirement shall be applied no more

Exhibit 4

than once to an approved development, regardless of changes in the character or ownership of the development, provided the total number of units does not change. In projects located outside of the redevelopment project area where the calculation of the inclusionary requirement results in a fraction of a unit, such a fraction shall be paid in the form of an in-lieu fee, as set forth in Section 18.33.060(B) (Affordable Unit In-Lieu Fees). When the project is developed inside the redevelopment project area, all fractional numbers of units required (including numbers below 0.5) shall be rounded up to the next whole number and that resulting affordable unit shall be provided as set forth in this chapter. The City reserves the right, solely at the City's discretion, to negotiate with the project developer to adjust the required affordability levels of a particular project on a case-by-case basis if it is deemed necessary and appropriate by the City to maximize the best suited development for a site.

B. Affordability Levels. Affordable units provided pursuant to the fifteen percent (15%) requirement of subsection A of this section shall be made affordable to households with very low, low and moderate income pursuant to the minimum distributions included in the following table:

Income Level	Rental Units Distribution of Affordable Units Required to Be Built	Owner Units Distribution of Affordable Units Required to Be Built
Very Low Income	30%	Not Applicable
Low Income	70%	10%
Moderate Income—81 to 100%	Not Applicable	30%
Moderate Income—101 to 120%	Not Applicable	60%

For projects with seven (7) or more rental units, the application of the minimum distributions will be as set forth in the following table:

Total Number of Affordable Rental Units to Be Built	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Very Low Income Units	—	1	1	1	2	2	3	3	3	3	4	4	4	5	5
Low Income Units	1	1	2	3	3	4	4	5	6	7	7	8	9	9	10

Exhibit 4

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For projects with seven (7) or more owner units, the application of the minimum distributions will be as set forth in the following table:

Total Number of Affordable Owner Units to Be Built	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Low Income Units	–	–	–	1	1	1	1	1	1	1	2	2	2	2	2
Moderate Income Units (81—100%)	–	1	1	1	2	2	2	3	3	3	3	4	4	5	5
Moderate Income Units (101—120%)	1	1	2	2	2	3	4	4	5	6	6	6	7	7	8

For larger projects that exceed fifteen (15) required units to be built, the columns can be added to equal the total number, and the corresponding required units shall be built.

C. **Conditions of Approval.** Any tentative map, use permit or site development permit approving residential construction projects meeting the foregoing criteria shall contain conditions sufficient to ensure compliance with the provisions of this chapter. Such conditions shall specify the schedule of construction of affordable units, the number of affordable units, and appropriate resale controls and rental restrictions.

D. **Concurrent Construction.** All affordable units in a project or phase of a project shall be constructed concurrently with nonaffordable units.

E. **Design and Distribution of Affordable Units.** Unless the City, at its sole discretion, and in cooperation with the Developer, an alternate development plan for the affordable units is developed, all affordable units shall reflect the range of numbers of bedrooms provided in the project as a whole, and shall not be distinguished by exterior design, construction, or materials, and shall be reasonably dispersed throughout the project.

F. **Single-Family Housing Projects with Corner Lot Duplexes.** When affordable housing units are required in single-family developments, duplexes may be built on corner lots in the development. If a single-family residential development does include corner lot duplexes, no more than fifty percent (50%) of the affordable housing requirement for that project can be satisfied with the use of duplex units and no more than fifty percent (50%) of the total duplex units built can be affordable units. The remaining fifty percent (50%) of the affordable housing requirement for that project shall be provided in the single-family product as set forth in this chapter. Duplexes shall meet the setback standards of the zoning district in which they are located. Exceptions to the setback standards may be granted by approval of a Use Permit. The City may also consider other alternative affordable options, as set forth in Section 18.33.060(e).

18.33.040 General procedures.

- A. Agreements. Prior to the issuance of a certificate of occupancy, resale restrictions and/or rental controls, as applicable, all of which must be acceptable to the Director and be consistent with the requirements of this chapter, shall be recorded against parcels having affordable units and shall be effective for the life of the project.
- B. Right of First Refusal. The resale restrictions shall provide that in the event of the sale of an affordable unit, the City shall have the right to purchase any affordable owner-occupancy unit at the maximum prices which could be charged to an eligible household.
- C. Selection Criteria. No household shall be permitted to occupy a unit which is required to be affordable under this chapter unless the City or its designee has approved the household's eligibility. Eligible potential occupants of affordable units will be qualified on the basis of household income, the median combined household income statistics published periodically by HUD, all sources of household income and assets, a relationship between household size and the size of available units, and any further criteria required by law. The developer shall use an equitable selection method established in conformance with the terms of this chapter. No distinction will be made between adults and children. All persons in each of the following categories of otherwise qualified persons shall be selected before persons from the next succeeding category are selected:
 - 1. First priority: Persons who have been displaced by the proposed project;
 - 2. Second priority: Persons who live or work within the City of Union City;
 - 3. Third priority: Persons who have immediate family living in the City of Union City;
 - 4. Fourth priority: All other eligible persons.

18.33.050 Public subsidy assistance.

It is the intent of this chapter that its requirements of construction and maintenance of affordable units shall not depend upon the availability of any government subsidies. This is not to preclude the use of such programs or subsidies where available, however, and it is anticipated that subsidies of rental units may be available from HUD or State sources on an ongoing basis.

18.33.060 Development options.

This chapter is not intended to place any unreasonable burden upon developers of residential projects, and for that reason confers significant economic and land use benefits thereon, as set forth below:

- A. Density Bonus. The limitations upon residential density contained in Chapter 18.32 of this Code shall be deemed modified to the extent required by the terms of this chapter. The city, upon request, may approve an increase in the number of units permitted in a proposed residential development governed by this chapter, when such an increase in density is

consistent with State density bonus law per Section 65915 of the State Government Code. ~~The City may provide for either a density bonus of at least twenty-five percent (25%) and at least one (1) other concession or incentive or other incentives of equivalent financial value to developers of housing developments that reserve at least twenty percent (20%) of their units for lower-income households, ten percent (10%) for very-low income households, or fifty percent (50%) for qualifying senior citizens. Developers receiving this density bonus must ensure the continued affordability of all lower-income units for a minimum of thirty (30) years.~~ The dwelling units or parcels designated to meet the City's mandatory inclusionary housing requirement shall ~~not~~ count toward qualifying the proposed development for a density bonus.

B. Small Project In-Lieu Fees. The Director, upon request by the developer, may waive the requirements to provide affordable units pursuant to Section 18.33.030 (general requirements) in exchange for the payment of an affordable unit in-lieu fee; provided, that the proposed development is six (6) units or less. The developer may also have the option to pay the small project in-lieu fee where the calculation of the inclusionary requirement results in the fraction of a unit as set forth in Section 18.33.030(A). If fees are permitted to be paid in-lieu of providing affordable units, the fees shall be paid prior to issuance of the first building permit for the project, or secured at that time by an approved letter of credit or bond. The small project in-lieu fee shall be initially set at one hundred sixty thousand dollars (\$160,000.00) per each affordable unit that would have been required to be built for the entire project. This amount shall be multiplied by the fractional amount of the unit required to determine the actual fee to be paid by the developer. The small project in-lieu fee amount may be amended from time to time by the City Council by resolution, to meet inflationary increases, and the amount shall be set forth in the City's Master Fee Schedule. Any small project in-lieu fees collected from any project will be committed to an affordable housing project within five (5) years of being collected.

C. Optional In-Lieu Fee. The City, solely at its discretion, may waive the requirements to provide affordable owner units pursuant to Section 18.33.030 (general requirements) in exchange for the payment of an optional in-lieu fee for any or all required units. If fees are permitted to be paid in-lieu of providing affordable units, the fee shall be paid prior to the issuance of the first building permit for the project, or secured at that time by an approved letter of credit or bond. The optional in-lieu fee shall be initially set at one hundred eighty dollars (\$180.00) per square foot of the affordable units that would have been required to be built for the entire project, pursuant to this chapter. The City shall utilize the square footage of the units that are required to be built, in the range of bedrooms, sizes and product styles that would be required to satisfy the requirements of Section 18.33.030 (general requirements). The optional in-lieu fee amount may be amended from time to time by the City Council by resolution, to meet inflationary increases, and the amount shall be set forth

in the City's Master Fee Schedule. Any optional in-lieu fees collected from any project will be committed to an affordable housing project within five (5) years from being collected.

D. Waiver of Requirements. The City Council, at its discretion, may waive the requirements of this chapter if there are unusual development costs associated with the property that would otherwise prevent the project from proceeding. Typically, such a condition would involve excessive costs inherent on the property, such as environmental contamination.

E. Off-Site and Alternative Construction Options. Where affordable units are required by Section 18.33.030, the City may instead, at its sole discretion, consider the construction of units not physically contiguous to the development (off-site) or alternative on-site affordable housing development options, set forth in a binding agreement as set forth in 18.33.060(H), if the Planning Commission determines that:

1. A schedule for completion of the off-site units concurrently with completion of the related market-rate units is provided and agreed upon as a condition of approval for the project;
2. The off-site or alternative units are at least equal in basic amenities to other units in the project, with extra consideration given for the creation of additional affordable units, larger units or affordability to households with lower incomes; and
3. Off-site or alternative construction options will further affordable housing opportunities in the City to a greater extent than construction of the normally required units as part of the residential project in question;
4. When the original development is located in the redevelopment agency project area and the off-site location is located outside of the redevelopment project area, then two (2) units for every one (1) unit required to be built in the original location shall be developed. It may be determined by the City that working with a non-profit to develop higher density, rental units on or off-site may be a more efficient way to meet affordable needs at that point in time. In all cases, the affordable units must be built prior to or concurrently with the market rate development, unless a development agreement with a non-profit has been approved. The utilization of off-site and alternative housing will be considered relative to the inventory of available sites at that time.

F. Technical and Financial Assistance. Upon request, the City or its designee shall provide assistance to applicants concerning information regarding financial subsidy programs and economic analysis designed to indicate the most suitable methods by which the terms of this chapter may be implemented. To the extent that funds may be available and consistent with applicable Federal and State regulations and policies, affordable unit project applicants may apply to receive Federal community development block grant or City redevelopment funds for purposes of defraying certain off-site improvement costs and other expenses. Such

determination of eligibility shall be made by the Director and/or the Redevelopment Agency Manager. The City shall establish application and administration procedures and criteria by which eligible expenditures of such funds and their amounts shall be determined.

G. Priority Processing. All residential developments providing affordable units pursuant to the requirements of this chapter shall receive “priority processing” by which housing developments shall be reviewed and checked for all required City permit and other approvals in advance of other pending developments.

H. Contractually Binding Alternative Means of Compliance. The City Council, in its discretion, may permit an applicant to comply with the purpose of this chapter for a particular residential development project through implementation of an alternative affordable housing program instead of by compliance with the provisions of this chapter if:

1. Such alternative affordable housing program is set forth in a binding agreement, including, but not limited to, a government code development agreement, disposition and development agreement, disposition and development loan agreement, ~~or owner participation agreement,~~ or affordable housing agreement with the ~~City and/or the Community Redevelopment Agency of the~~ City of Union City; and
2. The City Council finds that such alternative affordable housing program meets the purpose of this chapter. The City Council, at its discretion, may require that the alternative affordable housing program include the payment of an in-lieu fee, the provision of affordable units, or a combination thereof. will provide an equal to or greater than level of affordable housing to the community as would be provided through adherence of the applicant to the requirements of this chapter.
3. Any affordable housing program that includes the payment of an in-lieu fee for any or all required affordable units, shall provide an in-lieu fee of no less than one hundred sixty thousand dollars (\$160,000.00) per each affordable unit that would have been required to be built, including fractional units.

18.33.070 Exemptions.

Residential developments consisting of only one (1) unit will be exempt from the requirements of this chapter; provided, that the unit is an owner-occupied single-family home, constructed by or for the property owner or the property owner’s immediate family members, and the owner or immediate family member lives in the home for a minimum of five (5) years upon its completion.

