AGENDA

SPECIAL CITY COUNCIL MEETING
Tuesday, May 1, 2018 – 6:40 p.m.
Hillside Conference Room

REGULAR CITY COUNCIL MEETING
Tuesday, May 1, 2018 – 7:00 p.m.
City Council Chambers

Meeting Location
El Cerrito City Hall
10890 San Pablo Avenue, El Cerrito

Gabriel Quinto – Mayor

Mayor Pro Tem Rochelle Pardue-Okimoto
Councilmember Paul Fadelli
Councilmember Janet Abelson
Councilmember Greg Lyman

ROLL CALL

6:40 p.m. **CONVENE SPECIAL CITY COUNCIL MEETING**

ORAL COMMUNICATIONS FROM THE PUBLIC

All persons wishing to speak should sign up with the City Clerk. Remarks are typically limited to 3 minutes per person and to items on the special meeting agenda only.

COMMISSION INTERVIEWS, STATUS AND APPOINTMENTS

Conduct interviews of candidates for the City Boards and Commissions. Interviews may result in an announcement of appointment at the meeting.

ADJOURN SPECIAL CITY COUNCIL MEETING

ROLL CALL

7:00 p.m. **CONVENE REGULAR CITY COUNCIL MEETING**

1. PLEDGE OF ALLEGIANCE TO THE FLAG OR OBSERVATION OF MOMENT OF SILENCE – *Mayor Pro Tem Rochelle Pardue-Okimoto.*

2. COUNCIL / STAFF COMMUNICATIONS *(Reports of Closed Session, commission appointments and informational reports on matters of general interest which are announced by the City Council & City Staff.)*

3. ORAL COMMUNICATIONS FROM THE PUBLIC

All persons wishing to speak should sign up with the City Clerk. Remarks are typically limited to 3 minutes per person. The Mayor may reduce the time limit per speaker depending upon the number of speakers. Kindly state your name and city of residence for the record. Comments regarding non-agenda, presentation and consent calendar items will be heard first. Comments related to items appearing on the Public Hearing or Policy Matter portions of the Agenda are taken up at the time the City Council deliberates each action item. Individuals wishing to comment on any closed session scheduled after the regular meeting may do so during this public comment period or after formal announcement of the closed session.

4. ADOPTION OF THE CONSENT CALENDAR – Item Nos. 4(A) through 4(E)

A. Asian Pacific Heritage Month Proclamation

Approve a proclamation declaring the month of May 2018 Asian Pacific American Heritage Month in the City of El Cerrito and inviting everyone to reflect on the notable accomplishments and outstanding services provided by Asian Americans and Pacific Islanders to the Nation, California and the City of El Cerrito.

B. Jewish American Heritage Month Proclamation

Approve a proclamation declaring May 2018 as Jewish American Heritage Month in the City of El Cerrito and calling upon all residents to celebrate Jewish Americans who have helped weave the fabric of not only American history, culture and society but also the City of El Cerrito, to visit www.jewishheritagemonth.gov to learn more about the heritage and contributions of Jewish Americans, and to observe this month with solemn remembrance, appropriate programs, activities and ceremonies.

C. Affordable Housing Week Proclamation

Approve a proclamation declaring May 11 to May 20, 2018 as Annual Affordable Housing Week in the City of El Cerrito and confirming the City's commitment to work to support affordable housing at the local, regional and state level and encouraging residents of El Cerrito to participate in regional Affordable Housing Week activities (listed at www.ebho.org/events) to raise awareness about the importance of affordable housing for families and communities.

D. Support for Assembly Bill 1793 Cannabis Convictions: Resentencing

At the request of Mayor Pro Tem Pardue-Okimoto, adopt a resolution supporting Assembly Bill 1793 which would require the State Department of Justice to review its database and notify the courts of all cases that are eligible of reduced sentencing or expungement if the person does not meet the eligibility criteria or presents an unreasonable risk to public safety. The resolution also requests that the District Attorney of Contra Costa County join the District Attorneys of Alameda, San Diego, San Francisco, Sonoma and Yolo Counties in supporting these efforts.

