



Michael Simmons, Foreperson
Contra Costa County Civil Grand Jury
725 Court Street
Martinez, CA 94553-0091

September 7, 2016

Re: Response to Grand Jury Report No. 1614: *Where Will We Live?*

Dear Mr. Simmons,

This correspondence serves as the City of Walnut Creek's response to your July 6, 2016 letter regarding Grand Jury Report No. 1614 – "Where Will We Live?"

FINDINGS

F1. PDAs recognize the importance of housing near transportation and jobs for developing prosperous communities.

Response: The City of Walnut Creek agrees with this finding.

F2. *Plan Bay Area 2040* seeks to combine transportation, jobs and housing as a solution to the needs of our growing population.

Response: The City of Walnut Creek agrees with this finding.

F3. While State law mandates that ABAG conduct the RHNA process, a city is not required to subsidize and/or build the units; it is only required to demonstrate that local zoning will not impede development.

Response: The City of Walnut Creek agrees with this finding.

F5. Inclusionary zoning programs provide incentives and regulatory waivers to builders and developers who produce both affordable and market rate homes within the same project.

Response: The City of Walnut Creek partially disagrees with this finding. Inclusionary Zoning requires the inclusion of affordable housing (or payment of a fee in lieu of units) in market rate developments. Separately, Density Bonus (both State law and local ordinance) provide incentives and regulatory waivers that may be afforded to the developer of affordable units. Inclusionary zoning units may be double-counted toward density bonus units which may lead to those incentives and waivers.

F6. The city's Inclusionary Housing ordinance helps to provide affordable housing in the City.

Response: The City of Walnut Creek agrees with this finding.

F8. Inclusionary Housing Ordinances sometimes include the option for the developer to pay in lieu fees instead of constructing affordable housing units.

Response: The City of Walnut Creek agrees with this finding.

F9. The city supplements the shortage of funds for affordable housing by requiring builders to pay impact fees, in lieu fees, or other construction and remodeling fees.

Response: The City of Walnut Creek agrees with this finding.

F10. Infill costs less to service than new development because it takes advantage of the existing infrastructure.

- Response: The City of Walnut Creek partially disagrees with this finding. It is true that infrastructure for new development on the fringe is more expensive to develop. It is also the case that, in contrast, urbanized areas of the city are within the service boundaries of utility and other service providers and adequate infrastructure components generally are in place. Although new development provides incremental improvements to the local utility services and pays fees for larger scale improvements, older undersized infrastructure can also be overloaded by new development even in urban areas which can lead to major infrastructure projects that include high costs for right of way, disruption to existing development, and other costs. Services such as police and fire departments, parks, and schools also incur costs from new development that are not always adequately covered by infill, while "greenfield" development often includes special taxes for these purposes.

F11. The elimination of redevelopment agencies resulted in a reduction of the number of affordable housing units constructed in the city by eliminating a major source of funding for affordable development projects.

Response: The City of Walnut Creek agrees with this finding.

F12. The city delegates to the builder, owner, or management company of affordable housing properties the responsibility for gathering and validating affordable housing clientele information, as well as maintaining lists of potentially interested buyers.

Response: The City of Walnut Creek partially disagrees with this finding. The City requires that the developer, owner, or management company of affordable rental developments is responsible for the leasing of the units and that they administer leasing in compliance with the regulatory agreements. As part of the process, they are required to maintain a waitlist for the units. In the case of "for sale" units, the developer is required to sell the units in compliance with the regulatory agreements, but the City staff works closely with the developer to market and sell the units.

F13. There is no accessible centralized information source for available affordable housing, which compounds the problems created by the affordable housing shortage for those who are searching for affordable housing.

Response: The City of Walnut Creek agrees with this finding.

RECOMMENDATIONS

R1. The city should consider increasing affordable housing in PDAs.