18.33.080 Enforcement.

A. The provisions of this chapter shall apply to all agents, successors and assignees of an applicant proposing a residential development governed by this chapter. No tentative map,

use permit, special development permit or occupancy permit shall be issued for any residential development unless exempt from or in compliance with the terms of this chapter. B. 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.

18.33.090 Appeals.

A. Any person aggrieved by any action involving denial, suspension or revocation of an occupancy or other permit, or denial, suspension or revocation of any development approval, may appeal such action or determination in the manner provided for appeal of use permits, by Chapter 18.56.

B. Any applicant or other person who contends that his or her rights conferred by this chapter have been adversely affected by any determination or requirement of any agency designated by the City as its administrative agent may notify the chief executive officer of said agency to that effect in writing, stating relevant facts. All such contentions shall be considered exclusively by said agency in accordance with such procedures as they may be established. In instances in which violations of this chapter or any agreement with the City on the part of said agency is alleged, City shall take appropriate investigative and corrective actions.

2613603.1



Agenda Item

DATE: MARCH 3, 2016

TO: PLANNING COMMISSION

FROM: JOAN MALLOY, ECONOMIC AND COMMUNITY
DEVELOPMENT DIRECTOR

SUBJECT: DESK ITEM #1 FOR AFFORDABLE HOUSING ORDINANCE
AMENDMENT

This desk item replaces the Resolution that was included in the staff report due to Exhibit A and Exhibit B of the Resolution being mislabeled. In the staff report, Exhibit A was the redlined version of the Ordinance and Exhibit B was the amended version however this should have been in reverse order. This desk item corrects that.

ATTACHMENT 5

ATTACHMENT 1

PLANNING COMMISSION RESOLUTION NUMBER XX-XX

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF UNION CITY
RECOMMENDING APPROVAL TO THE CITY COUNCIL OF MUNICIPAL CODE
AMENDMENT, AT-16-001, TO AMEND CHAPTER 18.33, AFFORDABLE HOUSING
ORDINANCE, TO AMEND THE DENSITY BONUS PROVISION TO COMPLY WITH
REQUIREMENTS LISTED IN STATE LAW AND THE CITY'S CURRENT HOUSING
ELEMENT AND TO AMEND THE CONTRACTUALLY BINDING ALTERNATIVE
MEANS OF COMPLIANCE PROVISION TO PROVIDE GREATER FLEXIBILITY TO
GENERATE FUNDS TO SUPPORT AFFORDABLE HOUSING DEVELOPMENT**

WHEREAS, the City of Union City is proposing Municipal Code Amendment, AT-16-001, to amend provisions listed in Chapter 18.33 (the "Affordable Housing Ordinance") to amend the density bonus provision to comply with requirements listed in State law and the City's current Housing Element and to amend the contractually binding alternative means of compliance provision to provide greater flexibility to generate funds to support affordable housing development; and

WHEREAS, the California Constitution, Article XI, Section 7, provides cities and counties with the authority to enact ordinances to protect the health, safety, welfare, and morals of their citizens; and

WHEREAS, the City's current Housing Element provides that the City will update the density bonus provision of the Affordable Housing Ordinance in 2016 to comply with State law requirements; and

WHEREAS, the existing density bonus provision of the Affordable Housing Ordinance is not compliant with State law requirements; and

WHEREAS, the City desires to amend the density bonus provision of the Affordable Housing Ordinance to allow units that are required to be affordable pursuant to the Affordable Housing Ordinance to be considered restricted affordable units for the purposes of determining whether a housing development qualifies for a density bonus and to reference State law requirements for density bonus eligibility; and

WHEREAS, the California Supreme Court has affirmed the power of a city to enact a broad inclusionary housing ordinance to increase the amount of affordable housing provided that the ordinance is reasonably related to the broad general welfare purposes of the ordinance in California Bldg. Industry Assn. v. City of San Jose (2015) 61 Cal.4th 435; and

WHEREAS, the City's Redevelopment Agency dissolved in 2011 pursuant to State law; and

WHEREAS, the City relied upon Redevelopment Agency Housing Funds to construct affordable rental housing; and

WHEREAS, the Affordable Housing Ordinance requires ownership developments to provide affordable units for moderate income households; and

WHEREAS, the Affordable Housing Ordinance also requires rental developments to provide affordable units for very-low and low income households. However, this provision is unenforceable pursuant to the California Court of Appeal decision in Palmer/Sixth Street Properties, LP v. City of Los Angeles (2009) 175 Cal.App.4th 1396; and

WHEREAS, the dissolution of the City's Redevelopment Agency and recent California case law has limited the City's ability to provide affordable housing for very-low and low income households; and

WHEREAS, the City desires to amend the Affordable Housing Ordinance to provide more flexibility and City discretion to accept a contractually binding alternative means of compliance; and

WHEREAS, the Planning Commission held a duly noticed public hearing on the proposed Municipal Code Amendments on March 3, 2016 at which time all interested parties had the opportunity to be heard. The Planning Commission considered a staff report dated March 3, 2016 and all written and oral testimony; and

WHEREAS, the amendments to the Municipal Code propose to amend Chapter 18.33.060 as shown in Exhibit A and in red-lined version in Exhibit B for reference, which exhibits are attached and incorporated herein by reference.

NOW, THEREFORE, BE IT RESOLVED, that the foregoing recitals are true and correct and made a part of this Resolution.

BE IT FURTHER RESOLVED that the Planning Commission of the City of Union City hereby recommends that the City Council adopt an ordinance amending Chapter 18.33.060 of the Municipal Code to amend provisions related to density bonuses and contractually binding alternative means of compliance, and does hereby find as follows:

1. That approval of the Municipal Code Amendments is exempt from further environmental review under the general rule in California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) that CEQA only applies to projects that have the potential for causing a significant effect on the environment. As a series of text amendments and additions, it can be seen with certainty that there is no possibility that the Municipal Code Amendment (AT-16-001) will have a significant effect on the environment; and
2. That the proposed Municipal Code Amendments should be granted because it will ensure the Affordable Housing Ordinance complies with State law, the City fulfills implementation program HE-B.c of the City's current Housing Element, and the City has greater flexibility to generate funds to support affordable housing development; and
3. That the proposed Municipal Code Amendments amending Title 18 are consistent with the General Plan, and any applicable specific plans, because the amendments would encourage

ATTACHMENT 5

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AT-16-001, Affordable Housing Ordinance
March 3, 2016
Page 3 of 3

construction and maintenance of affordable housing by allowing the City to obtain funds to provide financial support for the development of affordable housing and update the density bonus provisions to comply with State law; and

4. That the proposed Municipal Code Amendments are necessary and desirable to achieve the purposes of Title 18.

BE IT FURTHER RESOLVED, that the Planning Commission of the City of Union City hereby recommends approval of the proposed text amendments, AT-16-001, as shown in Exhibit A and incorporated herein by reference, to the City Council.

I HEREBY CERTIFY that the foregoing resolution was introduced and adopted at a regular meeting of the Planning Commission of the City of Union City held on March 3, 2016, by the following vote:

AYES
NOES
ABSTAIN
ABSENT
MOVED:
SECONDED:

APPROVED

**RAYMOND GONZALES, JR.,
CHAIRPERSON**

ATTEST:

JOAN MALLOY, SECRETARY

2613905.1

Exhibit A**Chapter 18.33 AFFORDABLE HOUSING****18.33.010 Purpose.**

The purpose of this chapter is to:

- A. Enhance the public welfare by ensuring that future residential developments contribute to the attainment of the affordable housing goals set forth in the Housing Element of the General Plan of the City of Union City.
- B. Increase the production of residential units in Union City that are affordable to households of very low, low, and moderate income.
- C. Facilitate a cooperative effort between the City of Union City and the housing development community for the provision of affordable housing to all economic segments of the community.
- D. Ensure that units affordable to households of very low, low and moderate income are distributed throughout the City's various neighborhoods.
- E. Comply with the requirements of Health and Safety Code Section 33341.3(b) within the redevelopment project area and elsewhere in the community as applicable.

18.33.020 Definitions.

As used in this chapter, each of the following terms is defined as follows:

- A. "Affordable housing program" means a method for providing the affordable housing units in the proposed project, a method for a payment in-lieu of providing affordable units, or a combination thereof, pursuant to Section 18.33.060(H).
- B. "Affordable unit" means an ownership or rental housing unit, including senior housing, affordable by households with very low, low or moderate incomes as defined in this chapter. The unit shall be deemed affordable if it meets the requirements of Health and Safety Code Section 50052.5(b) for owner occupied housing and Section 50053(b) for rental housing.
- C. "Applicant" means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which seeks city real property development permits or approvals.
- D. "Dwelling unit" means a dwelling designed and intended for occupancy by one (1) household.
- E. "Housing costs" means the monthly mortgage principal and interest, property taxes, homeowners' insurance, utility allowance and condominium fees, where applicable, for ownership units; and the monthly rent and utility allowance for rental units.
- F. "HUD" means the United States Department of Housing and Urban Development or its successor.
- G. "Very low, low and moderate income levels" means those income and eligibility levels determined periodically by the United States Department of Housing and Urban

Development based on the Oakland Standard Metropolitan Statistical Area (SMSA) median income levels by family size. Such levels shall be calculated on the basis of gross annual household income considering household size and number of dependents, income of all wage earners, elderly or disabled family members and all other sources of household income and will be recertified as set forth by local standards, State and Federal housing law.

1. “Very low income” means fifty percent (50%) or under of the SMSA median, adjusted for actual household size.
2. “Low income” means fifty-one (51%) to eighty percent (80%) of the SMSA median, adjusted for actual household size.
3. “Moderate income” means eighty-one (81%) to one hundred twenty percent (120%) of the SMSA median, adjusted for actual household size.

H. “Resale controls and/or rent restrictions” means legal restrictions, as set forth by the City of Union City, State and Federal law, by which the affordable units shall be restricted to ensure that the unit remains affordable to very low, low or moderate income households, as applicable, permanently or for the longest period allowed by law and in any event until at least March 26, 2033. Such resale controls and/or rental restrictions shall generally be consistent with the requirements of Health and Safety Code Section 33334.3(f)(2). 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.

I. “Residential development” includes, without limitation, detached single-family dwellings, multiple dwelling structures, groups of dwellings, condominium or townhouse developments, condominium conversions, cooperative developments, mixed use developments that include housing units, and residential land subdivisions intended to be sold to the general public.

J. “Residential project” includes contiguous or non-contiguous parcels that have one (1) or more applications filed within a twenty-four (24) month period and which are under the same ownership.

18.33.030 General requirements.

A. Fifteen Percent (15%) Requirement. All residential development projects designed and intended for permanent occupancy located in any zoning district, for which an application for any use permit, site development permit or subdivision map is filed after the effective date of the ordinance codified in this chapter, shall maintain fifteen percent (15%) of the total number of dwelling units or parcels within the development as affordable units, according to the terms of this chapter. The foregoing requirement shall be applied no more than once to an approved development, regardless of changes in the character or ownership of the development, provided the total number of units does not change. In projects located outside of the redevelopment project area where the calculation of the inclusionary

requirement results in a fraction of a unit, such a fraction shall be paid in the form of an in-lieu fee, as set forth in Section 18.33.060(B) (Affordable Unit In-Lieu Fees). When the project is developed inside the redevelopment project area, all fractional numbers of units required (including numbers below 0.5) shall be rounded up to the next whole number and that resulting affordable unit shall be provided as set forth in this chapter. The City reserves the right, solely at the City's discretion, to negotiate with the project developer to adjust the required affordability levels of a particular project on a case-by-case basis if it is deemed necessary and appropriate by the City to maximize the best suited development for a site.

