



City of Huntington Beach Planning Department  
**STAFF REPORT**

**TO:** Planning Commission  
**FROM:** Scott Hess, AICP, Director of Planning  
**BY:** Mary Beth Broeren, AICP, Planning Manager   
**DATE:** March 24, 2009

**SUBJECT: ZONING TEXT AMENDMENT NO. 08-005 (AFFORDABLE HOUSING ORDINANCE REVISIONS – Continued from November 12, 2008)**

**APPLICANT:** City of Huntington Beach, 2000 Main Street, Huntington Beach, CA 92648

**LOCATION:** Citywide

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**STATEMENT OF ISSUE:**

- ◆ Zoning Text Amendment No. 08-005 request:
  - Amend Chapter 230 (Site Standards), Section 230.26 (Affordable Housing) of the Huntington Beach Zoning and Subdivision Ordinance to increase the size of projects that would be allowed to pay in-lieu fees; allow fractional unit requirements to be satisfied by payment of an in-lieu fee; increase the required income levels for affordable housing; decrease the required affordability term of new inclusionary units and make other minor changes to existing provisions.
- ◆ Staff's Recommendation: Approve Zoning Text Amendment No. 08-005 based upon the following:
  - The amendment will encourage and facilitate residential development, both market rate and affordable units, and provides consistency between the City's affordable housing requirements and state law.
  - The proposed changes strike a balance in providing financial relief to developers of small projects, in particular, while still fulfilling the City's goals for affordable housing.

**RECOMMENDATION:**

Motion to:

“Approve Zoning Text Amendment No. 08-005 with findings for approval (Attachment No. 1) and forward Draft Ordinance (Attachment No. 2) to the City Council for adoption.”

**ALTERNATIVE ACTION(S):**

The Planning Commission may take alternative actions such as:

- A. “Continue Zoning Text Amendment No. 08-005 with findings for denial.”
- B. “Deny Zoning Text Amendment No. 08-005 and direct staff accordingly.”

## **PROJECT PROPOSAL:**

Zoning Text Amendment No. 08-005 represents a request to amend Section 230.26 (Affordable Housing) of the Huntington Beach Zoning and Subdivision Ordinance (ZSO) pursuant to Chapter 247 (Amendments). Zoning Text Amendment No. 08-005 would implement the following significant changes (a legislative draft is provided in Attachment No. 3; the section references below refer to the attachment):

- Allow fractional unit requirements to be satisfied by payment of an in-lieu fee, rather than rounding up to another whole unit (Section B.1);
- Change the required income level of affordable rental units from very low or low income to low income. Allow for moderate income if the units are included within the project (Section B.2);
- Change the required income level of affordable for-sale units from very low, low or median income to only moderate income (Section B.3);
- Increase the size of a project that may pay an in-lieu fee to satisfy its affordable housing obligation from nine units to 30 units (Section B.4);
- Clarify the methodology for annual fee updates (Section C.3);
- Modify the requirements for off-site rehabilitation of units (Section D.1);
- Decrease the affordability term from 60 years to 55 years for rental housing and 45 years for for-sale housing (Section E.3);
- Delete the requirement for an Agreement if in-lieu fees are being paid (Section E.4); and
- Establish a “Reduced Fees for Affordable Housing” section that would allow projects that exceed inclusionary requirements on-site to be eligible for reduced City fees. If this new section is approved, the City would subsequently develop and adopt the reduced fee schedule (Section G).

The amended ordinance was initiated by the City Council to facilitate the development of smaller residential projects by reducing the costs associated with complying with the City’s affordable housing ordinance.

## **Background:**

The City’s affordable housing ordinance was adopted in 2004, codifying a decade-old policy requirement that projects with three or more units provide the equivalent of 10 percent of their units as affordable housing either on-site or off-site. The ordinance has a provision that projects with three to nine units be allowed to satisfy their affordable housing requirement via payment of an in-lieu fee. In 2007 the City of Huntington Beach adopted the affordable housing in-lieu fee; an annual adjustment was approved in 2008. In its deliberations on affordable housing issues, the City Council formed an Ad Hoc Affordable Housing Committee and directed the Committee to evaluate the possibility of increasing the size of a project that would be eligible to pay an in-lieu fee. The Committee has met numerous times in the last several years and most recently in December 2008.

The Planning Commission has held two Study Sessions on the proposed ordinance changes. A public hearing was scheduled with the Planning Commission on November 12, 2008. At that meeting, the Chamber of Commerce submitted a late communication requesting additional changes to the ordinance. The Planning Commission continued the item to provide an opportunity for the City Council Ad Hoc Committee to review and consider the Chamber’s recommendations.

On December 16, 2008, the City Council Ad Hoc Committee met and reviewed the Chamber's letter (Attachment No. 5) in conjunction with staff recommendations on the various items. In addition to the City Council members, the Committee meeting was attended by representatives of the Building Industry Association, the Huntington Beach Chamber of Commerce, the Orange County Board of Realtors and Huntington Beach Tomorrow. The Committee's decisions on the various items are reflected in the attached legislative draft. The Committee agreed to make changes to Sections B.1, B.2, E.4 and F in response to the Chamber's suggestions.

**ISSUES:**

**Subject Property And Surrounding Land Use, Zoning And General Plan Designations:**

Zoning Text Amendment (ZTA) No. 08-005 is applicable to new residential development projects citywide that are subject to the City's inclusionary housing requirement.