Response: This recommendation has not yet been implemented but will be implemented in the future, within the next year. The City of Walnut Creek has undertaken the West Downtown Specific Plan and North Downtown Specific Plan in the designated PDA and has considered the PDA objective of providing more affordable housing in close proximity to jobs, transportation, and services. A side effect of new development in a PDA relates to potential displacement of existing lower income residents who may reside in older housing stock that is being replaced by new development, some of which can be mitigated with increased affordable housing requirements in the new development. What those requirements are, and which other anti-displacement measures should be taken are currently under consideration. The City of Walnut Creek previously sponsored several affordable housing projects within the PDA. (See Exhibit 1)

R2. The city should consider adopting an Inclusionary Housing Ordinance.

Response: This recommendation has been implemented. The City first adopted its Inclusionary Housing Ordinance in 2004, with adopted revisions to the ordinance approved in 2009 and 2010. (See Exhibit 2)

R3. The city should explore rehabilitating existing housing stock as affordable housing for purchase or rental, and identify funding to do so.

Response: This recommendation has been implemented. Currently, the City invests its affordable housing resources primarily into new development of affordable housing. A small portion is used to provide downpayment assistance to help moderate-income households purchase a home in Walnut Creek. The City is also willing to invest in a rental rehab project that will result in rent restricted affordable units if a good opportunity and partnership (with an affordable developer) arose. The City also has a home rehabilitation loan and emergency grant program for low-income homeowners in need of repair and rehabilitation of their home. Additional funding would increase the City of Walnut Creek's ability to dedicate more resources to this aspect of its affordable housing programs and projects.

R5. The city should explore increasing existing "impact fees" or "linkage fees" or enacting such fees in order to generate revenue with which to assist funding affordable housing.

Response: This recommendation has been implemented. The City recently commissioned new residential and commercial nexus studies. Both studies demonstrated a higher fee is justifiable and feasible. The Housing and Community Development Committee reviewed the reports and

recommendations in April of 2016 and the City held a stakeholder meeting in May of 2016. In July of 2016, the Planning Commission reviewed the studies and recommendations. Staff anticipates there will be a City Council Study Session in December of 2016, followed by Planning Commission and City Council meetings on the revised ordinances as necessary to address related programmatic and fee aspects.

R6. The city should consider designating an employee within the city's planning or housing department to coordinate with property management to maintain current waiting and interest lists of available affordable housing and ensure information is posted in the city website, and identifying funding to do so.

Response: This recommendation has been implemented. The City's Housing Division has designated staff who is in contact with property managers. When property managers notify the City that their waitlists are open the City posts that information on the Affordable Housing section of the City's website. The City also maintains an "interest list" of persons interested in affordable housing who are provided with information regarding current developments and contacts at management companies. To further coordinate and/or centralize the affordable projects waitlists, more extensive jurisdictional collaboration would be required. The City does not currently have the resources to act as a centralized location for maintaining waitlists, but could participate in a more streamlined and centralized process, perhaps by a non-profit entity.

R7. The city should consider seeking federal, state, and local funding sources for affordable housing.

Response: This recommendation has been implemented. The City actively seeks federal and state funding for affordable housing. The City is currently a joint applicant with affordable housing developer, Resources for Community Development, for the State sponsored Affordable Housing and Sustainable Communities Grant. The City is also a grant recipient of the State's BEGIN program, which provided downpayment assistance to 10 households that purchased below market rate units in 2014. The City utilizes local funds to support affordable housing, including housing impact fees, housing successor agency funds, and some general funds.

R8. The city should consider partnering with for-profit and not-for-profit builders to secure land suitable for affordable housing, and identify funding to do so.

Response: This recommendation has been implemented. The City regularly partners with affordable housing developers to secure land suitable for affordable housing. In 2014, Satellite Affordable Housing Associates completed 48 affordable rental units on property that was identified by the City, and acquired with City funding. Also in 2014, Habitat for Humanity completed 10 affordable ownership units on property that was partially purchased by the City from CalTrans and then donated to Habitat. The City also funded infrastructure improvements and downpayment assistance. In 2015 and 2016, Resources for Community Development received entitlements for two affordable housing projects (Riviera Family Apartments – 58 units; and St. Paul's Commons – 45 units), both of which received acquisition, predevelopment, and/or construction financing from the City. Also in 2016, Habitat for Humanity was approved for an acquisition and predevelopment loan to acquire County property located in Walnut Creek for

the development of up to 52 affordable ownership units. Through the City, funding sources for these projects included Housing Impact Fees, Redevelopment (or Housing Successor) Agency funding, Community Development Block Grant funding, and the State BEGIN program funding.