B. Affordability Levels. Affordable units provided pursuant to the fifteen percent (15%) requirement of subsection A of this section shall be made affordable to households with very low, low and moderate income pursuant to the minimum distributions included in the following table:

Income Level	Rental Units Distribution of Affordable Units Required to Be Built	Owner Units Distribution of Affordable Units Required to Be Built
Very Low Income	30%	Not Applicable
Low Income	70%	10%
Moderate Income—81 to 100%	Not Applicable	30%
Moderate Income—101 to 120%	Not Applicable	60%

For projects with seven (7) or more rental units, the application of the minimum distributions will be as set forth in the following table:

Total Number of Affordable Rental Units to Be Built	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Very Low Income Units	—	1	1	1	2	2	3	3	3	3	4	4	4	5	5
Low Income Units	1	1	2	3	3	4	4	5	6	7	7	8	9	9	10

ATTACHMENT 5

AT-16-001 Exhibit A
Affordable Housing Ordinance Amendment, Page 4

For projects with seven (7) or more owner units, the application of the minimum distributions will be as set forth in the following table:

Total Number of Affordable Owner Units to Be Built	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Low Income Units	–	–	–	1	1	1	1	1	1	1	2	2	2	2	2
Moderate Income Units (81—100%)	–	1	1	1	2	2	2	3	3	3	3	4	4	5	5
Moderate Income Units (101—120%)	1	1	2	2	2	3	4	4	5	6	6	6	7	7	8

For larger projects that exceed fifteen (15) required units to be built, the columns can be added to equal the total number, and the corresponding required units shall be built.

C. Conditions of Approval. Any tentative map, use permit or site development permit approving residential construction projects meeting the foregoing criteria shall contain conditions sufficient to ensure compliance with the provisions of this chapter. Such conditions shall specify the schedule of construction of affordable units, the number of affordable units, and appropriate resale controls and rental restrictions.

D. Concurrent Construction. All affordable units in a project or phase of a project shall be constructed concurrently with nonaffordable units.

E. Design and Distribution of Affordable Units. Unless the City, at its sole discretion, and in cooperation with the Developer, an alternate development plan for the affordable units is developed, all affordable units shall reflect the range of numbers of bedrooms provided in the project as a whole, and shall not be distinguished by exterior design, construction, or materials, and shall be reasonably dispersed throughout the project.

F. Single-Family Housing Projects with Corner Lot Duplexes. When affordable housing units are required in single-family developments, duplexes may be built on corner lots in the development. If a single-family residential development does include corner lot duplexes, no more than fifty percent (50%) of the affordable housing requirement for that project can be satisfied with the use of duplex units and no more than fifty percent (50%) of the total duplex units built can be affordable units. The remaining fifty percent (50%) of the affordable housing requirement for that project shall be provided in the single-family product as set forth in this chapter. Duplexes shall meet the setback standards of the zoning district in which they are located. Exceptions to the setback standards may be granted by approval of a Use Permit. The City may also consider other alternative affordable options, as set forth in Section 18.33.060(e).

18.33.040 General procedures.

- A. Agreements. Prior to the issuance of a certificate of occupancy, resale restrictions and/or rental controls, as applicable, all of which must be acceptable to the Director and be consistent with the requirements of this chapter, shall be recorded against parcels having affordable units and shall be effective for the life of the project.
- B. Right of First Refusal. The resale restrictions shall provide that in the event of the sale of an affordable unit, the City shall have the right to purchase any affordable owner-occupancy unit at the maximum prices which could be charged to an eligible household.
- C. Selection Criteria. No household shall be permitted to occupy a unit which is required to be affordable under this chapter unless the City or its designee has approved the household's eligibility. Eligible potential occupants of affordable units will be qualified on the basis of household income, the median combined household income statistics published periodically by HUD, all sources of household income and assets, a relationship between household size and the size of available units, and any further criteria required by law. The developer shall use an equitable selection method established in conformance with the terms of this chapter. No distinction will be made between adults and children. All persons in each of the following categories of otherwise qualified persons shall be selected before persons from the next succeeding category are selected:
 - 1. First priority: Persons who have been displaced by the proposed project;
 - 2. Second priority: Persons who live or work within the City of Union City;
 - 3. Third priority: Persons who have immediate family living in the City of Union City;
 - 4. Fourth priority: All other eligible persons.

18.33.050 Public subsidy assistance.

It is the intent of this chapter that its requirements of construction and maintenance of affordable units shall not depend upon the availability of any government subsidies. This is not to preclude the use of such programs or subsidies where available, however, and it is anticipated that subsidies of rental units may be available from HUD or State sources on an ongoing basis.

18.33.060 Development options.

This chapter is not intended to place any unreasonable burden upon developers of residential projects, and for that reason confers significant economic and land use benefits thereon, as set forth below:

A. Density Bonus. The limitations upon residential density contained in Chapter 18.32 of this Code shall be deemed modified to the extent required by the terms of this chapter. The city, upon request, may approve an increase in the number of units permitted in a proposed residential development governed by this chapter, when such an increase in density is consistent with State density bonus law per Section 65915 of the State Government Code. The dwelling units or parcels designated to meet the City's mandatory inclusionary housing requirement shall count toward qualifying the proposed development for a density bonus.

B. Small Project In-Lieu Fees. The Director, upon request by the developer, may waive the requirements to provide affordable units pursuant to Section 18.33.030 (general requirements) in exchange for the payment of an affordable unit in-lieu fee; provided, that the proposed development is six (6) units or less. The developer may also have the option to pay the small project in-lieu fee where the calculation of the inclusionary requirement results in the fraction of a unit as set forth in Section 18.33.030(A). If fees are permitted to be paid in-lieu of providing affordable units, the fees shall be paid prior to issuance of the first building permit for the project, or secured at that time by an approved letter of credit or bond. The small project in-lieu fee shall be initially set at one hundred sixty thousand dollars (\$160,000.00) per each affordable unit that would have been required to be built for the entire project. This amount shall be multiplied by the fractional amount of the unit required to determine the actual fee to be paid by the developer. The small project in-lieu fee amount may be amended from time to time by the City Council by resolution, to meet inflationary increases, and the amount shall be set forth in the City's Master Fee Schedule. Any small project in-lieu fees collected from any project will be committed to an affordable housing project within five (5) years of being collected.

C. Optional In-Lieu Fee. The City, solely at its discretion, may waive the requirements to provide affordable owner units pursuant to Section 18.33.030 (general requirements) in exchange for the payment of an optional in-lieu fee for any or all required units. If fees are permitted to be paid in-lieu of providing affordable units, the fee shall be paid prior to the issuance of the first building permit for the project, or secured at that time by an approved letter of credit or bond. The optional in-lieu fee shall be initially set at one hundred eighty dollars (\$180.00) per square foot of the affordable units that would have been required to be built for the entire project, pursuant to this chapter. The City shall utilize the square footage of the units that are required to be built, in the range of bedrooms, sizes and product styles that would be required to satisfy the requirements of Section 18.33.030 (general requirements). The optional in-lieu fee amount may be amended from time to time by the City Council by resolution, to meet inflationary increases, and the amount shall be set forth in the City's Master Fee Schedule. Any optional in-lieu fees collected from any project will be committed to an affordable housing project within five (5) years from being collected.

D. Waiver of Requirements. The City Council, at its discretion, may waive the requirements of this chapter if there are unusual development costs associated with the property that would otherwise prevent the project from proceeding. Typically, such a condition would involve excessive costs inherent on the property, such as environmental contamination.

E. Off-Site and Alternative Construction Options. Where affordable units are required by Section 18.33.030, the City may instead, at its sole discretion, consider the construction of units not physically contiguous to the development (off-site) or alternative on-site affordable housing development options, set forth in a binding agreement as set forth in 18.33.060(H), if the Planning Commission determines that:

1. A schedule for completion of the off-site units concurrently with completion of the related market-rate units is provided and agreed upon as a condition of approval for the project;
2. The off-site or alternative units are at least equal in basic amenities to other units in the project, with extra consideration given for the creation of additional affordable units, larger units or affordability to households with lower incomes; and
3. Off-site or alternative construction options will further affordable housing opportunities in the City to a greater extent than construction of the normally required units as part of the residential project in question;
4. When the original development is located in the redevelopment agency project area and the off-site location is located outside of the redevelopment project area, then two (2) units for every one (1) unit required to be built in the original location shall be developed. It may be determined by the City that working with a non-profit to develop higher density, rental units on or off-site may be a more efficient way to meet affordable needs at that point in time. In all cases, the affordable units must be built prior to or concurrently with the market rate development, unless a development agreement with a non-profit has been approved. The utilization of off-site and alternative housing will be considered relative to the inventory of available sites at that time.

F. Technical and Financial Assistance. Upon request, the City or its designee shall provide assistance to applicants concerning information regarding financial subsidy programs and economic analysis designed to indicate the most suitable methods by which the terms of this chapter may be implemented. To the extent that funds may be available and consistent with applicable Federal and State regulations and policies, affordable unit project applicants may apply to receive Federal community development block grant or City redevelopment funds for purposes of defraying certain off-site improvement costs and other expenses. Such determination of eligibility shall be made by the Director and/or the Redevelopment Agency

Manager. The City shall establish application and administration procedures and criteria by which eligible expenditures of such funds and their amounts shall be determined.

G. Priority Processing. All residential developments providing affordable units pursuant to the requirements of this chapter shall receive “priority processing” by which housing developments shall be reviewed and checked for all required City permit and other approvals in advance of other pending developments.

H. Contractually Binding Alternative Means of Compliance. The City Council, in its discretion, may permit an applicant to comply with the purpose of this chapter for a particular residential development project through implementation of an alternative affordable housing program instead of by compliance with the provisions of this chapter if:

1. Such alternative affordable housing program is set forth in a binding agreement, including, but not limited to, a government code development agreement, disposition and development agreement, disposition and development loan agreement, owner participation agreement, or affordable housing agreement with the City of Union City; and
2. The City Council finds that such alternative affordable housing program meets the purpose of this chapter. The City Council, at its discretion, may require that the alternative affordable housing program include the payment of an in-lieu fee, the provision of affordable units, or a combination thereof.
3. Any affordable housing program that includes the payment of an in-lieu fee for any or all required affordable units, shall provide an in-lieu fee of no less than one hundred sixty thousand dollars (\$160,000.00) per each affordable unit that would have been required to be built, including fractional units.

18.33.070 Exemptions.

Residential developments consisting of only one (1) unit will be exempt from the requirements of this chapter; provided, that the unit is an owner-occupied single-family home, constructed by or for the property owner or the property owner’s immediate family members, and the owner or immediate family member lives in the home for a minimum of five (5) years upon its completion.

18.33.080 Enforcement.

A. The provisions of this chapter shall apply to all agents, successors and assignees of an applicant proposing a residential development governed by this chapter. No tentative map, use permit, special development permit or occupancy permit shall be issued for any residential development unless exempt from or in compliance with the terms of this chapter.

B. 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.

18.33.090 Appeals.

A. Any person aggrieved by any action involving denial, suspension or revocation of an occupancy or other permit, or denial, suspension or revocation of any development approval, may appeal such action or determination in the manner provided for appeal of use permits, by Chapter 18.56.

B. Any applicant or other person who contends that his or her rights conferred by this chapter have been adversely affected by any determination or requirement of any agency designated by the City as its administrative agent may notify the chief executive officer of said agency to that effect in writing, stating relevant facts. All such contentions shall be considered exclusively by said agency in accordance with such procedures as they may be established. In instances in which violations of this chapter or any agreement with the City on the part of said agency is alleged, City shall take appropriate investigative and corrective actions.

2613603.1

Exhibit B**Chapter 18.33 AFFORDABLE HOUSING****18.33.010 Purpose.**

The purpose of this chapter is to:

- A. Enhance the public welfare by ensuring that future residential developments contribute to the attainment of the affordable housing goals set forth in the Housing Element of the General Plan of the City of Union City.
- B. Increase the production of residential units in Union City that are affordable to households of very low, low, and moderate income.
- C. Facilitate a cooperative effort between the City of Union City and the housing development community for the provision of affordable housing to all economic segments of the community.
- D. Ensure that units affordable to households of very low, low and moderate income are distributed throughout the City's various neighborhoods.
- E. Comply with the requirements of Health and Safety Code Section 33341.3(b) within the redevelopment project area and elsewhere in the community as applicable.