**General Plan Conformance:**

The proposed Zoning Text Amendment No. 08-005 is consistent with the goals, policies, and programs of the City's General Plan as follows:

**Housing Element**

**Goal 4:** Remove Governmental Constraints

**Policy 4.1:** Offer financial and/or regulatory incentives, including density bonuses, where feasible to offset or reduce the costs of developing affordable housing.

**Program 14:** Inclusionary Housing Ordinance – Continue to utilize the Inclusionary Housing Ordinance as a tool to integrate affordable housing within market rate developments, or alternatively, to generate fees in support of affordable housing in off-site locations. Implement the Affordable Housing Ad Hoc Committee's recommendation regarding use of in-lieu fees.

**Program 18:** *Development Fee Assistance* – Conduct a fee study and Adopt an Affordable Housing Fee Reduction Ordinance by the end of 2009 as an incentive for projects to provided increased percentages of affordable units.

The amended ordinance will facilitate the development of smaller residential projects by reducing the costs associated with complying with the City's affordable housing ordinance. The amended ordinance also fulfills Program 14 by carrying out the Ad Hoc Committee's recommendations and provides a first step in fulfilling Program 18 to establish a fee reduction ordinance.

**Zoning Compliance:** Not applicable.

**Urban Design Guidelines Conformance:** Not applicable.

**Environmental Status:** The proposed ZTA No. 08-005 is categorically exempt pursuant to City Council Resolution No. 4501, Class 20, which supplements the California Environmental Quality Act.

**Coastal Status:** The proposed amendment will be combined with other minor amendments that will be forwarded to the California Coastal Commission as a minor Local Coastal Program Amendment for certification.

**Redevelopment Status:** Not applicable.

**Design Review Board:** Not applicable.

**Subdivision Committee:** Not applicable.

**Other Departments Concerns and Requirements:** The proposed ordinance changes were prepared with assistance and input from the Economic Development Department and the City Attorney's Office.

**Public Notification:**

Legal notice was published in the Huntington Beach/Fountain Valley Independent on March 12, 2009, and notices were sent to individuals/organizations requesting notification (Planning Department's Notification Matrix), as well as other interested parties. As of March 16, 2009 no communication supporting or opposing the request has been received.

**Application Processing Dates:**

**DATE OF COMPLETE APPLICATION:**  
July 29, 2008

**MANDATORY PROCESSING DATE(S):**  
Legislative Action – Not Applicable

**ANALYSIS:**

City staff was directed to process this Zoning Text Amendment for the initial reason of evaluating allowing projects with more than nine units the option of paying an in-lieu fee to satisfy their affordable housing obligations. As a result of the City Council Ad Hoc Committee discussions, as well as previous input from the City's consultant, the Zoning Text Amendment includes other recommended changes. The analysis examines the various components of the ZTA.

*Project Size*

Section B.4 of the existing ordinance allows projects with three to nine units to pay a fee in-lieu of providing an affordable unit either on-site or off-site. Over the years, the development community has expressed that this threshold is too low and that relief should be given to larger projects. The Ad Hoc Committee discussed a range of possibilities, including allowing all projects regardless of the number of units to pay an in-lieu fee. City staff and its consultant evaluated the size of projects that have been proposed or approved in the last several years and concluded that a project size of 30 units would satisfactorily capture the range of smaller projects built in the city. Specifically, projects have either been

over 200 units or less than 30 units. Staff does not support the concept that all projects be allowed to pay an in-lieu fee. First, staff believes that the development community is better positioned to provide affordable units in general; and second, larger projects can better absorb the cost of providing these units. The Ad Hoc Committee's recommendation is to change the project limit from nine units to 30 units.

At the October 14, 2008 and March 10, 2009 Planning Commission Study Sessions, the Commission inquired as to the requirements of other cities, which vary widely as shown in the examples below. The far right column shows examples of cities that have restrictions on what projects can pay an in-lieu fee. See Attachment No. 4 for a more detailed listing of other cities' programs.

<b>Inclusionary Negotiated Case by Case</b>	<b>Inclusionary by formula</b>	<b>In-lieu Fee Restrictions</b>
Brea Fullerton (only in redevelopment) Newport Beach Orange (only in redevelopment)	Carlsbad (7+ units requires 15%) Coronado (20% or in-lieu) Irvine (15% or in-lieu) Laguna Beach (15% or in-lieu) San Clemente (6+ units requires 4%)	Davis (30 units or less may ask) Livermore (only if 9 or less units) San Jose (no in-lieu fees accepted) Santa Clara (no in-lieu fees accepted) West Hollywood (20 units or less)

*Affordability Levels*

The existing ordinance states that affordable rental units will be provided at either very low or low income levels and that affordable for-sale units will be provided at very low, low or median income levels (Sections B.2 and B.3). Based on the City's experience in implementing the inclusionary requirement and input from the development community, staff is recommending that the income levels be relaxed such that the requirements would only be low income for rental units and moderate income for for-sale units. In response to the Chamber's November 2008 letter, the Ad Hoc Committee agreed to also allow rental units in a project at the moderate income level if they are located on-site within the project.

The principal reason for the change for rental units is based on practice. Due to the high cost of developing in the city, the only time that very low income units have been built/required is where there has been significant subsidy, either from state tax credits, redevelopment agency funds or as a Habitat for Humanity project. In other words, a typical development project is not in the position to financially accommodate the deep subsidy that is required to provide units at a very low income level. While the Economic Development Department will continue to look for opportunities to facilitate projects with a very low income component, staff believes that it is misleading to imply in the ordinance that the City might require a development to provide very low income units. The desire to allow moderate income rental units within a project provides further financial relief to developers and also recognizes that finding off-site locations to satisfy housing requirements can be difficult.