R11. The city should consider undertaking an education initiative in the earliest phase of affordable planning projects in order to alleviate community concerns regarding affordable housing, and identifying funding to do so.

Response: This recommendation has been implemented. The City works closely with affordable housing developers to notify and educate surrounding neighborhoods when developments are proposed and going through the entitlement process. The City is currently in the process of recruiting an intern to assist in an Affordable Housing Community Education campaign. This campaign is not currently tied to a specific project or development phase.

R13. The city should consider identifying all infill and vacant land not in PDAs and encourage use of it for affordable housing through tax incentives, density bonuses, etc.

Response: This recommendation will not be implemented because it is not warranted or is not reasonable, based on the following explanation. The City of Walnut Creek has an adopted and State-certified Housing Element that identifies opportunity sites which are vacant or underdeveloped and already designated in the General Plan and zoning for appropriately scaled development that is sufficient to meet the RHNA allocation for the eight-year planning period. Other sites throughout the city may also be available on the market at different times, and may be appropriate for private redevelopment as housing sites. However, researching and creating a list of vacant sites would only induce speculation which tends to increase prices and reduce the opportunity for affordable housing development. Instead, the city maintains an informal awareness of opportunities and works with land owners, for-profit developers and affordable housing developers to define projects that meet a variety of objectives including economic development and new housing.

R15. The city should consider creating an easily accessible, online central repository with all relevant information on deed-restricted housing units to assure that inventory of affordable housing is maintained, and identify funding to do so.

Response: This recommendation has not yet been implemented, but will be implemented in the future. The City maintains an active list of affordable deed restricted rental affordable housing which is available online. The City also maintains an active list of the affordable ownership units, but that list is not currently available online. Online access to all deed restricted units is in process and should be fully available by the end of the year (2016). The City also monitors all affordable housing to ensure it is well maintained and in compliance with the regulatory agreements.

The City Council approved this response at their September 6, 2016 meeting.

Sincerely,



Ken Nordhoff
City Manager

Exhibits

1. West Downtown Specific Plan, affordable housing report, available at:
<http://www.walnut-creek.org/home/showdocument?id=3598>
2. Inclusionary Zoning Ordinance

CITY OF WALNUT CREEK
ORDINANCE NO. 2095

Exhibits

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WALNUT CREEK
AMENDING ARTICLE 9 OF PART III OF CHAPTER 2 OF TITLE 10 OF THE WALNUT
CREEK MUNICIPAL CODE RELATING TO INCLUSIONARY HOUSING

The City Council of the City of Walnut Creek does ordain as follows:

Section 1. Decision.

Article 9 of Part III of Chapter 2 of Title 10 of the Walnut Creek Municipal Code is hereby amended as follows:

Section A. Section 10-2.3.901 of the Walnut Creek Municipal Code is hereby amended to read as follows:

Article 9 Inclusionary Housing

Sec. 10-2.3.901 Purpose.

The purpose of this Article is to facilitate the development and availability of housing affordable to a broad range of households with varying income levels within the City. It is intended in part to implement state policy that declares that local governments have a responsibility to exercise their powers to facilitate the development of housing to adequately provide for the housing needs of all economic segments of the community, as stated in Government Code section 65580. It is also intended to implement the Housing Element of the General Plan which calls for the adoption of an inclusionary housing program to require either production of affordable housing at moderate, low, and very low-income levels or payment of In-Lieu and/or Impact Fees, where applicable, toward affordable housing development. The goal of this Article is, to the extent legally permissible, to have a minimum percentage of very low, low and/or moderate-income units built within each new residential development.

Section B. Section 10-2.3.902.E of the Walnut Creek Municipal Code is hereby amended to read as follows:

Sec. 10-2.3.902. Definitions.

E. Residential Development Project: Any project that either: (1) includes the construction of one or more Dwelling Units, or (2) includes a Condominium Conversion.