18.33.020 Definitions.

As used in this chapter, each of the following terms is defined as follows:

- A. "Affordable housing program" means a method for providing the affordable housing units in the proposed project, a method for a payment in-lieu of providing affordable units, or a combination thereof, as defined herein, pursuant to Section 18.33.060(H).
- B. "Affordable unit" means an ownership or rental housing unit, including senior housing, affordable by households with very low, low or moderate incomes as defined in this chapter. The unit shall be deemed affordable if it meets the requirements of Health and Safety Code Section 50052.5(b) for owner occupied housing and Section 50053(b) for rental housing.
- C. "Applicant" means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which seeks city real property development permits or approvals.
- D. "Dwelling unit" means a dwelling designed and intended for occupancy by one (1) household.
- E. "Housing costs" means the monthly mortgage principal and interest, property taxes, homeowners' insurance, utility allowance and condominium fees, where applicable, for ownership units; and the monthly rent and utility allowance for rental units.
- F. "HUD" means the United States Department of Housing and Urban Development or its successor.
- ~~G. "Level of affordable housing" means the total number of affordable units and the distribution of those affordable housing units in the income ranges provided herein.~~

GH. “Very low, low and moderate income levels” means those income and eligibility levels determined periodically by the United States Department of Housing and Urban Development based on the Oakland Standard Metropolitan Statistical Area (SMSA) median income levels by family size. Such levels shall be calculated on the basis of gross annual household income considering household size and number of dependents, income of all wage earners, elderly or disabled family members and all other sources of household income and will be recertified as set forth by local standards, State and Federal housing law.

1. “Very low income” means fifty percent (50%) or under of the SMSA median, adjusted for actual household size.
2. “Low income” means fifty-one (51%) to eighty percent (80%) of the SMSA median, adjusted for actual household size.
3. “Moderate income” means eighty-one (81%) to one hundred twenty percent (120%) of the SMSA median, adjusted for actual household size.

HI. “Resale controls and/or rent restrictions” means legal restrictions, as set forth by the City of Union City, State and Federal law, by which the affordable units shall be restricted to ensure that the unit remains affordable to very low, low or moderate income households, as applicable, permanently or for the longest period allowed by law and in any event until at least March 26, 2033. Such resale controls and/or rental restrictions shall generally be consistent with the requirements of Health and Safety Code Section 33334.3(f)(2). 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.

IJ. “Residential development” includes, without limitation, detached single-family dwellings, multiple dwelling structures, groups of dwellings, condominium or townhouse developments, condominium conversions, cooperative developments, mixed use developments that include housing units, and residential land subdivisions intended to be sold to the general public.

JK. “Residential project” includes contiguous or non-contiguous parcels that have one (1) or more applications filed within a twenty-four (24) month period and which are under the same ownership.

18.33.030 General requirements.

A. Fifteen Percent (15%) Requirement. All residential development projects designed and intended for permanent occupancy located in any zoning district, for which an application for any use permit, site development permit or subdivision map is filed after the effective date of the ordinance codified in this chapter, shall maintain fifteen percent (15%) of the total number of dwelling units or parcels within the development as affordable units, according to the terms of this chapter. The foregoing requirement shall be applied no more

ATTACHMENT 5

than once to an approved development, regardless of changes in the character or ownership of the development, provided the total number of units does not change. In projects located outside of the redevelopment project area where the calculation of the inclusionary requirement results in a fraction of a unit, such a fraction shall be paid in the form of an in-lieu fee, as set forth in Section 18.33.060(B) (Affordable Unit In-Lieu Fees). When the project is developed inside the redevelopment project area, all fractional numbers of units required (including numbers below 0.5) shall be rounded up to the next whole number and that resulting affordable unit shall be provided as set forth in this chapter. The City reserves the right, solely at the City's discretion, to negotiate with the project developer to adjust the required affordability levels of a particular project on a case-by-case basis if it is deemed necessary and appropriate by the City to maximize the best suited development for a site.

B. Affordability Levels. Affordable units provided pursuant to the fifteen percent (15%) requirement of subsection A of this section shall be made affordable to households with very low, low and moderate income pursuant to the minimum distributions included in the following table:

Income Level	Rental Units Distribution of Affordable Units Required to Be Built	Owner Units Distribution of Affordable Units Required to Be Built
Very Low Income	30%	Not Applicable
Low Income	70%	10%
Moderate Income—81 to 100%	Not Applicable	30%
Moderate Income—101 to 120%	Not Applicable	60%

For projects with seven (7) or more rental units, the application of the minimum distributions will be as set forth in the following table:

Total Number of Affordable Rental Units to Be Built	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Very Low Income Units	—	1	1	1	2	2	3	3	3	3	4	4	4	5	5
Low Income Units	1	1	2	3	3	4	4	5	6	7	7	8	9	9	10

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AT-16-001 Exhibit B
Affordable Housing Ordinance Amendment, Page 4

For projects with seven (7) or more owner units, the application of the minimum distributions will be as set forth in the following table:

Total Number of Affordable Owner Units to Be Built	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Low Income Units	–	–	–	1	1	1	1	1	1	1	2	2	2	2	2
Moderate Income Units (81—100%)	–	1	1	1	2	2	2	3	3	3	3	4	4	5	5
Moderate Income Units (101—120%)	1	1	2	2	2	3	4	4	5	6	6	6	7	7	8

For larger projects that exceed fifteen (15) required units to be built, the columns can be added to equal the total number, and the corresponding required units shall be built.

C. Conditions of Approval. Any tentative map, use permit or site development permit approving residential construction projects meeting the foregoing criteria shall contain conditions sufficient to ensure compliance with the provisions of this chapter. Such conditions shall specify the schedule of construction of affordable units, the number of affordable units, and appropriate resale controls and rental restrictions.

D. Concurrent Construction. All affordable units in a project or phase of a project shall be constructed concurrently with nonaffordable units.

E. Design and Distribution of Affordable Units. Unless the City, at its sole discretion, and in cooperation with the Developer, an alternate development plan for the affordable units is developed, all affordable units shall reflect the range of numbers of bedrooms provided in the project as a whole, and shall not be distinguished by exterior design, construction, or materials, and shall be reasonably dispersed throughout the project.

F. Single-Family Housing Projects with Corner Lot Duplexes. When affordable housing units are required in single-family developments, duplexes may be built on corner lots in the development. If a single-family residential development does include corner lot duplexes, no more than fifty percent (50%) of the affordable housing requirement for that project can be satisfied with the use of duplex units and no more than fifty percent (50%) of the total duplex units built can be affordable units. The remaining fifty percent (50%) of the affordable housing requirement for that project shall be provided in the single-family product as set forth in this chapter. Duplexes shall meet the setback standards of the zoning district in which they are located. Exceptions to the setback standards may be granted by approval of a Use Permit. The City may also consider other alternative affordable options, as set forth in Section 18.33.060(e).

18.33.040 General procedures.

- A. Agreements. Prior to the issuance of a certificate of occupancy, resale restrictions and/or rental controls, as applicable, all of which must be acceptable to the Director and be consistent with the requirements of this chapter, shall be recorded against parcels having affordable units and shall be effective for the life of the project.
- B. Right of First Refusal. The resale restrictions shall provide that in the event of the sale of an affordable unit, the City shall have the right to purchase any affordable owner-occupancy unit at the maximum prices which could be charged to an eligible household.
- C. Selection Criteria. No household shall be permitted to occupy a unit which is required to be affordable under this chapter unless the City or its designee has approved the household's eligibility. Eligible potential occupants of affordable units will be qualified on the basis of household income, the median combined household income statistics published periodically by HUD, all sources of household income and assets, a relationship between household size and the size of available units, and any further criteria required by law. The developer shall use an equitable selection method established in conformance with the terms of this chapter. No distinction will be made between adults and children. All persons in each of the following categories of otherwise qualified persons shall be selected before persons from the next succeeding category are selected:
 - 1. First priority: Persons who have been displaced by the proposed project;
 - 2. Second priority: Persons who live or work within the City of Union City;
 - 3. Third priority: Persons who have immediate family living in the City of Union City;
 - 4. Fourth priority: All other eligible persons.

18.33.050 Public subsidy assistance.

It is the intent of this chapter that its requirements of construction and maintenance of affordable units shall not depend upon the availability of any government subsidies. This is not to preclude the use of such programs or subsidies where available, however, and it is anticipated that subsidies of rental units may be available from HUD or State sources on an ongoing basis.

18.33.060 Development options.

This chapter is not intended to place any unreasonable burden upon developers of residential projects, and for that reason confers significant economic and land use benefits thereon, as set forth below:

- A. Density Bonus. The limitations upon residential density contained in Chapter 18.32 of this Code shall be deemed modified to the extent required by the terms of this chapter. The city, upon request, may approve an increase in the number of units permitted in a proposed residential development governed by this chapter, when such an increase in density is

consistent with State density bonus law per Section 65915 of the State Government Code. ~~The City may provide for either a density bonus of at least twenty-five percent (25%) and at least one (1) other concession or incentive or other incentives of equivalent financial value to developers of housing developments that reserve at least twenty percent (20%) of their units for lower-income households, ten percent (10%) for very-low income households, or fifty percent (50%) for qualifying senior citizens. Developers receiving this density bonus must ensure the continued affordability of all lower-income units for a minimum of thirty (30) years.~~ The dwelling units or parcels designated to meet the City's mandatory inclusionary housing requirement shall ~~not~~ count toward qualifying the proposed development for a density bonus.

B. Small Project In-Lieu Fees. The Director, upon request by the developer, may waive the requirements to provide affordable units pursuant to Section 18.33.030 (general requirements) in exchange for the payment of an affordable unit in-lieu fee; provided, that the proposed development is six (6) units or less. The developer may also have the option to pay the small project in-lieu fee where the calculation of the inclusionary requirement results in the fraction of a unit as set forth in Section 18.33.030(A). If fees are permitted to be paid in-lieu of providing affordable units, the fees shall be paid prior to issuance of the first building permit for the project, or secured at that time by an approved letter of credit or bond. The small project in-lieu fee shall be initially set at one hundred sixty thousand dollars (\$160,000.00) per each affordable unit that would have been required to be built for the entire project. This amount shall be multiplied by the fractional amount of the unit required to determine the actual fee to be paid by the developer. The small project in-lieu fee amount may be amended from time to time by the City Council by resolution, to meet inflationary increases, and the amount shall be set forth in the City's Master Fee Schedule. Any small project in-lieu fees collected from any project will be committed to an affordable housing project within five (5) years of being collected.

C. Optional In-Lieu Fee. The City, solely at its discretion, may waive the requirements to provide affordable owner units pursuant to Section 18.33.030 (general requirements) in exchange for the payment of an optional in-lieu fee for any or all required units. If fees are permitted to be paid in-lieu of providing affordable units, the fee shall be paid prior to the issuance of the first building permit for the project, or secured at that time by an approved letter of credit or bond. The optional in-lieu fee shall be initially set at one hundred eighty dollars (\$180.00) per square foot of the affordable units that would have been required to be built for the entire project, pursuant to this chapter. The City shall utilize the square footage of the units that are required to be built, in the range of bedrooms, sizes and product styles that would be required to satisfy the requirements of Section 18.33.030 (general requirements). The optional in-lieu fee amount may be amended from time to time by the City Council by resolution, to meet inflationary increases, and the amount shall be set forth

in the City's Master Fee Schedule. Any optional in-lieu fees collected from any project will be committed to an affordable housing project within five (5) years from being collected.

D. Waiver of Requirements. The City Council, at its discretion, may waive the requirements of this chapter if there are unusual development costs associated with the property that would otherwise prevent the project from proceeding. Typically, such a condition would involve excessive costs inherent on the property, such as environmental contamination.