With regard to the for-sale units, prior to adoption of the affordable housing ordinance in 2004, the City required for-sale units at a moderate income level. In 2004, the City decided to lower the income level to median levels. This had the effect of making it more costly for the development community but improved the affordability for the home buyer. Staff is now recommending a switch back to the moderate income levels. This will provide relief to the development community but will still provide affordable units that can count toward the City's Regional Housing Needs Assessment (RHNA) requirement.

At the Study Session, the Planning Commission inquired as to what the various income levels were and associated typical salaries. The table below provides data for the County of Orange as a whole.

County of Orange		
Income Level	Maximum Qualifying Incomes by Household Size	Example Occupations & Mean Annual Wage (2008 1 <sup>st</sup> Qtr.)
	4 Persons	
Very Low (50% of Median)	\$46,500	Retail Salesperson \$26,629 School Bus Driver \$35,986 Teacher's Assistant \$31,390
Low (80% of Median)	\$74,400	Firefighter \$58,889 Kindergarten Teacher \$54,360 Librarian \$66,522
Median	\$84,100	Dental Hygienist \$78,756 Police Officer \$75,499 Registered Nurse \$75,772
Moderate (120% of Median)	\$100,900	Computer Software Engineer \$91,882 Optometrist \$85,688 Public Relations Manager \$99,770

Source of Wage Data is the California Employment Development Department

### *Affordability Term*

The proposed Zoning Text Amendment would decrease the affordability term of new inclusionary units from 60 years to 55 years for rental housing and 45 years for for-sale housing (Sections E.3, E.4 and E.7). Prior to the adoption of the ordinance in 2004, the City required an affordability term of 30 years for inclusionary units. In 2004, the City chose to require the 60 year term in order to ensure a continued supply of affordable units. The development community has consistently voiced opposition to the 60 year requirement, citing difficulty in getting financing and the cost implications this requirement has on the viability of a project. Staff and the Ad Hoc Committee recommend that the length of affordability be reduced slightly to terms that are consistent with Redevelopment Law.

### *Fractional Units*

Section B.1. of the City's ordinance is recommended to be changed to allow the payment of an in-lieu fee for fractional unit requirements. This provision would be triggered for projects with more than 30 units, which are not eligible to pay an in-lieu fee for their inclusionary housing requirement. As an example, under the existing ordinance a project with 42 units would have an inclusionary housing requirement of 4.2 (10 percent) affordable units; because the City rounds up their unit requirement would actually be 5. The proposed text amendment would reduce the requirement for units by allowing the developer to pay an in-lieu fee for the fractional unit requirement (0.2 in the example). Thus, the developer would be required to only provide four affordable units and pay the in-lieu fee for 0.2. This proposed change was agreed to by the Ad Hoc Committee and is in response to the Chamber's November 2008 letter.

### *Consistency/Clarifying/Streamlining changes*

A number of the proposed amendments are recommended by the City's housing consultant, Keyser Marston Associates (KMA) to make the City's ordinance more consistent with state law and/or redevelopment law requirements and definitions. These types of changes are made to Sections C.2, C.3, E.1.(c) and F, where the ordinance would refer to the Health and Safety Code Sections as they define affordable households and affordable housing cost; and Section D.1 to make the definition of substantial rehabilitation consistent with that of the state Government Code. Staff recommends these changes because they are supported by the state definitions and maximize the opportunities for the City and Redevelopment Agency to be able to count units for RHNA and Agency purposes. In addition, staff and KMA are recommending that the ordinance include language clarifying how annual fee updates are calculated; changes related to this item are made in a new Section C.3. New language is also recommended in the Purpose section (Section A.3), to clarify that projects located within a redevelopment and/or Specific Plan area may be subject to other restrictions or requirements (e.g., 15% requirement). Finally, in response to the Chamber's November 2008 letter, the Ad Hoc Committee agreed to the deletion of requiring an agreement to be recorded if in-lieu fees are paid (original Section E.4). The City does not require such an agreement for other similar fees. This change would streamline project implementation and achieve better consistency with other City practices.

### *Reduced Fees Provision*

Pursuant to the discussion and program in the City's updated Housing Element, staff is recommending that the City establish a "Reduced Fees for Affordable Housing" section that would allow projects that exceed inclusionary requirements on-site to be eligible for reduced City fees. If this new section is approved, the City would subsequently develop and adopt the reduced fee schedule (Section G). The City's Housing Element targets this for completion by the end of 2009.

Staff recommends that the Planning Commission approve Zoning Text Amendment No. 08-005 with findings for approval and forward the item to City Council for adoption of the ordinance. The proposed changes strike a balance in providing financial relief to developers of small projects, in particular, while still fulfilling the City's goals for affordable housing.