Section C. Section 10-2.3.903.A and Section 10-2.3.903.B of the Walnut Creek Municipal Code is hereby amended to read as follows:

Sec. 10-2.3.903. Inclusionary Units or Fee Required.

A. Requirement – Ownership Projects. All Ownership Projects shall either include the number of Inclusionary Units required under section 10-2.3.904 or, if applicable, pay the In-Lieu Fee required under section 10-2.3.905. No application for a rezoning, tentative map, parcel map, conditional use permit, design review, or building permit shall be approved, nor shall any such Ownership Project be constructed or Condominium Conversion approved, without compliance with

this Article.

B. Requirement – Rental Projects. All Rental Projects shall pay an Affordable Housing Impact Fee, if such a fee has been adopted, upon issuance of a building permit for each Dwelling Unit in the Rental Project, unless an alternative is proposed by the Developer and approved as described in Section 10-2.3.906. Any Affordable Housing Impact Fee shall be established by resolution of the City Council. No application for a rezoning, tentative map, parcel map, conditional use permit, design review, or building permit shall be approved, nor shall any such Ownership Project be constructed or Condominium Conversion approved, without compliance with this Article.

Section D. Section 10-2.3.904.A and Section 10-2.3.904.B of the Walnut Creek Municipal Code is hereby amended to read as follows:

Sec. 10-2.3.904. Number of Inclusionary Units – Ownership Projects.

A. Basic Requirement. The required number of Inclusionary Units included in an Ownership Project shall depend upon the total number of Dwelling Units in the Project and the type of Inclusionary Units being included (i.e. whether they are made affordable to Moderate Income, Low Income or Very Low Income Households). The Developer of the Ownership Project may choose which type of Inclusionary Units to include which, in turn, will partially determine the number of Inclusionary Units that must be included.

1. Projects of 2 to 9 Units. The Developer of an Ownership Project (other than a Condominium Conversion) shall, at the Developer’s option, either (a) include one Moderate-Income Ownership Unit, or (b) pay the In-Lieu Fee specified in section 10-2.3.905.

2. Projects of 10 - 26 Units. The Developer of an Ownership Project (other than a Condominium Conversion) shall pay the In-Lieu Fee specified in section 10-2.3.905, or include either:

- (a) 10% of the Dwelling Units as Moderate Income Ownership Units;
- (b) 7% of the Dwelling Units as Low Income Ownership Units; or
- (c) 6% of the Dwelling Units as Very Low Income Ownership Units.

Notwithstanding section 10-2.3.904(B), a minimum of one Inclusionary Ownership Dwelling Unit shall be provided per Project.

Table 1: Options for Projects of 10-26 units

| | <i>Moderate</i> | <i>Low</i> | <i>Very Low</i> | <i>Pay In-lieu Fee</i> |
|------------------------|-----------------|------------|-----------------|------------------------|
| Ownership Units | 10% | 7% | 6% | Section 10-2.3.905 |

3. Projects of 27 or more Units. The Developer of an Ownership Project (other than a Condominium Conversion) shall include either:

- a. 10% of the Dwelling Units as Moderate Income Ownership Units,
- b. 7% of the Dwelling Units as Low Income Ownership Units, or

c. 6% of the Dwelling Units as Very Low Income Ownership Units.

Notwithstanding any other provision of this ordinance, for any Ownership Project (other than a Condominium Conversion) in which the application for a tentative subdivision or parcel map is deemed complete after the effective date of this provision and before January 1, 2013, the Developer may pay the In-Lieu Fee specified in section 10-2.3.905 in lieu of providing the Inclusionary Units that would otherwise be required under this subsection 3. The Community Development Director, in his or her sole discretion, may extend the option for the Developer to pay an In-Lieu Fee for any Ownership Project (other than a Condominium Conversion) in which the application for a tentative subdivision or parcel map is deemed complete after the effective date of this provision and before a date specified by the Community Development Director.

4. Condominium Conversions: The Condominium Conversion shall include either 15% of the Dwelling Units as Low Income Ownership Units or 11% of the Dwelling Units as Very Low Income Units as selected by the applicant, or, if the Project is fewer than 10 units, pay a fractional fee for Low Income Ownership Units as specified in Section 10-2.3.905.