E. Off-Site and Alternative Construction Options. Where affordable units are required by Section 18.33.030, the City may instead, at its sole discretion, consider the construction of units not physically contiguous to the development (off-site) or alternative on-site affordable housing development options, set forth in a binding agreement as set forth in 18.33.060(H), if the Planning Commission determines that:

1. A schedule for completion of the off-site units concurrently with completion of the related market-rate units is provided and agreed upon as a condition of approval for the project;
2. The off-site or alternative units are at least equal in basic amenities to other units in the project, with extra consideration given for the creation of additional affordable units, larger units or affordability to households with lower incomes; and
3. Off-site or alternative construction options will further affordable housing opportunities in the City to a greater extent than construction of the normally required units as part of the residential project in question;
4. When the original development is located in the redevelopment agency project area and the off-site location is located outside of the redevelopment project area, then two (2) units for every one (1) unit required to be built in the original location shall be developed. It may be determined by the City that working with a non-profit to develop higher density, rental units on or off-site may be a more efficient way to meet affordable needs at that point in time. In all cases, the affordable units must be built prior to or concurrently with the market rate development, unless a development agreement with a non-profit has been approved. The utilization of off-site and alternative housing will be considered relative to the inventory of available sites at that time.

F. Technical and Financial Assistance. Upon request, the City or its designee shall provide assistance to applicants concerning information regarding financial subsidy programs and economic analysis designed to indicate the most suitable methods by which the terms of this chapter may be implemented. To the extent that funds may be available and consistent with applicable Federal and State regulations and policies, affordable unit project applicants may apply to receive Federal community development block grant or City redevelopment funds for purposes of defraying certain off-site improvement costs and other expenses. Such

determination of eligibility shall be made by the Director and/or the Redevelopment Agency Manager. The City shall establish application and administration procedures and criteria by which eligible expenditures of such funds and their amounts shall be determined.

G. Priority Processing. All residential developments providing affordable units pursuant to the requirements of this chapter shall receive “priority processing” by which housing developments shall be reviewed and checked for all required City permit and other approvals in advance of other pending developments.

H. Contractually Binding Alternative Means of Compliance. The City Council, in its discretion, may permit an applicant to comply with the purpose of this chapter for a particular residential development project through implementation of an alternative affordable housing program instead of by compliance with the provisions of this chapter if:

1. Such alternative affordable housing program is set forth in a binding agreement, including, but not limited to, a government code development agreement, disposition and development agreement, disposition and development loan agreement, ~~or owner participation agreement,~~ or affordable housing agreement with the ~~City and/or the Community Redevelopment Agency of the~~ City of Union City; and
2. The City Council finds that such alternative affordable housing program meets the purpose of this chapter. The City Council, at its discretion, may require that the alternative affordable housing program include the payment of an in-lieu fee, the provision of affordable units, or a combination thereof. will provide an equal to or greater than level of affordable housing to the community as would be provided through adherence of the applicant to the requirements of this chapter.
3. Any affordable housing program that includes the payment of an in-lieu fee for any or all required affordable units, shall provide an in-lieu fee of no less than one hundred sixty thousand dollars (\$160,000.00) per each affordable unit that would have been required to be built, including fractional units.

18.33.070 Exemptions.

Residential developments consisting of only one (1) unit will be exempt from the requirements of this chapter; provided, that the unit is an owner-occupied single-family home, constructed by or for the property owner or the property owner’s immediate family members, and the owner or immediate family member lives in the home for a minimum of five (5) years upon its completion.

18.33.080 Enforcement.

A. The provisions of this chapter shall apply to all agents, successors and assignees of an applicant proposing a residential development governed by this chapter. No tentative map,

use permit, special development permit or occupancy permit shall be issued for any residential development unless exempt from or in compliance with the terms of this chapter. B. 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.

18.33.090 Appeals.

A. Any person aggrieved by any action involving denial, suspension or revocation of an occupancy or other permit, or denial, suspension or revocation of any development approval, may appeal such action or determination in the manner provided for appeal of use permits, by Chapter 18.56.

B. Any applicant or other person who contends that his or her rights conferred by this chapter have been adversely affected by any determination or requirement of any agency designated by the City as its administrative agent may notify the chief executive officer of said agency to that effect in writing, stating relevant facts. All such contentions shall be considered exclusively by said agency in accordance with such procedures as they may be established. In instances in which violations of this chapter or any agreement with the City on the part of said agency is alleged, City shall take appropriate investigative and corrective actions.

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Agenda Item

DATE: MARCH 3, 2016
TO: PLANNING COMMISSION
FROM: JOAN MALLOY, ECONOMIC AND COMMUNITY
DEVELOPMENT DIRECTOR
SUBJECT: DESK ITEM #2 FOR AFFORDABLE HOUSING ORDINANCE
AMENDMENT

Staff received the attached correspondence from Lisa Vorderbrueggen of Building Industry Association (BIA) | Bay Area.

Ms. Vorderbrueggen is requesting:

- That the minimum per unit fee be based on the type of residential unit rather than set a flat rate.
- The City identify and grandfather residential developments projects that are currently in the pipeline and that have been financed based on the current regulatory environment and advice from staff.

ATTACHMENT 5

DATE: March 3, 2016

TO: Union City Planning Commission Chairman Raymond Gonzales Jr., Vice
Chairman Harpal Mann and Commissioners Leo Guio, Jo Ann Lew and Dave
Sweilem

FROM: BIA|Bay Area East Bay Governmental Affairs Executive
Director Lisa Vorderbrueggen

RE: Agenda Item B.1: Proposed affordable housing zoning text amendment

Dear Chairman Gonzales and Commissioners:

As a representative of more than 400 companies that develop, design and produce housing the Bay Area, BIA|Bay Area applauds Union City's innovative approach toward the provision of much-needed affordable housing.

We would like to take this opportunity, however, to request consideration of two refinements to the staff's proposed affordable housing policy amendments.

With respect to the profit-sharing option, we would ask that the city base the minimum per unit fee upon the type of residential unit rather than set a flat rate. A fee floor of \$160,000 per unit may make sense for a single-family home with a sales price in excess of \$1.5 million. But for smaller townhomes or condos with lower sales prices, the fee represents a higher financial burden. Setting the floor based on unit type is a more equitable option that will better fulfill the city's desire to make the payment of an in-lieu fee attractive.

Second, we understand there are residential development projects currently in the pipeline in Union City that have been financed based on the current regulatory environment and advice from staff. We would ask that the city identify and grandfather residential development projects that fall into a specified transition period.

Thank you for your consideration. Please feel free to contact me at any time with questions or comments at 925-348-1956 or lvorderbrueggen@biabayarea.org.

Sincerely yours,



Lisa A. Vorderbrueggen
East Bay Executive Director for Governmental Affairs, BIA|Bay Area
lvorderbrueggen@biabayarea.org
925-348-1956 (cell)

cc: BIA|Bay Area Government Affairs Patricia Sausedo
BIA|Bay Area Government Affairs Dennis Martin
Union City Manager Tony Acosta
Union City Economic and Community Development Director Joan Malloy



Agenda Item

DATE: 3/22/2016

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: BENJAMIN T. REYES II, CITY ATTORNEY

SUBJECT: INTRODUCE AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UNION CITY TO AMEND CHAPTER 10.17 “TOWING SERVICES” AND TO REPEAL CHAPTER 10.18 “FRANCHISES FOR POLICE TOWING” TO AMEND REQUIREMENTS FOR TOWING COMPANIES PROVIDING POLICE TOWING

The City of Union City is proposing to modify Title 10, Vehicles and Traffic of the Municipal Code to:

- Consolidate relevant franchise towing requirements contained in Chapter 10.18 “Franchises for Police Towing” and relevant towing services requirements contained in Chapter 10.17 “Towing Services”; and
- Streamline and simplify the City’s process for awarding franchises for police towing; and
- Add new regulations; and
- Further clarify existing regulations.

Staff recommends that the City Council introduce the attached Ordinance that would amend Chapter 10.17 “Towing Services” and repeal Chapter 10.18 “Franchises for Police Towing” to consolidate relevant provisions in Chapter 10.17 and amend requirements for towing companies providing police towing in order to offer flexibility related to towing requirements and required franchise fees.

BACKGROUND

The Police Department has a regular need to have vehicles towed and removed from public roadways for various reasons including: to remove disabled vehicles; to tow vehicles operated by unlicensed drivers or drivers with suspended licenses; to tow vehicles with excessive parking citations or vehicles with excessive expired registration; to tow abandoned vehicles; and to tow vehicles where drivers are arrested. The City requested an average of 700 police-generated tows per year between 2011 and 2015. The Police Department currently utilizes private tow operators to tow, impound and store vehicles as pursuant to the Municipal Code provisions outlined below.

Title 10, Chapter 17 of the Union City Municipal Code (the “Towing Services Ordinance”) provides that the Police Department will only utilize tow operators that are placed on the City’s rotation tow list and the Police Department equally distributes tow requests among operators. The process and procedure for tow operators to apply for placement, and for selection for placement, on the rotation tow list are outlined in the Towing Services Ordinance. Additionally, the Towing Services Ordinance provides minimum standards for tow truck drivers, equipment and storage spaces for tow operators that are placed on the rotation tow list. The minimum standards include a requirement that tow operators maintain a storage facility within a radius of five miles of the

center of the City. The Towing Services Ordinance currently requires that tow operators selected for placement on the rotation tow list execute a five-year agreement with the City and provides that the Chief of Police can eliminate an operator from the rotation tow list for failure to comply with the Towing Services Ordinance. The City Council adopted the Towing Services Ordinance in 1979.

Title 10, Chapter 18 of the Union City Municipal Code (the “Franchise Ordinance”) requires that tow operators placed on the rotation tow list apply for a franchise to provide tow services. The City Council is authorized to grant towing franchises pursuant to the Franchise Ordinance. The Franchise Ordinance currently provides the procedural requirements for applying for, renewing, terminating and suspending a franchise as well as the requirements for paying the franchise fee. The Franchise Ordinance allowed the City to receive franchise fees from tow operators and the City Council adopted the Franchise Ordinance in 2005.

The Police Department currently has only one tow operator on the rotation tow list. Historically, the Police Department had up to three tow operators on the rotation tow list, but one tow operator recently closed and other tow operators do not qualify because they do not have a storage facility within five miles of the center of the City. The City collected an average of \$14,000.00 in franchise fees per year between 2011 and 2015.

DISCUSSION

The Police Department recently discovered the challenges in administering the rotational tow program pursuant to the Towing Services Ordinance and the Franchise Ordinance (the “Ordinances”). For example, the City does not have more than one qualified tow operator that maintains a storage facility within a radius of five miles of the center of the City, which prevents the City from adding tow operators to the rotation tow list. Additionally, the Towing Services Ordinance provides rigid requirements related to equipment and personnel that can be addressed contractually.

As indicated above, the Towing Services Ordinance has not been substantively updated since 1979 and the Franchise Ordinance has not been updated since its enactment. Regulations regarding tow operator requirements, the application and approval process and the franchise fee requirement need to be updated to clarify existing requirements, streamline the process to select and place tow operators on the rotation tow list, and eliminate the rigid process and procedures outlined in the Ordinances so that they can adapt to technical requirements over time.

Effect of Text Amendments

California Vehicle Code section 12110(b) allows cities to establish franchise agreements and franchise fees for City-generated tows provided that any fees established do not exceed the reasonable costs incurred with operating the towing program. The proposed amendments would continue the rotational tow program and continue the requirement that tow operators obtain a franchise to provide police tows. This includes requiring the payment of a franchise fee. Any funds received from the franchise fee are utilized to help offset the ongoing costs with operating the towing program.