### **ATTACHMENTS:**

1. Suggested Findings for Approval – ZTA No. 08-005
2. Draft Ordinance for ZTA No. 08-005
3. Legislative Draft for ZTA No. 08-005
4. Summary of other cities' inclusionary programs.
5. Chamber of Commerce letter, dated November 12, 2008
6. Chamber of Commerce letter, dated February 13, 2009

SH:MBB

# **ATTACHMENT NO. 1**

## **SUGGESTED FINDINGS FOR APPROVAL**

### **ZONING TEXT AMENDMENT NO. 08-005**

#### **SUGGESTED FINDINGS FOR PROJECTS EXEMPT FROM CEQA:**

The Planning Commission finds that the project will not have any significant effect on the environment and is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to City Council Resolution No. 4501, Class 20, which supplements the California Environmental Quality Act. The project is exempt because it involves minor amendments to Chapter 230 (Site Standards), Section 230.26 (Affordable Housing) to facilitate compliance with the City's affordable housing requirements.

#### **SUGGESTED FINDINGS FOR APPROVAL - ZONING TEXT AMENDMENT NO. 08-005:**

1. Zoning Text Amendment No. 08-005 amends Chapter 230 (Site Standards), Section 230.26 (Affordable Housing) to increase the size of projects that would be allowed to pay in-lieu fees; allow fractional unit requirements to be satisfied by payment of an in-lieu fee; increase the required income levels for affordable housing; decrease the required affordability term of new inclusionary units and to make other minor changes to existing provisions in a manner consistent with the goals, policies and programs specified in the General Plan, particularly the Housing Element. The proposed changes are consistent with Programs 14 and 18 of the Housing Element requiring that the City pursue the Ad Hoc Committee recommendations and adoption of a reduced fee schedule for projects with affordable units, and they are consistent with the goals and policies of the Housing Element to facilitate the development of affordable housing.
2. In the case of the general land use provision, the change proposed is compatible with the uses authorized in, and the standards prescribed for in the zoning district for which it is proposed. The amendments to Chapter 230, Section 230.96 affect the inclusionary housing requirements that new residential development projects, not subject to other requirements of redevelopment project areas and/or Specific Plan areas, would be subject to. The changes do not affect zoning of any property by altering density or development standards. Therefore, the changes do not affect the compatibility of uses allowed and established by the General Plan and Zoning designations.
3. A community need is demonstrated for the proposed zoning text amendment to facilitate development of smaller residential projects, in particular, by allowing projects with up to 30 units to pay an in-lieu fee, and of all residential projects by increasing the affordability levels and reducing the affordability term. These changes improve the financial viability of residential projects, which will ultimately improve the supply of new housing units, both market rate and affordable, in the city.
4. Its adoption will be in conformity with public convenience, general welfare and good zoning practice because the amendment to Chapter 230, Section 230.26 will encourage and facilitate residential development and provides consistency between the City's affordable housing requirements and state law.

AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH  
AMENDING CHAPTER 230 OF THE HUNTINGTON BEACH MUNICIPAL CODE BY  
AMENDING SECTION 230.26 RELATING TO AFFORDABLE HOUSING

The City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. Section 230.26 of the Huntington Beach Municipal Code is hereby amended to read as follows:

A. Purpose.

1. The purpose and intent of this Chapter is to implement the goals, objectives and policies of the City's Housing Element. It is intended to encourage low-and moderate income housing, which is integrated, compatible with and complements adjacent uses, and is located in close proximity to public and commercial services.
2. The affordable housing program is one tool the City utilizes to meet its commitment to provide housing affordable to all economic sectors, and to meet its regional fair-share requirements for construction of affordable housing.
3. As a result of being located within a redevelopment area and/or Specific Plan area, additional restrictions or requirements may apply.

B. Applicability. This section shall apply to new residential projects three (3) or more units in size.

1. A minimum of ten (10) percent of all new residential construction shall be affordable housing units. The whole number established by dividing the total unit count proposed by ten (10) shall be affordable housing units unless Section 230.26B.4 applies. Any fractional amount may be paid with an equivalent in-lieu fee.
2. Rental units included in the project shall be made available to low-income households as defined by Health and Safety Code Section 50079.5, or a successor statute. Rental units included in the project may be made available to moderate income households as defined by Health and Safety Code Section 50093, or a successor statute if the moderate income units are located on-site within the project.
3. For sale units included in the project shall be made available to moderate income households, as defined by the Health and Safety Code Section 50093, or a successor statute.
4. Developers of residential projects consisting of thirty or fewer units may elect to pay a fee in lieu of providing the units on-site to fulfill the requirement of the Section, unless the affordable housing requirement is outlined as part of a specific

plan project.

5. Developers of residential projects may elect to provide the affordable units at an off-site location pursuant to subsection B unless otherwise outlined as part of a specific plan project. If affordable units are off-site, they must be under the full control of the applicant, or other approved party.
6. New residential projects shall include construction of an entirely new project or new units added to an existing project. For purposes of determining the required number of affordable housing units, only new units shall be counted.

C. Fees in Lieu of Construction.

1. Fees paid to fulfill the requirements of this Section shall be placed in the City's Affordable Housing Trust Fund, the use of which is governed by subsection E.
2. The amount of the in-lieu fees shall be calculated using the fee schedule established by resolution of the City Council.
3. Fees shall be updated annually using the Real Estate and Construction Report published by the Real Estate Research Council of Southern California. The fee change shall be based on the percentage difference in the New Home Prices in Orange County published in the 4<sup>th</sup> quarter report for the then current year versus the immediately preceding year.
4. One hundred (100) percent of the fees required by this Section shall be paid prior to issuance of a building permit.
5. Fees paid as a result of new residential projects shall be based upon the total number of the new residential units which are to be constructed.

D. Off-Site Construction of Affordable Units. Except as may be required by the California Coastal Act and/or the Government Code Section 65590 or a successor statute, developers may provide the required affordable housing off-site, at one or several sites, within the City of Huntington Beach.