Table 2: Options for Projects of 27 or more units

| | Moderate | Low | Very Low |
|------------------------|----------|-----|----------|
| Ownership Units | 10% | 7% | 6% |

B. Fractional Units. When the application of the percentages specified above results in a number that includes a fraction, the fraction shall be rounded up to the next whole number if the fraction is .7 or more. If the result includes a fraction below .7, the Developer shall have the option of rounding up to the next whole number and providing the Inclusionary Unit on-site, or paying a fee in-lieu of providing an additional Inclusionary Unit. The In-Lieu Fee shall be calculated in accordance with section 10-2.3.905 below.

Section E. Section 10-2.3.904.F of the Walnut Creek Municipal Code is hereby amended to read as follows:

Sec. 10-2.3.904. Number of Inclusionary Units – Ownership Projects.

F. Replacement Units. If a proposed Ownership Project would result in the demolition or elimination of existing dwelling units that have (or within the twelve months prior to submittal of the application had) rent levels affordable to Low-Income Households, and these dwelling units were built less than 30 years ago, the affordable dwelling units must be replaced on a one-for-one basis affordable to Low-Income Households. If the number of required Inclusionary Units is less than the number of low-income units being eliminated, then Developer shall either (1) include a number of Inclusionary Units affordable to Low Income Households in an amount equal to the number of low-income units being eliminated or (2) provide the number of Inclusionary Units required based upon project size (or pay the In-Lieu Fee if permitted by this Article), and pay the Low-Income per unit In-Lieu Fee for each Replacement Unit over the Inclusionary Unit amount.

This Section (F) does not apply to Condominium Conversions.

Section F. Section 10-2.3.905 of the Walnut Creek Municipal Code is hereby amended in its

entirety to read as follows:

Sec. 10-2.3.905. Affordable Housing Impact and In-Lieu Fees

A. As provided in section 10-2.3.903, all Rental Projects will pay an Affordable Housing Impact Fee, if such a fee has been adopted, upon issuance of a building permit for each Dwelling Unit in the Rental Project, unless an alternative is proposed by the Developer and approved as described in Section 10-2.3.906.

B. As provided in section 10-2.3.904, a fee may be paid in-lieu of providing (a) Inclusionary Units in an Ownership Project (other than Condominium Conversion) of 2-9 units; or (b) Inclusionary Units in an Ownership Project (other than Condominium Conversion) of 10-26 units, (c) Inclusionary Units in a Condominium Conversion Project of fewer than 10 units, and (d) fractional Inclusionary Units below .7 units. For Residential Development Projects constructed in phases, In-Lieu Fees shall be paid prior to issuance of each building permit in the proportion that the phase bears to the overall Residential Development Project. The In-Lieu Fees shall be paid into a separate fund earmarked for the City's Affordable Housing Program.

C. Notwithstanding any other provision of this ordinance, to the extent that an Ownership Project (other than Condominium Conversion) or a Rental Project involves the demolition of existing Dwelling Units at a ratio of .5 or greater to the construction of new Dwelling Units, the Affordable Housing Impact Fee, the In-Lieu Fee and the requirements to provide Inclusionary Units shall be based upon the number of net new Dwelling Units to be constructed.

D. The City Council shall, from time to time, adopt a resolution setting forth the amount of the Impact and In-Lieu Fees. All fees shall be paid by the Developer prior to issuance of the building permit for any Dwelling Unit in the Residential Development Project or as determined by the Residential Development Project's adopted Conditions of Approval. The In-Lieu Fees shall not exceed the average estimated cost of otherwise providing the required Inclusionary Units affordable to a Very Low Income Household, a Low Income Household or a Moderate Income Household, as applicable, including but not limited to: (i) estimated construction costs, (ii) the cost of land, (iii) financing costs, (iv) consultant costs (including without limitation architecture, engineering, and other costs), and (iv) any indirect costs. Nothing in this ordinance shall deem or be used to deem the Impact and In-Lieu Fees authorized pursuant to this section as an ad hoc exaction, as a mandated fee required as a condition to developing property, or as a fee subject to the analysis in *Building Industry Association of Central California v. City of Patterson*, 171 Cal.App.4th 886 (2009). Any In-Lieu Fee adopted by the City Council is a menu option that may serve as an alternative to the on-site housing requirements for Ownership Projects set forth in this Article 9.