Existing provisions in the Tow Services Ordinance are rigid and outdated. For example, the Tow Services Ordinance currently requires tow operators to have a storage facility within a radius of five miles of the center of the City (defined as the intersection of Dove Avenue and Pacific Street), specifies tow response time requirements, sets insurance requirements, and provides termination and appeal procedures. The Franchise Ordinance requires tow operators to obtain a franchise from the City after entering into a tow rotation agreement and provides a different application process, selection procedure, and termination and appeal rights.

The proposed amendments are included in Exhibit A to the attached Ordinance, and in redline format in Exhibit

B, and include the following:

- Repeal Chapter 10.18 “Franchises for Police Towing” and amends and retitles Chapter 10.17 “Towing Services” to “Towing Services and Franchises for Police Towing” to consolidate relevant provisions from Chapter 10.18 with Chapter 10.17.
- Eliminates requirement that tow operators enter into a rotational tow agreement and subsequently enter into a franchise agreement and instead requires tow operators to enter into a franchise agreement that addresses all requirements for selected operators.
- Requires the Police Department to issue a request for proposals for potential operators to provide police towing every five (5) years with criteria for selection included in the request for proposals.
- Eliminates specific minimum standards for tow truck drivers, equipment and storage spaces for tow operators and adds a requirement that each tow operator enter into a franchise agreement which must address:
 - Minimum requirements for tow truck drivers employed by the operator;
 - Minimum equipment requirements for tow trucks used to provide police towing;
 - Minimum business standards for operators;
 - Minimum vehicle storage requirements;
 - Minimum tow response and operational requirements;
 - Minimum insurance and indemnification requirements as approved by the City Attorney;
 - Minimum response time requirements; and
 - Any other provisions deemed necessary by the Chief of Police.

This will allow the City to modify operational requirements in each franchise agreement that it executes with operators and make amendments to address changes in the law or preferred operational capacity without having to amend the Municipal Code.

- Requires that the franchise agreement establish the franchise fee.
- Requires the City Council approve all franchise agreements to provide tow services.

Permits the Chief of Police to terminate an operator from the rotation list for failure to comply with the Municipal Code or the franchise agreement to provide police towing and provides that the City Managers shall hear all appeals. This eliminates the dual procedure for termination from the tow rotation list and termination of a franchise that exists in both Chapter 10.17 and Chapter 10.18.

FISCAL IMPACT

There are no direct fiscal impacts as a result of adopting the attached Ordinance.

RECOMMENDATION

1. Introduce the attached ordinance amending Chapter 10.17 “Towing Services” and to repealing Chapter 10.18 “Franchises for Police Towing” to amend requirements for towing companies providing police towing.
2. Adopt the ordinance following second reading on April 12, 2016, or at another meeting selected by Council if directed.

Prepared by:

BENJAMIN T. REYES II, CITY ATTORNEY KRISTOPHER J. KOKOTAYLO, DEPUTY CITY ATTORNEY JARED RINETTI, POLICE CAPTAIN

Submitted by:

BENJAMIN T. REYES II, CITY ATTORNEY KRISTOPHER J. KOKOTAYLO, DEPUTY CITY ATTORNEY JARED RINETTI, POLICE CAPTAIN

ATTACHMENTS:

Description	Type
<input type="checkbox"/> Tow Ordinance	Ordinance
<input type="checkbox"/> Exhibit A to Draft Tow Ordinance	Exhibit
<input type="checkbox"/> Exhibit B to Draft Tow Ordinance	Exhibit

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
UNION CITY TO AMEND CHAPTER 10.17 “TOWING SERVICES” AND TO REPEAL
CHAPTER 10.18 “FRANCHISES FOR POLICE TOWING” TO AMEND
REQUIREMENTS FOR TOWING COMPANIES PROVIDING POLICE TOWING**

WHEREAS, the City of Union City (the “City”) requires tow services in the exercise of its police powers as necessary or appropriate for the general welfare of its citizens; and

WHEREAS, the California Constitution, Article XI, Section 7, provides cities and counties with the authority to enact ordinances to protect the health, safety, welfare, and morals of their citizens; and

WHEREAS, pursuant to California Vehicle Code section 12110, the City may establish a towing franchise and charge fees in connection with the award of a franchise for towing vehicles on behalf of the City, provided the fees do not exceed the amount necessary to reimburse the City for its actual and reasonable costs incurred in connection with the towing program; and

WHEREAS, the City currently requires towing companies to obtain a franchise prior to providing police towing services; and

WHEREAS, this Ordinance shall not be construed to restrict or prohibit the City from conducting its own towing operations or storage; and

WHEREAS, the City desires to clarify the provisions in the Municipal Code related to towing services and revise existing provisions to more effectively grant franchises and select towing companies for police towing services; and

WHEREAS, the amendments to the Municipal Code propose to repeal Chapter 10.18 and amend Chapter 10.17 as shown in Exhibit A and in red-line in Exhibit B for reference, which exhibits are attached and incorporated herein by reference.

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

SECTION 1. Recitals. The above recitals are true and correct and made a part of this Ordinance.

SECTION 2. CEQA. Approval of the amendments is exempt from further environmental review under the general rule in California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) that CEQA only applies to projects that have the potential for causing a significant effect on the environment. As a series of text amendments and additions, it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment.

SECTION 3. Findings. The City Council makes the following findings in support of approving this Ordinance, based on the whole of the record before it.

1. The City has a substantial interest in revising the Municipal Code to effectively select towing companies that are able to provide police towing services.
2. The amendments are consistent with the City's efforts to clarify provisions of the Municipal Code to more effectively administer the City police towing services program.

SECTION 4. Approval. The City Council hereby approves the amendments to the Municipal Code, more particularly, repealing Chapter 10.18 and amending Chapter 10.17 as shown in attached Exhibit A, which is incorporated herein by reference and available for review in the City Clerk's office during normal business hours.

SECTION 5. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION 6. Publication and effective date. Within fifteen (15) days from and after adoption, this Ordinance shall be published once in the Tri-City Voice, a newspaper of general circulation printed and published in Alameda County and circulated in the City of Union City, in accordance with California Government Code Section 36933. This Ordinance shall take effect and be enforced thirty (30) days after its adoption.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Union City at a regular meeting held on _____, 2016, by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:
ABSTAIN: COUNCILMEMBERS

APPROVED:

Carol Dutra-Vernaci, Mayor

ATTEST:

Anna Brown, City Clerk
2603560.1

APPROVED AS TO FORM:

Benjamin T. Reyes II, City Attorney

EXHIBIT A

Chapter 10.17

TOWING SERVICES AND FRANCHISES FOR POLICE TOWING

10.17.010 Purpose.

The public health, safety and welfare require that hazards to vehicular movement and traffic safety be removed from City streets as soon as possible. This requirement cannot be satisfactorily performed by the officers and employees of the Union City Police Department. In order to insure the efficient removal of a vehicle which is a hazard to traffic, and to provide a dependable towing service to the public, it is necessary to establish minimum standards for vehicle towing services. It is also the intent of this chapter to regulate the operation of tow car services utilized by the City of Union City police department pursuant to the authority conferred by the California Vehicle Code and to establish a franchise agreement and franchise fee for these services.

10.17.020 Definitions.

In this chapter unless the context otherwise requires:

- A. “Chief of Police” means the Police Chief of the City or designee.
- B. “City” means the City of Union City.
- C. “City Council” means the City Council of the City of Union City.
- D. “City Manager” means the City Manager of the City of Union City or designee.
- E. “Franchise” means a nonexclusive franchise granted by the City to provide police towing.
- F. “Franchise agreement” means the agreement entered into between the City and an operator that defines the obligations, procedures and terms for police towing and establishes the franchise fees to be paid by operators.
- G. “Operator” means a person with a franchise to provide police towing pursuant to this chapter.
- H. “Person” means an individual, a firm or a copartnership, a corporation, a company, an association or a joint-stock association.
- I. “Police towing” includes towing of vehicles to impound or to other locations, the storage of such vehicles as ordered and designated by authorized members of the police department and all services required to transport, secure and maintain such vehicles.
- J. “Rotation list” means a list maintained by the City of operators who comply with this chapter and provide police towing.
- K. “Tow truck” means a motor vehicle altered or designed and equipped for, and exclusively used in, the business of towing vehicles by means of a crane, tow bar, tow line or dolly, or is otherwise used to give assistance to other vehicles.

10.17.030 Activities that are unlawful unless authorized—Activities not covered.

Except as specified in this title, it is unlawful for any person to solicit or perform the business of police towing in the City unless a franchise agreement therefor has first been entered into pursuant to the provisions of this chapter and such franchise agreement is in full force and

effect. This chapter shall not apply to towing, repair or storage services performed for or made available to members of the public by any person.

10.17.040 Placement on rotation list.

The Chief of Police shall issue a request for proposals for potential operators to provide police towing every five (5) years. Operators placed on the rotation list shall enter into an franchise agreement to provide police towing for a five (5) year period.

10.17.050 Selection and designation for rotation list and franchisee.

A. The Chief of Police shall maintain a list of up to three (3) operators to provide police towing. The City shall have three (3) openings on the rotation list when the Chief of Police issues a request for proposals pursuant to Section 10.17.040.

B. The Chief of Police shall make appointments of operators to the rotation list based upon criteria determined by the Chief of Police and identified in the request for proposals issued pursuant to Section 10.17.040. In addition to any other requirements, the Chief of Police may require operators to maintain a storage facility within City limits, or within a reasonable distance of City limits.

C. A person seeking to be an operator on the rotation list shall be rejected if that person has knowingly submitted facts which are untrue, or intentionally omitted or fails to indicate facts which, if submitted, could have resulted in a rejection of the application for placement on the rotation list, provided such facts should have reasonably been known by that person. A person that is rejected for placement on the rotation list as an operator shall receive written notice of rejection.

D. All operators selected for placement on the rotation list shall execute a franchise agreement with the City to provide police towing for a period of five (5) years. Operators placed on the rotation list shall comply with all provisions of this chapter and additional conditions deemed necessary by the Chief of Police and included in the franchise agreement to provide police towing. In the event that an operator on the rotation list fails to complete a five (5) year term, the Chief of Police may issue a request for proposals for operators to complete such five (5) year term pursuant to this chapter.

E. All franchise agreements to provide police towing shall be approved by the City Council. The Chief of Police shall submit the selected operators for placement on the rotation list to the City Council for review at a regular meeting of the City Council. The selection of operators shall be granted or denied, based upon compliance with this chapter, the California Vehicle Code, and public comment.

10.17.060 Minimum requirements.

Each franchise agreement entered into with operators to provide police towing shall include, but not be limited to, provisions which shall address:

- A. Minimum requirements for tow truck drivers employed by the operator;
- B. Minimum equipment requirements for tow trucks used to provide police towing;
- C. Minimum business standards for operators;
- D. Minimum vehicle storage requirements;
- E. Minimum tow response and operational requirements;
- F. Minimum insurance and indemnification requirements, as approved by the City Attorney;

- G. Minimum response time requirements; and
- H. Any other provisions deemed necessary by the Chief of Police.

10.17.060 Inspection Requirement.

The operator shall render available all tow trucks and the storage facility for inspection by the Chief of Police upon request. In addition, the operator shall make available any record of a tow transaction for inspection to insure compliance with the fee schedule for towing.

10.17.070 Schedule of fees and rates.

For towing services provided under this chapter, the operator may charge no more than the maximum rate established by the Chief of Police in the franchise agreement for police towing, as approved by the City Council.

10.17.080 State law governs collection of fees, lien sales and disposition of abandoned vehicles.

Nothing in this chapter shall be construed to modify State law in regards to the collection of fees and the conduct of lien sales regarding the disposition and storage of abandoned vehicles, or the State licensing requirement therefor, for abandoned vehicles having an estimated value less than as established in the California Vehicle Code for “low value vehicles.”

10.17.090 Records open to inspection.

The Chief of Police may inspect, during normal business hours, the records of an operator. The operator shall maintain adequate records to include the description of vehicles, nature of service, time and location of each call for police towing and the disposition of each vehicle.