1. Off-site projects may be new construction or substantial rehabilitation, as defined by Government Code Section 33413 affordable housing production requirements, of existing non-restricted units conditioned upon being restricted to long-term affordability. "At Risk" units identified in the Housing Element or mobile homes may be used to satisfy this requirement.
2. All affordable off-site housing shall be constructed or rehabilitated prior to or concurrently with the primary project. Final approval (occupancy) of the first market rate residential unit shall be contingent upon the completion and public availability, or evidence of the applicant's reasonable progress towards attainment of completion, of the affordable units.

E. Miscellaneous Provisions.

1. The conditions of approval for any project that requires affordable units shall specify the following items:

- (a) The density bonus being provided pursuant to Section 230.14, if any;
  - (b) The number of affordable units;
  - (c) The number of units at each income level as defined by the Health and Safety Code; and
  - (d) A list of any other incentives offered by the City.
2. An Affordable Housing Agreement outlining all aspects of the affordable housing provisions shall be executed between the applicant and the City and recorded with the Orange County Recorder's Office, or the applicable in-lieu fee shall be paid in full, prior to issuance of the first building permit.
  3. The Agreement shall specify an affordability term of not less than fifty-five (55) years for rental housing or forty-five (45) years for ownership housing.
  4. All affordable on-site units in a project shall be constructed concurrently with or prior to the construction of the primary project units unless otherwise approved through a phasing plan. Final approval (occupancy) of the first market rate residential unit shall be contingent upon the completion and public availability, or evidence of the applicant's reasonable progress towards attainment of completion, of the affordable units.
  5. All affordable units shall be reasonably dispersed throughout the project unless otherwise designed through a master plan, shall contain on average the same number of bedrooms as the market rate units in the project, and shall be comparable with the market rate units in terms of exterior appearance, materials and finished quality.
  6. Affordable Housing Trust Funds shall be used for projects which have a minimum of fifty (50) percent of the dwelling units affordable to very low- and low-income households, with at least twenty (20) percent of the units available to very low-income households. Concurrent with establishing the annual fee schedule pursuant to subsection C, the City Council shall by resolution set forth the permitted uses of Affordable Housing Trust Funds. All units that obtain Affordable Housing Trust Funds shall maintain the affordability of the units for a minimum of fifty-five (55) years. The funds may, at the discretion of the City Council, be used for pre-development costs, land or air rights acquisition, rehabilitation, land write downs, administrative costs, gap financing, or to lower the interest rate of construction loans or permanent financing.
  7. New affordable units shall be occupied in the following manner:
    - (a) If residential rental units are being demolished and the existing tenant(s) meets the eligibility requirements, he/she shall be given the right of first refusal to occupy the affordable unit(s); or
    - (b) If there are no qualified tenants, or if the qualified tenant(s) chooses not to exercise the right of first refusal, or if no demolition of residential rental units occurs, then qualified households or buyers will be selected.
- F. Price of Affordable Units. Affordable housing cost shall be calculated in accordance with Health and Safety Code Section 50052.5 standards for ownership units and Health and

Safety Code Section 50053 standards for rental units. This methodology is full described in the City's adopted housing policies.

- G. Reduced Fees for Affordable Housing. Projects that exceed inclusionary requirements on-site will be eligible for reduced City fees, pursuant to an Affordable Housing Fee Reduction Ordinance, upon adoption by the City Council.

SECTION 1. This ordinance shall become effective 30 days after its adoption.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

*[Handwritten Signature]*  
City Attorney  
14309

REVIEWED AND APPROVED:

\_\_\_\_\_  
City Administrator

INITIATED AND APPROVED:

\_\_\_\_\_  
Director of Planning

LEGISLATIVE DRAFT

AMENDING SECTION 230.26 OF HBMC CHAPTER 230

**230.26 Affordable Housing**

A. Purpose.

1. The purpose and intent of this Chapter is to implement the goals, objectives and policies of the City's Housing Element. It is intended to encourage ~~very low, low-and median~~moderate income housing, which is integrated, compatible with and complements adjacent uses, and is located in close proximity to public and commercial services.
2. The affordable housing program is one tool the City utilizes to meet its commitment to provide housing affordable to all economic sectors, and to meet its regional fair-share requirements for construction of affordable housing.
3. As a result of being located within a redevelopment area and/or Specific Plan area, additional restrictions or requirements may apply.

B. Applicability. This section shall apply to new residential projects three (3) or more units in size.

1. A minimum of ten (10) percent of all new residential construction shall be affordable housing units. The whole number established by dividing the total unit count proposed by ten (10) shall be affordable housing units unless Section 230.26B.4 applies. Any fractional amount may be paid with an equivalent in-lieu fee.
2. Rental units included in the project shall be made available to ~~very low or low-income households based on the Orange County Median Income, adjusted for appropriate family size, as published by the United States Department of Housing and Urban Development or established as defined by the State of California, pursuant to Health and Safety Code Section 50093-50079.5, or a successor statute.~~ Rental units included in the project may be made available to moderate income households as defined by Health and Safety Code Section 50093, or a successor statute if the moderate income units are located on-site within the project.
3. For sale units included in the project shall be made available to ~~very low, low or median~~ moderate income level households based on the Orange County Median Income, adjusted for appropriate family size, as published by the United States Department of Housing and Urban Development or established defined by the State of California, pursuant to Health and Safety Code Section 50093, or a successor statute.
4. Developers of residential projects consisting of ~~ninethirty~~ or fewer units may elect to pay a fee in lieu of providing the units on-site to fulfill the requirement of the Section, unless the affordable housing requirement is

outlined as part of a specific plan project.