Section G. Section 10-2.3.906 of the Walnut Creek Municipal Code is hereby amended in its entirety to read as follows:

Sec. 10-2.3.906. Alternatives

The Developer may propose an alternative means of compliance with this Article instead of provision of Ownership Inclusionary Units or payment of an In-Lieu Fee or Affordable Housing Impact Fee according to the following provisions.

A. Off Site Construction of Inclusionary Units. Inclusionary Units may be constructed

off-site only upon a determination by the City that on-site construction is infeasible. If this option is chosen, then the off-site Inclusionary Units must be constructed prior to or concurrently with construction of the Residential Development Project. The Inclusionary Unit size and count must meet the same requirements as if the Inclusionary Units were constructed on-site. If the Developer proposes to provide off-site Rental Inclusionary Units, then the proposal must meet the standards for Rental Inclusionary Units contained in section 10-2.3.906.C. No Certificate of Occupancy will be issued for any corresponding Market Rate Unit prior to Inclusionary Unit construction completion or payment of required In-Lieu Fees.

B. Land Dedication. In-lieu of building Inclusionary Units, the Developer may dedicate to the City land within the City that the City determines is suitable for the construction of Inclusionary Units and is of equivalent or greater value than is produced by applying the City's current In-Lieu Fee to the Inclusionary obligation.

C. Provision of Rental Inclusionary Units. A Developer may propose to provide dwelling units in the Residential Development Project as Rental Inclusionary Units that provide either:

1. 10% of the Dwelling Units as Low Income Rental Units; or
2. 6% of the Dwelling Units as Very Low Income Rental Units.

To ensure compliance with the Costa-Hawkins Act (Chapter 2.7 of Title 5 of Part 4 of Division 3 of the Civil Code), the city may only approve such a proposal if the Developer agrees in a rent regulatory agreement with the city to limit rents in consideration for a direct financial contribution or a form of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code, in conformance with *Palmer v. City of Los Angeles* (2009) 175 Cal.App.4th 1396, and the Costa-Hawkins Act. Such a proposal must be made by the Developer and not by the City, in the event that a court finds that this subsection C would violate the Costa-Hawkins Act, the court shall sever this subsection from the remainder of this ordinance, and the remainder of this ordinance, including but not limited to the requirement that a Developer pay the Affordable Housing Impact Fee, shall remain in full force and effect.

Section H. Section 10-2.3.909 of the Walnut Creek Municipal Code is hereby amended in its entirety to read as follows:

Sec. 10-2.3.909. Inclusionary Housing Agreement

A. Agreements Required. Applications for Residential For-Sale Development Projects shall be approved only concurrently with the approval of an Inclusionary Housing Agreement pursuant to this section. This section shall not apply (1) if the Developer of an Ownership Project of 2 or more units chooses to pay an In-Lieu Fee pursuant to section 10-2.3.904(A)(1); or (2) if the City Council approves the request of a Developer to pay an In-Lieu Fee pursuant to section 10-2.3.905(C);

B. The Developer of a Rental Project shall be required to pay any adopted Affordable Housing Impact Fee. No Agreement is required for the payment of the Affordable Housing Impact Fee.

C. Information in Application. Applications for Residential Development Projects shall include the following information in addition to information otherwise required under this Code:

1. The location, structure, proposed tenure (rental or ownership) and size of the proposed Market Rate and Inclusionary Units;
2. The calculations used to determine the number of required Inclusionary Units;
3. A floor plan or site plan depicting the location of the Inclusionary Units;
4. The income level targets for each Inclusionary Unit;
5. The mechanisms that will be used to assure that the Inclusionary Units remain affordable for the required term;
6. For phased developments, a phasing plan;
7. A description of any requested incentives as allowed in Section 10-2.3.909(D);
8. A marketing plan for the process by which qualified households will be reviewed and selected to either purchase or rent affordable units; and
9. Any other information requested by the Community Development Director.