10.17.100 Nonexclusive franchise fees.

A. Each operator placed on the rotation list and entering into a franchise agreement pursuant to this chapter shall pay a franchise fee to the City pursuant to the terms of the franchise agreement, as approved by the City Council.

B. The payment to the City by the operator pursuant to this chapter shall be in addition to any license fee or business tax prescribed by the City for the same period.

10.17.110 Termination of towing service.

The Chief of Police may terminate an operator from the rotation list if the operator fails to comply with this chapter or the franchise agreement with the City to provide police towing. The Chief of Police shall provide the operator written notice of termination along with the reasons for termination, facts supporting termination, and ability to appeal pursuant to Section 10.17.130 twenty-four hours prior to the effective date of the termination. The operator may appeal the decision of the Chief of Police in the manner provided by this chapter.

10.17.120 Reinstatement to rotation list.

After an operator has been removed from the rotation list pursuant to Section 10.17.110, the operator is not eligible for placement on the rotation list until the expiration of one year following the effective date of termination.

10.17.130 Appeal procedure.

Any operator or applicant who desires to appeal the decision of the Chief of Police to terminate the operator from the rotation list, pursuant to Section 10.17.110, or deny an applicant, pursuant to Section 10.17.050 shall, within ten (10) days of the mailing of notice of the decision of the Chief of Police, file a written notice of appeal with the City. The City Manager shall hear the appeal. An appeal shall not stay enforcement of the appealed action. The date, time, and place of appeal hearings shall be provided in writing to the operator or person with at least ten days' notice and copies of hearing rules. If the operator or person fails to present evidence establishing that person is entitled to remain an operator or that an application was improperly rejected, the City Manager shall uphold the decision of the Chief of Police and give written notice to the operator.

2621819.1

EXHIBIT B

Chapter 10.17

TOWING SERVICES AND FRANCHISES FOR POLICE TOWING

10.17.010 Purpose.

The public health, safety and welfare require that hazards to vehicular movement and traffic safety be removed from City streets as soon as possible ~~to do so~~. This requirement cannot be satisfactorily performed by the officers and employees of the Union City Police Department. In order to insure the efficient removal of a vehicle which is a hazard to traffic, and to provide a dependable towing service to the public, it is necessary to establish minimum standards for vehicle towing services. It is also the intent of this chapter to regulate the operation of tow car services utilized by the City of Union City police department pursuant to the authority conferred by the California Vehicle Code and to establish a franchise agreement and franchise fee for these services.

10.17.020 Definitions.

In this chapter unless the context otherwise requires:

~~A. “Attendant” means an employee of an operator, qualified by knowledge and experience to operate a tow car or tow truck.~~

~~B.A.~~ “Police Chief of Police” means the chief of the City Police Department Police Chief of the City or designee.

B. “City” means the City of Union City.

C. “City Council” means the City Council of the City of Union City.

D. “City Manager” means the City Manager of the City of Union City or designee.

E. “Franchise” means a nonexclusive franchise granted by the City to provide police towing.

F. “Franchise agreement” means the agreement entered into between the City and an operator that defines the obligations, procedures and terms for police towing and establishes the franchise fees to be paid by operators.

~~EG.~~ “Operator” means a person with a franchise to provide police towing pursuant to this chapter engaged in the business of towing motor vehicles.

~~DH.~~ “Person” includes means an individual, a firm or a copartnership, a corporation, a company, an association or a joint-stock association.

~~E.~~ “Police Department” means the Union City Police Department.

I. “Police towing” includes towing of vehicles to impound or to other locations, the storage of such vehicles as ordered and designated by authorized members of the police department and all services required to transport, secure and maintain such vehicles.

~~FJ.~~ “Rotation list” means a list maintained by the Police Department City of operators who comply with this chapter and from which the Police Department will make calls for towing services on a sequential basis provide police towing.

~~GK.~~ “Tow truck” means a motor vehicle altered or designed and equipped for, and exclusively used in, the business of towing vehicles by means of a crane, tow bar, tow line or dolly, or is otherwise used to give assistance to other vehicles.

~~_____ H. “Towing service” is the business of towing for compensation motor vehicles in the City. Such business also includes the storage of towed vehicles, pending their return to the owners thereof, by the person who towed such vehicles or by some other person for the person who towed such vehicles.~~

10.17.030 Activities that are unlawful unless authorized—Activities not covered.

Except as specified in this title, it is unlawful for any person to solicit or perform the business of police towing in the City unless a franchise agreement therefor has first been entered into pursuant to the provisions of this chapter and such franchise agreement is in full force and effect. This chapter shall not apply to towing, repair or storage services performed for or made available to members of the public by any person.

10.17.040 ~~Application for p~~Placement on rotation list.

The Chief of Police shall issue a request for proposals for potential operators to provide police towing every five (5) years. Operators placed on the rotation list shall enter into an franchise agreement to provide police towing for a five (5) year period. ~~The operator shall fill out an application furnished by the Police Department requesting placement on the rotation list.~~

10.17.050 Selection and designation for rotation list and franchisee.

A. _____ The ~~Police Department~~Chief of Police shall maintain a list of up to three (3) operators to provide for police towing services. The City shall have three (3) number of openings on the rotation list shall be set by the City Council by resolution ~~when the Chief of Police issues a request for proposals pursuant to Section 10.17.040.~~

B. _____ The ~~Police Department~~Chief of Police shall make an appointments of operators to a vacancy on the rotation list based upon the number of points awarded to the applicant as set forth by the Tow Truck Rating Criteria as provided by the City Council by resolution ~~criteria determined by the Chief of Police and identified in the request for proposals issued pursuant to Section 10.17.040. In addition to any other requirements, the Chief of Police may require operators to maintain a storage facility within City limits, or within a reasonable distance of City limits. In addition thereto, the Police Chief may refuse to appoint an applicant to the rotation list if he/she finds that the applicant is unable to meet the requirements of this chapter. The determination shall be based upon information supplied to the Police Chief and upon past experience with the applicant.~~

C. _____ The A person seeking to be an operator applicant on the rotation list shall be rejected if that e person applicant has knowingly submitted facts and information in an application for permit which are untrue, or intentionally omitted or failed fails to indicate in the application facts which, if submitted, could have resulted in a rejection of the application for a permit placement on the rotation list, provided such facts should have reasonably been known by that persone applicant. The decision of the Police Chief may be appealed by said applicant in the manner set forth in this chapter. A person that is rejected for placement on the rotation list as an operator shall receive written notice of rejection.

D. _____ All operators selected for placement on the rotation tow list shall execute an franchise agreement with the City to provide police towing of Union City. Agreement so

~~executed shall be~~ for a period of five (5) years. Operators placed on the rotation list shall comply with all provisions of this chapter and additional conditions deemed necessary by the Chief of Police and included in the franchise agreement to provide police towing. ~~Notwithstanding this section, nothing shall prohibit the Police Department from exercising its responsibilities under Section 10.17.210 of the Union City Municipal Code.~~ In the event that an operator on the rotation list fails to complete a five (5) year term, the Chief of Police may issue a request for proposals for operators to complete such five (5) year term pursuant to this chapter.

E. All franchise agreements to provide police towing shall be approved by the City Council. The Chief of Police shall submit the selected operators for placement on the rotation list to the City Council for review at a regular meeting of the City Council. The selection of operators shall be granted or denied, based upon compliance with this chapter, the California Vehicle Code, and public comment.

10.17.060 ~~Approval of drivers~~ Minimum requirements.

~~A. Each franchise agreement entered into with operators to provide police towing shall include, but not be limited to, provisions which shall address:~~

- ~~A. Minimum requirements for tow truck drivers employed by the operator;~~
- ~~B. Minimum equipment requirements for tow trucks used to provide police towing;~~
- ~~C. Minimum business standards for operators;~~
- ~~D. Minimum vehicle storage requirements;~~
- ~~E. Minimum tow response and operational requirements;~~
- ~~F. Minimum insurance and indemnification requirements, as approved by the City Attorney;~~
- ~~G. Minimum response time requirements; and~~
- ~~H. Any other provisions deemed necessary by the Chief of Police.~~ Each towing

~~service which is placed on the rotation list shall employ only capable and competent drivers and attendants that are satisfactory to the Police Chief. Each towing service shall provide the Police Department with a current list of drivers and attendants authorized to perform operations of each tow truck. The Police Chief may remove an operator from the rotation list if he/she finds that the operator employs a driver who, within the thirty-six months preceding the date of his/her service with the operator, or who in the course of his/her service with the operator, has been convicted of one or more of the following crimes:~~

- ~~1. Auto theft, burglary, possession of stolen property, grand or petty theft;~~
- ~~2. A crime of violence on the person of another;~~
- ~~3. A violation of the Health and Safety Code relating to narcotics or dangerous drugs;~~
- ~~4. A violation of Sections 4461, 4462b, 4463, or 5017a of Division 3 of the California Vehicle Code;~~
- ~~5. A violation of any provision of Division 4 of the California Vehicle Code; or~~
- ~~6. A crime relating to illegal acquisition of vehicles or vehicle parts or documents relating to vehicle registration or ownership.~~

~~B. There shall be no discrimination against any person who an operator employs for the work required in this chapter, or against any applicant for such employment, because of race, religion, sex, age, color, or national origin. This provision shall include, but not be limited to, the following:~~

- ~~1. Employment;~~

- ~~2. Upgrading;~~
- ~~3. Demotion;~~
- ~~4. Transfer;~~
- ~~5. Recruitment;~~
- ~~6. Recruitment advertising;~~
- ~~7. Layoff;~~
- ~~8. Termination;~~
- ~~9. Rates of pay;~~
- ~~10. Selection for training; or~~
- ~~11. Apprenticeship.~~

-

~~10.17.070 Minimum equipment standards for tow trucks.~~

~~Each tow truck shall meet the following minimum standards:~~

- ~~A. Truck Chassis. At least one ton capacity with dual rear wheels or equivalent.~~
- ~~B. Company Name. Each vehicle shall be marked pursuant to Section 27907 of the California Vehicle Code.~~
- ~~C. Lights. Each vehicle shall be equipped with lighting equipment required by the California Vehicle Code, plus one white utility light (adjustable or portable) and may be equipped with such other lights as the operator desires, notwithstanding, the provisions of the California Vehicle Code.~~
- ~~D. Winch. Each vehicle shall have one chassis-mounted, power-driven winch operated from a transmission equipped with safety dogs or equivalent braking devices with a minimum cable length of one hundred feet.~~
- ~~E. Additional Equipment. Each vehicle shall have:~~
 - ~~1. Flashlight in operating condition;~~
 - ~~2. Dustpan or square-bladed shovel;~~
 - ~~3. Crowbar or prybar;~~
 - ~~4. Sand, minimum of one hundred pounds;~~
 - ~~5. Rope or strapping implement for securing steering wheels;~~
 - ~~6. Miscellaneous handtools, such as hammer, screwdriver and wrenches;~~
 - ~~7. Set of dollies;~~
 - ~~8. Safety chain;~~
 - ~~9. A device intended and manufactured to protect impact resistant vehicle bumpers;~~
- ~~and~~
- ~~10. Other equipment required by the California Vehicle Code.~~

-

~~10.17.080 Business and storage lot requirements.~~

~~A. Trucks/Equipment. Each approved towing service, towing vehicles of less than six thousand pounds, shall have a minimum of two trucks operational at all times. Each approved towing service, towing vehicles over six thousand pounds, shall have at least one three-axle tow truck operational at all times. Each tow truck shall be equipped with communications between the tow truck and its dispatcher, and further the dispatching shall be from a central dispatching point available by telephone twenty four hours per day. For the purpose of this section, citizen band radio equipment shall not satisfy the communications requirement.~~

~~B. Tow Requirements. Upon request by the City, all tow companies on the rotational list, for vehicles under six thousand pounds, will tow abandoned autos at no cost to the City. Tow~~

~~companies will not respond to or assist at the scene of a collision or tow unless specifically requested. Tow companies will comply with the tow service agreement and any addenda.~~