E. Modify City Council Meeting Schedule

Reschedule the June 5, 2018 City Council meeting to Monday, June 11, 2018 at 7:00 p.m. due to a conflict with the June 5, 2018 Statewide Primary Election. City Hall is a polling place for this election. In addition, schedule a special City Council meeting on Monday, June 18, 2018 at 7:00 p.m. to conduct a public hearing to further discuss and consider a proposed City Charter and possible continued discussion regarding the City budget. The City Council will also meet on June 19, 2018 at 7:00 p.m. to consider adoption of the City's budgets.

5. PRESENTATIONS – None

6. PUBLIC HEARINGS

A. Inclusionary Zoning Requirements for New Residential Development Projects, Including Fees In-Lieu of On-Site Affordable Units

Conduct a public hearing and upon conclusion, introduce by title and waive any further reading of an ordinance adding Chapter 19.30 to the El Cerrito Municipal Code to require the inclusion of affordable units within new residential development projects and allow the payment of a fee in lieu of providing units. *Exempt from CEQA.*

B. Review City Charter Process and City Charter Committee Recommendation

Conduct a public hearing and receive a presentation from staff on the City Charter development process to date and review the proposed City Charter as recommended by the Charter Committee.

7. POLICY MATTERS – *None*

8. CITY COUNCIL LOCAL AND REGIONAL LIAISON ASSIGNMENTS

Mayor and City Council communications regarding local and regional liaison assignments and committee reports.

9. ADJOURN REGULAR CITY COUNCIL MEETING

The next regularly scheduled City Council meeting is Tuesday, May 15, 2018 at 7:00 p.m. in the City Council Chambers, 10890 San Pablo Avenue, El Cerrito.

The City of El Cerrito serves, leads and supports our diverse community by providing exemplary and innovative services, public places and infrastructure, ensuring public safety and creating an economically and environmentally sustainable future.

- Council Meetings can be heard live on FM Radio, KECG – 88.1 and 97.7 FM and viewed live on Cable TV - KCRT-Channel 28 and AT&T Uverse Channel 99. The meetings are rebroadcast on Channel 28 the following Thursday and Monday at 12 noon, except on holidays. Live and On-Demand Webcast of the Council Meetings can be accessed from the City's website http://www.el-cerrito.org/streamingmedia. Copies of the agenda bills and other written documentation relating to items of business referred to on the agenda are on file and available for public inspection in the Office of the City Clerk, at the El Cerrito Library and posted on the City's website at www.el-cerrito.org prior to the meeting.

- In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk, (510) 215-4305. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.102-35.104 ADA Title I).

- ***The Deadline for agenda items and communications*** is eight days prior to the next meeting by 12 noon, City Clerk's Office, 10890 San Pablo Avenue, El Cerrito, CA. Tel: 215–4305 Fax: 215–4379, email cmorse@ci.el-cerrito.ca.us

- IF YOU CHALLENGE A DECISION OF THE CITY COUNCIL IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE COUNCIL MEETING. ACTIONS CHALLENGING CITY COUNCIL DECISIONS SHALL BE SUBJECT TO THE TIME LIMITATIONS CONTAINED IN CODE OF CIVIL PROCEDURE SECTION 1094.6.

- The City Council believes that late night meetings deter public participation, can affect the Council's decision-making ability, and can be a burden to staff. City Council Meetings shall be adjourned by 10:30 p.m., unless extended to a specific time determined by a majority of the Council.

Special City Council Meeting – 6:40 p.m.

Date:	May 1, 2018
To:	Honorable Mayor and Members of the City Council
From:	Cheryl Morse, City Clerk
Subject:	Commission Interviews

MAY 1 INTERVIEW SCHEDULE

6:40 p.m.	Allison Cooper	[Arts]
6:55 p.m.	Council Deliberation	

Allison Cooper is confirmed for an interview this evening. Richard Fernandez and Eva Jo Meyers were interviewed by the City Council on April 17, 2018.