D. Approval. An Inclusionary Housing Agreement between the Developer and the City shall be required by the applicable decision-making body as a condition of approval of any tentative map, parcel map, conditional use permit subject, or design review to this Article. If the foregoing approvals are not required, an Inclusionary Housing Agreement in a form approved by the Community Development Director shall be executed prior to issuance of a building permit. The Inclusionary Housing Agreement shall provide for the implementation of the requirements of this Article. All Inclusionary Housing Agreements must include, at minimum, the following:

1. Description of the development, including whether the Inclusionary Units will be rented or owner-occupied;
2. The number, size and location of the Inclusionary Units, or any approved alternative;
3. Inclusionary incentives by the City (if any);
4. Provisions and/or documents for resale restrictions, deeds of trust, rights of first refusal or rental restrictions that shall be recorded against the property;
5. Provisions for monitoring the ongoing affordability of the units, and the process for marketing units, and qualifying prospective residents household for income eligibility;
6. Deed Restriction acceptable to the City.

E. Incentives.

1. In approving an Inclusionary Housing Agreement, the decision-making body may, in its sole discretion, include one or more of the following incentives:

a. **Unit Size Reduction.** The size of the Inclusionary Units may be smaller than the Market Rate Units, consistent with all other provisions herein.

b. **Second Family Unit.** Projects consisting of single-family detached units may meet the Inclusionary Unit requirement by providing a second family unit, subject to Article 5 (Second Family Residential Units) of Chapter 2 of Title 10 of this Code, or any successor provisions instead of an Inclusionary Unit on a one-for-one basis.

c. **Interior Finishes.** Inclusionary Units may have different interior finishes and features than Market Rate Units so long as the interior features are durable, of good quality and consistent with current State building code standards for new housing.

2. A Developer may apply for a Density Bonus and other incentives if the Residential Development Project includes lower, very low and/or senior housing units at levels beyond those required by this Article to the extent permitted by Government Code section 65915.

Section I. Section 10-2.3.910 of the Walnut Creek Municipal Code is hereby amended in its entirety to read as follows:

Sec. 10-2.3.910. Adjustments.

A. The requirements of this Article may be adjusted or waived if the Developer demonstrates that applying this Article would take property in violation of the United States and/or California Constitutions. The Developer shall submit a request for an adjustment or waiver together with the Application and such additional information as may be required by the Community Development Director to make a determination.

B. Upon finding that the adjustment would promote the general health, safety or welfare of the City, the decision-making body may, in its sole discretion:

1. Allow In-Lieu Fee payments to be made on all ownership projects of 2 or more units (above the current 26-unit threshold), or

2. Allow 50% of In-Lieu or Affordable Housing Impact Fees to be deferred and paid at time of issuance of Certificate of Occupancy, rather than at the initial issuance of the building permit.

Section 2. Effective Date.

The City Clerk is directed to format and number this ordinance to be in conformance with this title as appropriate.

This ordinance shall take effect sixty (60) days after its adoption.

PASSED AND ADOPTED by the City Council of the City of Walnut Creek at a regular meeting thereof held on the 16th day of November 2010, by the following called vote:

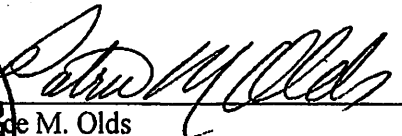
- AYES: Councilmembers: Simmons, Skrel, Silva, Mayor Rainey
- NOES: Councilmembers: Rajan
- ABSENT: Councilmembers: None

/s/ Susan M. Rainey
Mayor of the City of Walnut Creek

Attest:

/s/ Patrice M. Olds
City Clerk of the City of Walnut Creek

I HEREBY CERTIFY the foregoing to be a true and correct copy of Ordinance No. 2095, duly passed and adopted by the City Council of Walnut Creek, County of Contra Costa, State of California, at a regular meeting of said Council held on the 16th day of November 2010.



Patrice M. Olds
City Clerk of the City of Walnut Creek

OF '13