~~C. Vehicle Storage. Each towing service shall maintain a clean and orderly storage facility (lot or building) within a radius of five miles of the center of the City which, for purposes of this section, is found to be the intersection of Dowe Avenue and Pacific Street, as determined by the Police Chief of the City of Union City, providing sufficient client space for all vehicles towed by the service. All storage facilities located within the City of Union City shall be enclosed with substantial fencing, at least six feet in height. The fencing will also have a minimum of eighteen inches of additional security barrier added to the fence line. Fences may otherwise be a total of eight feet. Fencing shall be capable of securing and protecting stored vehicles and their contents from theft or tampering. Gates and buildings shall be reasonably screened from public view. Said storage facility shall have suitable lighting to better insure safe storage of vehicles. All outside lighting shall be arranged and shielded so as to prevent glare or reflection or any nuisance, inconvenience and hazardous interference of any kind on adjoining streets or property. The storage facility shall bear the name of the tow company and the company's business telephone number. No vehicle shall be stored in said facility in excess of six months without written consent of the Police Chief. Vehicle storage facilities located outside the City of Union City shall meet all requirements of the city in which it is located as it pertains to licensing, land use, and requirements normally attributed to the planning, zoning and building process. Tow companies located in another city which meet the requirements of that city may be deemed exempt from the storage facility requirements of this section provided that those requirements insure, in the opinion of the Police Chief, safe storage, fencing and lighting.~~

~~D. Tow Response and Confirmation. Whenever a rotational tow list company is requested to respond to a tow, said company shall respond within twenty minutes or decline to tow the vehicle. After normal business hours, or whenever an answering service is employed to take messages, a company employee shall telephone the Police Dispatcher to confirm the availability of a driver and the response time. The Police Dispatcher shall wait no more than five minutes for a return call before requesting a different tow company. A tow company may decline to take an abandoned auto when said company has committed to accept a private tow. However, the tow company will not be permitted to take a Police requested rotational standard tow until the company accepts the abandoned tow.~~

~~E. Hours. Each tow service shall render available not less than two attendants at all times, except between the hours of 12:01 a.m. and seven a.m., during which latter time at least one attendant shall be available. The aforementioned times include Saturdays, Sundays and holidays. In addition, the service shall render available one attendant to respond to police and citizen requests for release of vehicles, twenty-four hours per day, seven days per week, including holidays.~~

~~F. Insurance. The City, and/or its City Council, and/or its employees, shall not be answerable or accountable in any manner for any loss or damages that may arise out of the operation of towing services and storage of vehicles and arising out of the performance of any requirements of this chapter; or for injury or damage to property or loss of use thereof, from any cause whatsoever arising out of the performance of any requirement of this chapter by the towing services.~~

~~The operator shall defend, indemnify and save harmless the City, the Council, and City officers and employees, from any suits, claims, or actions brought, or disease or illness or damages sustained or arising out of the operation of towing services and storage of vehicles and~~

arising out of the performance of any requirement of this chapter by the operator or in consequence thereof.

~~_____ The operator shall maintain public liability insurance, primary coverage, and property damage in an amount established by resolution of the City Council. The operator shall further be responsible at actual cash value of customer vehicles and contents as provided by law.~~

~~_____ A certificate of insurance for worker's compensation shall be provided to the City. The Finance Director of the City shall be furnished with a certificate of insurance, for the coverage established by resolution, with a thirty-day notice of cancellation to the City. In addition, each operator shall file a copy of the certificate of insurance, for the coverage established by resolution, with the Police Chief.~~

~~_____ G. _____ License Requirements.~~

~~_____ 1. _____ The operator shall possess and insure that each attendant possesses a valid California Driver's License as outlined in Section 12804 of the California Vehicle Code.~~

~~_____ 2. _____ The operator shall obtain and maintain a business license issued by the City of Union City.~~

~~_____ 3. _____ The operator shall provide proof of a valid California Board of Equalization license as required under Section 3701 of the California Revenue and Taxation Code.~~

~~_____ H. _____~~

10.17.060 Inspection Requirement.

~~_____~~ The operator shall render available all tow trucks and the storage facility for inspection by ~~a representative of the Police Chief~~ the Chief of Police upon request. In addition, the operator shall make available any record of a tow transaction for inspection to insure compliance with the fee schedule for towing.

10.17.0790 Schedule of fees and rates.

For towing services provided under this chapter, the operator may charge no more than the maximum rate established ~~in the most current Tow Service Agreement executed between the operator and the City of Union City~~ by the Chief of Police in the franchise agreement for police towing, as approved by the City Council. The rate for road service calls and for towing to points other than the operator's established storage facility at the request of the vehicle owner or agent shall be negotiated between the operator (or attendant) and the vehicle owner or agent thereof. The operator shall keep business records of all rates charged and collected for towing services and these records shall be rendered available for inspection whenever requested by a representative of the Chief of Police.

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10.17.100 Response time.

~~_____ Not less than one tow truck and attendant shall be able to respond to any location within the geographical limits of the City within twenty minutes. In addition thereto, at least one standby tow truck and attendant shall be rendered available and ready to respond to service within thirty minutes from the time the operator is notified by the Police Department. In the event of the unreasonable delay in time taken for the response, Police Department personnel charged with calling the operators shall evaluate the length of delay and, if possible, the reason for the delay. If, in the judgment of the Police Department personnel, the tow will be unreasonably delayed, they may call another operator and the tow will then be handled by the designated alternate operator. For such vehicles, thirty minutes shall be the normally accepted~~

~~time during business hours and forty-five minutes shall be the normally accepted time after regular business hours before another qualified tow service will be contacted. In the event a vehicle of greater weight than a private passenger auto, station wagon or unladen pickup truck must be removed, the Police Department will notify the operator on the rotation list next in line qualified to handle the assignment.~~

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~~10.17.120 Duty to obey orders and responsibility at scene.~~

~~Each operator shall obey the orders of a peace officer in accordance with State and local laws. Each operator shall remove all hazards and debris from the location from which a vehicle is towed prior to leaving the scene of the tow.~~

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~~10.17.125 Duty to obey local laws.~~

~~All tow operators shall obey all local laws of the jurisdiction in which they are located.~~

10.17.130-080 State law governs collection of fees, lien sales and disposition of abandoned vehicles.

Nothing in this chapter shall be construed to modify State law in regards to the collection of fees and the conduct of lien sales regarding the disposition and storage of abandoned vehicles, or the State licensing requirement therefor, for abandoned vehicles having an estimated value less than as established in the [California](#) Vehicle Code for "low value vehicles."

10.17.140-090 Records open to inspection.

The ~~Police Department~~[Chief of Police](#) may inspect ~~from time to time~~, during normal business hours, the records of an operator. The operator shall maintain adequate records to include the description of vehicles, nature of service, time and location of ~~the each~~ call [for police towing](#) and the disposition of ~~the each~~ vehicle.

10.17.100 Nonexclusive franchise fees.

A. Each operator placed on the rotation list and entering into a franchise agreement pursuant to this chapter shall pay a franchise fee to the City pursuant to the terms of the franchise agreement, as approved by the City Council.

B. The payment to the City by the operator pursuant to this chapter shall be in addition to any license fee or business tax prescribed by the City for the same period.

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~~10.17.150 Accessibility of vehicles for appraisal.~~

~~A. The operator shall make each vehicle, except impounded vehicles, available during normal business hours to the owner or his/her representative for the purpose of estimating damages to the vehicle and appraising its value.~~

~~B. The operator shall provide the Police Department with access to each stored vehicle. A stored vehicle shall be released to its owner or his/her representative upon payment of the necessary fee. All personal property within the vehicle shall be released to the owner or his/her representative upon request, even though the vehicle is retained in storage.~~

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~~10.17.160 When a request is a rotation turn.~~

~~A request for the towing of vehicles, a request for emergency road service, and a request for any other non-towing service is considered a rotation turn, except when:~~

- ~~_____ A. _____ No compensation for services provided is charged;~~
- ~~_____ B. _____ A citizen requests the services of a specific operators; or~~
- ~~_____ C. _____ The requested service consists of towing an abandoned vehicle.~~

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10.17.170 Abandoned vehicles:

~~_____ If any operator declines towing or storing a vehicle abandoned and valued at less than described in the Vehicle Code as a “low value” vehicle, the Police Department may assign another operator to the tow, however such action will cause the loss of the rotation turn, to the operator declining the tow, and not the responding tow service.~~

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10.17.180 Changes in order of rotation:

~~_____ The Police Department may deviate from the order of normal rotation if the operator next on rotation is, in the department’s judgment, incapable or improperly equipped for handling a specific task. If no operator on the rotation list has the necessary skills or equipment to handle a specific task, the Police Department may request the service from an operator capable of handling the request. A change from the normal rotation does not cause the loss of handling the next normal turn by either the operator judged capable of handling the request or by the rotation operator who responded.~~

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10.17.190 Records:

~~_____ The Police Department shall maintain rotation records and make these available for inspection to an operator and to the public.~~

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10.17.200 Prohibited acts:

~~_____ It is unlawful for:~~

~~_____ A. _____ An operator not on the rotation list to remove and tow a vehicle from the public right of way, unless the owner or driver of the vehicle has requested it;~~

~~_____ B. _____ An operator, his/her agent or employee to solicit towing service without first having been called by the owner or operator of the vehicle or by the Police Department;~~

~~_____ C. _____ An operator to perform towing services pursuant to this chapter in violation of any of the provisions of this chapter.~~

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10.17.210-110 Termination of towing service.

The ~~Police~~ Chief of Police may ~~terminate~~eliminate an operator ~~towing service~~ from the rotation list if the operator fails to comply with this chapter or the franchise agreement with the City to provide police towing. ~~T~~In the event of termination, the ~~Police~~ Chief of Police shall ~~give~~ provide the operator written notice of termination along with the reasons for termination, facts supporting termination, and ability to appeal pursuant to Section 10.17.130 ~~the operator written notice of the reason or reasons for termination of his/her services~~ twenty-four hours ~~in advance of the~~ prior to the effective date of the termination. The operator may appeal the decision of the ~~Police~~ Chief of Police in the manner provided by this chapter.

10.17.220-120 Reinstatement to rotation list.

After an ~~an tow service~~ operator has been removed from the rotation list pursuant to ~~the provisions of~~ Section 10.17.210 110, ~~said tow service~~the operator ~~may reapply to the Police~~

~~Department pursuant to Section 10.17.050 is not eligible for placement on the rotation list no~~
~~sooner than~~until the expiration of one year ~~after~~following the effective date of termination.

10.17.230-130 Appeal procedure.

Any ~~applicant-operator or applicant~~ who desires to appeal the decision of the ~~Police Chief~~Chief of Police to terminate the operator from the rotation list, pursuant to Section 10.17.110, or deny an applicant, ~~made~~ pursuant to Sections ~~10.17.050 and 10.17.210~~, shall, within ten (10) days of the mailing of notice of the decision of the ~~Police Chief~~Chief of Police, file a written notice of appeal with the ~~City Manager of the~~ City. The ~~applicant is entitled to reasonable notice of time and place of hearing of his/her appeal by the~~ City Manager shall hear the appeal, ~~and is entitled to be personally present, to be represented by counsel, to call witnesses on his/her own behalf and to hear and examine the Police Chief or his/her designate and all witnesses called by him/her. Said hearing shall not be governed by the rules of evidence nor normal courtroom procedures.~~

~~Any applicant who, after having appealed a decision by the Police Chief to the City Manager, desires to appeal the decision of the City Manager may appeal to the City Council in the same manner and form as set forth in the procedure above.~~ An appeal shall not stay enforcement of the appealed action. The date, time, and place of appeal hearings shall be provided in writing to the operator or person with at least ten days' notice and copies of hearing rules. If the operator or person fails to present evidence establishing that person is entitled to remain an operator or that an application was improperly rejected, the City Manager shall uphold the decision of the Chief of Police and give written notice to the operator.

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