5. Developers of residential projects may elect to provide the affordable units at an off-site location pursuant to subsection B unless otherwise outlined as part of a specific plan project. If affordable units are off-site, they must be under the full control of the applicant, or other approved party.
6. New residential projects shall include construction of an entirely new project or new units added to an existing project. For purposes of determining the required number of affordable housing units, only new units shall be counted.

C. Fees in Lieu of Construction.

1. Fees paid to fulfill the requirements of this Section shall be placed in the City's Affordable Housing Trust Fund, the use of which is governed by subsection E.
2. The amount of the in-lieu fees shall be calculated using the fee schedule established annually by resolution of the City Council.
3. Fees shall be updated annually using the Real Estate and Construction Report published by the Real Estate Research Council of Southern California. The fee change shall be based on the percentage difference in the New Home Prices in Orange County published in the 4<sup>th</sup> quarter report for the then current year versus the immediately preceding year.
34. One hundred (100) percent of the fees required by this Section shall be paid prior to issuance of a building permit.
45. Fees paid as a result of new residential projects shall be based upon the total number and size of the new residential units which are to be constructed.

D. Off-Site Construction of Affordable Units. Except as may be required by the California Coastal Act and/or the California Government Code Section 65590 or a successor statute, developers may provide the required affordable housing off-site, at one or several sites, within the City of Huntington Beach.

1. Off-site projects may be new construction or ~~major physical~~ substantial rehabilitation, as defined by Government Code Section 33413 affordable housing production requirements, equal to more than one-third the value of the existing improvement, excluding land value, of existing non-restricted units conditioned upon being restricted to long-term affordability. "At Risk" units identified in the Housing Element or mobile homes may be used to satisfy this requirement.
2. All affordable off-site housing shall be constructed or rehabilitated prior to or concurrently with the primary project. Final approval (occupancy) of the first market rate residential unit shall be contingent upon the completion and public availability, or evidence of the applicant's reasonable progress towards attainment of completion, of the affordable units.

E. Miscellaneous Provisions.

1. The conditions of approval for any project that requires affordable units shall specify the following items:
  - (a) The density bonus being provided pursuant to Section 230.14, if any;
  - (b) The number of affordable units;
  - (c) The number of units at each income level as ~~related to Orange County Median Income~~ defined by the California Health and Safety Code; and
  - (d) A list of any other incentives offered by the City.
2. An Affordable Housing Agreement outlining all aspects of the affordable housing provisions shall be executed between the applicant and the City and recorded with the Orange County Recorder's Office, or the applicable in-lieu fee shall be paid in full, prior to issuance of the first building permit.
3. The Agreement shall specify an affordability term of not less than ~~sixty (60)~~ fifty-five (55) years. for rental housing or forty-five (45) years for ownership housing.
- ~~4. In a project requiring an in-lieu fee, the applicant shall execute and record an Agreement, subject to approval by the Planning Director, to pay an Affordable Housing In-Lieu Fee.~~
54. All affordable on-site units in a project shall be constructed concurrently with or prior to the construction of the primary project units unless otherwise approved through a phasing plan. Final approval (occupancy) of the first market rate residential unit shall be contingent upon the completion and public availability, or evidence of the applicant's reasonable progress towards attainment of completion, of the affordable units.
65. All affordable units shall be reasonably dispersed throughout the project unless otherwise designed through a master plan, shall contain on average the same number of bedrooms as the market rate units in the project, and shall be comparable with the market rate units in terms of exterior appearance, materials and finished quality.
76. Affordable Housing Trust Funds shall be used for projects which have a minimum of fifty (50) percent of the dwelling units affordable to very low- and low-income households, with at least twenty (20) percent of the units available to very low-income households. Concurrent with establishing the annual fee schedule pursuant to subsection C, the City Council shall by resolution set forth the permitted uses of Affordable Housing Trust Funds. All units that obtain Affordable Housing Trust Funds shall maintain the affordability of the units for a minimum of ~~sixty (60)~~ fifty-five (55) years. The funds may, at the discretion of the City Council, be used for pre-development costs, land or air rights acquisition,

rehabilitation, land write downs, administrative costs, gap financing, or to lower the interest rate of construction loans or permanent financing.

87. New affordable units shall be occupied in the following manner:

- (a) If residential rental units are being demolished and the existing tenant(s) meets the eligibility requirements, he/she shall be given the right of first refusal to occupy the affordable unit(s); or
- (b) If there are no qualified tenants, or if the qualified tenant(s) chooses not to exercise the right of first refusal, or if no demolition of residential rental units occurs, then qualified households or buyers will be selected.

F. Price of Affordable Units. Affordable units shall be sold or rented at prices affordable to very low, low or median income households pursuant to terms of the Affordable Housing Agreement. Affordable housing cost shall be calculated in accordance with Health and Safety Code Section 50052.5 standards for ownership units and Health and Safety Code Section 50053 standards for rental units. This methodology is fully described in the City's adopted housing policies.

G. Reduced Fees for Affordable Housing. Projects that exceed inclusionary requirements on-site will be eligible for reduced City fees, pursuant to an Affordable Housing Fee Reduction Ordinance, upon adoption by the City Council.

**Affordable Housing In-Lieu Fees in California**

	<b>City:</b>	<b>Affordable housing in-lieu fees</b>	<b>Details:</b>
1	Berkeley	Inclusionary Ordinance.	Inclusionary Ordinance on all housing. Developer cannot do in-lieu fees unless requirement includes a fraction of a unit, in that case, they can pay an in-lieu fee. (I.e. if it turns out a developer is required to set aside 4.5 units for affordable housing, the developer must set aside 4 units and pay an in-lieu fee for the .5 unit.)
2	Brea	Yes/No Formula	For a 231-houses project, the city required 10% allocated for affordable housing. Developer only wanted to provide 7 units; paid in lieu for the 16 other units. No formula.
3	Calistoga	Yes	5 or more units shall set aside funds and make available a minimum of 20% of the units within the project for households of low and moderate income. Commercial & Industrial projects with new and additions to gross floor area shall contribute an in-lieu fee to the Calistoga Housing Trust Fund.
4	Carlsbad	Yes.	7 or more units shall set aside 15% of units for affordable housing for very low and low income. In lieu fee allowed.
5	Coronado	Yes.	20% of units must be set aside for affordable housing, or pay an in-lieu fee.
6	Cotati	Yes.	5 units or more shall set aside 15% of units of low and moderate income household.
7	Danville	Yes	In-lieu fees available, but always push developers to build.
8	Davis	Yes	5 units or more must set aside 25-35 % for affordable housing for very low, low (rental units) and moderate (sale units): Projects with 30 units or less can ask for consideration of in-lieu.

	City:	Affordable housing in-lieu fees	Details:
10	Encinitas	Yes	10 units or more can request affordable unit consideration but restricts project to rental only.
12	Fullerton	No	Redevelopment negotiates affordability with use of set-aside funds.
13	Irvine	Yes	15% affordable units required for inclusionary housing. In-lieu fee allowed.
14	Larkspur	No	For projects of 10 or more units, 15% must be set aside for inclusionary housing at cost or rents affordable to low income households.
15	Livermore	Yes.	For initial construction, 10 % of units are to be put aside for affordable housing if the development consists of 10 or more units (or a fee for 9 or less units), which the council requests. Developers can submit alternate proposal to staff for consideration.
16	Menlo Park	Yes. Same as Below Market Rate (BMR) Housing Program.	For projects 5 or more units, one BMR unit is required. Projects with 10-19 units are required to provide 1 BMR unit <i>plus</i> 1 additional BMR unit or pay an in-lieu fee. Development projects with 20 or more units shall provide up to 15% at BMR for affordable housing. City asks the developer to assist with relocation, but there is not formal city policy or provisions regarding that.
17	Monterey	Yes	Formula used for affordability requirements: 3-4 Units in lieu fee permitted; 5 Units 20% of inclusionary units-1 at very low income; 6 Units and above 20 % inclusionary plus payment of in lieu fee for any fractional difference.
18	Newport Beach	Yes. Negotiable Basis	
19	Oakland	No inclusionary ordinance	Developments are required to provide affordable housing when the project is located within a redevelopment project area.
20	Orange	No	Only if in redevelopment

	City:	Affordable housing in-lieu fees	Details:
21	Oceanside	Yes	
22	Pasadena	Yes.	Inclusionary housing ordinance established: Any development with ten or more units must set aside 10% for low (80% of median) and 5% for moderate (120% of median) income. In-lieu fees based on affordability gap and location of proposed development. The city has an in-lieu fee ordinance that applies to all residential projects.
23	Pleasanton	Yes	The city is divided into "plan areas" with its own specific plans. Each specific plan is required to have a certain number of affordable housing units. The requirement is then allotted to various parcels, which are required to provide the affordable housing.
24	Roseville	No.	Based on Vacancy Rate. Less than 6 units, no requirements. More than 6 units, 4% must be set-aside for individuals earning less than 50% of median income. (i.e. For a 100-unit apt. complex, 4 units must be sold or rented permanently to person in very low income category. If 4 units are not provided, an in-lieu fee must be paid, based on 1% of construction of every unit converted.) (See supplementary documents for details)
25	San Clemente	Yes	Require affordable housing component only if project is located in a redevelopment area; otherwise, up to applicant to provide affordable housing (Incentives offered). 15% of units required to be set aside for affordable housing. No in-lieu fees accepted.
26	San Jose	No	For proposed building with greater than 10 units, at least 10% must be set aside for affordable housing. The city partially subsidizes building of
27	Santa Clara	No in-lieu fees	

	<b>City:</b>	<b>Affordable housing in-lieu fees</b>	<b>Details:</b>
			affordable housing units using 30% of Redevelopment Agency (RDA) money. As of now, has not done one for condo conversion, but same requirements would apply.
28	Santa Cruz	Yes	Most affordable housing based on area meeting income; rather complicated. Based on low, very low, and average incomes. Requires 1 out of 5 units affordable.
29	Tustin	No. City prefers not to accept in-lieu fees. Otherwise, would place an obligation on the city.	Affordable housing provision met either on- or off-site.
30	West Hollywood	Yes	For developments of 20 or less units.
31	County of Marin	Yes.	10 units or more must provide 15% affordable units for very low, low and moderate income households. In lieu fee shall be calculated as the difference between the ability of a moderate income family to pay for housing and the estimated cost of a market rate unit of appropriate size..
32	County of Monterey	Yes	Case-by-case basis. Option of in-lieu fees determined while the project is going through the planning phase, usually in a subdivision process.
33	County of Placer	Yes.	Obligated to provide in-lieu fee option, but prioritize options and discourage in-lieu fees. No formula, up to decision makers and permit process.
34	County of Santa Cruz	If considered a subdivision, then in-lieu fees are allowed.	



November 12, 2008

Mr. Tom Livengood, Planning Commission Chair  
City of Huntington Beach  
2000 Nain Street  
Huntington Beach, CA 92648

Dear Mr. Livengood:

Thank you for the opportunity to have the Chamber represented on the City's Affordable Housing In-lieu Fee Committee. Over the past two and a half years the Committee had discussed and agreed upon many proposed changes to the City's Zoning Code provisions addressing affordable housing.

We believe that the Committee's recommendations are significant steps in the right direction, however there are still a couple of items which should be addressed and other items clarified, in an effort to assist the building community in accepting their role in the implementation of the City's obligation for affordable housing.

#### Proposed Additional Amendments

B.1.

"A minimum of ten (10) percent of all new residential construction shall be affordable housing units."  
consider adding: The whole number established by dividing the total unit count proposed by ten (10). Any fractional amount could be paid with an equivalent in-lieu fee.

B.2.

"Rental units included in the project shall be made available to low income households."  
consider adding: low and moderate households. This request is consistent with the Council's recent action on the Ripcurl project, in the Edinger Corridor.

B.4.

Consider adding that projects proposing greater than 30 units have the opportunity to propose unique solutions including on-site and off-site units or the payment of increased fees, subject to the approval of an Affordable Housing Agreement by City Council.

- 
- Creating a strong local economy
  - Promoting the community
  - Providing networking opportunities
  - Representing the interests of businesses with government
  - Political action

C.2.

Consider eliminating the fee schedule and establish a fixed per unit fee of \$15,000 established by resolution of the City Council.

C.4.

Consider allowing projects to pay fees prior to final approval (occupancy) of the first market rate residential unit. This delay in payment will greatly assist the builder and still provide the fees in a timely manner.

E.1.c

Consider deleting this provision. the number of affordable units at various income levels should be part of the Affordable Housing Agreement and not part of the conditions on the project entitlement.

E.4.

Consider deleting: There should not be a need for an Agreement only a condition of approval on the entitlement.

E.6.

Consider deleting this provision. The units and type of unit within a project that are proposed to be set-aside to meet the City's affordable housing obligation, should be the decision of the developer and subject to approval of the Affordable Housing Agreement. It should be permissible for the least desirable and/or smallest units within a project to be offered to meet the affordable obligation.

F.

Please clarify the "Health and Safety Code Section 50052.5" affordable housing cost standards for ownership and rental units.

Thank you again for the opportunity to participate in achieving a workable solution to the community wide concern and obligation of affordable housing.

Sincerely,



Joyce Riddell, President  
Huntington Beach Chamber of Commerce



February 12, 2009

City of Huntington Beach

FEB 13 2009

Mary Beth Broeren, Planning Manager  
Huntington Beach Planning Department  
2000 Main Street  
Huntington Beach, CA 92648

*Mary Beth*  
Dear Ms. Broeren:

Thank you for the opportunity to have the Chamber represented on the City's Affordable Housing In-lieu Fee Committee. Over the past two and a half years the Committee has discussed and agreed upon many proposed changes to the City's Zoning Code provisions addressing affordable housing. We believe that the Committee's recommendations are significant steps in the right direction.

The Committee met on December 16<sup>th</sup> to review additional concerns expressed in our letter dated November 12, 2008. After considerable discussion there remains one fundamental issue, that being the basis upon which the affordable housing in-lieu fee is determined.

The Chamber believes that the in-lieu Affordable Housing fee should only be based upon the gap between a market rate residential rental unit and a low-income (51%-80% of the county median) rental unit. That affordability gap was determined to be \$105,000, in a Keyser Marston report dated January 23, 2006. Adjusting the number to 2009 and adding a City administration cost, the gap to produce an affordable unit could increase to approximately \$150,000 per affordable rental unit; subject to verification by the City's consultant.

Funding the affordability gap for rental housing will directly address the City's housing needs. Our proposed approach will establish a reasonable fee and add to the City's affordable housing stock. The staff recommended fee is based on blending the affordability gap for both rental and for sale housing unit. This approach will nearly double the fee which will be added as an expense to new residential projects and result in an overall increase in the cost of each housing unit produced in the City.

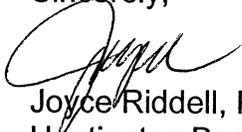
The City's desire to provide a greater variety of affordable housing for both ownership and rental units is an admirable goal. However, as recently demonstrated providing affordable for sale housing can create a great deal of misunderstanding and frustrated homeowners. The City should focus their efforts on providing affordable housing through the creation, rehabilitation and subsidy of rental units.

Assuming that the City Council concurs pursuing primarily affordable rental housing, the proposed in-lieu fee should be based on the affordable gap of providing new affordable rental units.

The Chamber requests that the proposed affordable housing in-lieu fee be revised to reflect a \$15,000 per unit fee (subject to annual review and adjustment) for all projects. In addition the graduated fee schedule already adopted by Council, for the projects of 3-9 units, should remain.

Thank you again for the opportunity to participate in achieving a workable solution to the community wide concern and obligation of affordable housing.

Sincerely,



Joyce Riddell, President  
Huntington Beach Chamber of Commerce