BACKGROUND

Staff began publicizing vacancies on all the Boards, Commissions and Committees in September 2017. Vacancies were published on the City's website and in the West County Times, posted at City Hall, the Community Center and Library. Although the City conducts a continuous recruitment, the deadline for submitting applications for the first round of interviews was set at December 4 however additional applications continued to be submitted throughout December 2017 and the initial deadline was extended to January 8. The City Council interviewed candidates for Boards and Commissions at special meetings held on January 4, January 16 and February 6, and February 20, 2018. The City Council also met on March 6 to follow up on its appointments and deliberations. Recruitment for remaining positions was extended to March 30 and is currently advertised as a continuous recruitment.

VACANCIES

Existing vacancies on each board, commission and committee in which members are directly appointed by the City Council are listed on the attached matrix and are also listed below for ease of reference. Staff has been informed that two additional vacancies on the Arts and Culture Commission are likely to occur within the next three to six months. One of these unexpected vacancies will occur on July 24, 2018.

EL CERRITO BOARDS AND COMMISSIONS

Arts and Culture Commission	1 Current Vacancy	+ 2 Upcoming Vacancies
Citizens Street Oversight Committee	3 Vacancies	

Attachments:

1. Applicant Matrix
2. Candidate Applications
3. Interview questions for consideration

2018 Board and Commission Applicant Matrix

Attachment 1

*** Updated: 4/23/2018**

THE CITY OF EL CERRITO	*Arts & Culture (1+2)*	*Citizens Street Oversight (3)*	*Civil Service Commission (0)*	*Committee on Aging (2)*	*Crime Prevention (8)*	*Design Review Board (0)*	*Economic Devt. Cmte (7)*	*Environmental Quality (3)*	*Financial Advisory Board (0)*	*Human Relations (0)*	*Park and Recreation (0)*	*Planning Commission (0)*	*Urban Forest Committee (9)*	*CC Library Alternate (0)*	*CCTA Citizens Advisory (0)*	*Interview Date*	*Appointed?*
Keith Alexander[1]							1					2					
Paul Allen		1				3					2					2/20	STREET
Ben Chuaqui						1					1	2				2/6	DRB
Allison Cooper	1															5/1	
Greg Crump												1				2/6	PLN
Richard Fernandez	1															4/17	
Derik Hilliard							1			2						2/20	
Douglas Hund						2						1				2/20	
John "Barry" Koops														1		2/20	LIB-Alt
Jessica Laird										1						2/20	HRC
Art Machado											1					2/20	PARKS
Eva Jo Meyers	1															4/17	
Alison H. Moreno[2]								1			2						
Joy Navarrete						2						1				2/6	PLN
Margo Parisi										1						2/20	HRC
Tenzin Rangdol							3		2	1						2/20	FAB
Christopher Sterba	1																ARTS
Jun Sunseri											1					2/6	PRKS
John Thompson						1										1/16	DRB
Bruce L. Yow			1								2				3	1/16	CSC, CCTA

[1] Will pursue appointment to EDC first.
[2] Will pursue appointment to EQC first.

THE CITY OF
EL CERRITO
OFFICE OF THE CITY CLERK

May 1, 2018
Special City Council Meeting

Commission Interviews

Attachment 2 Applications

is available for review in hardcopy format at the following locations:

Office of the City Clerk
10940 San Pablo Avenue
El Cerrito
(510) 215-4305

and

The El Cerrito Library
El Cerrito
6510 Stockton Avenue

City of El Cerrito
BOARD/COMMISSION INTERVIEW QUESTIONS

1. Will you give us a quick summary of why you chose to apply or how you selected the _______________ commission/board?

2. Briefly outline what in your professional background, work experience, education, or volunteer work would be relevant to the commission/board and highlight any special or unique qualifications or qualities you feel would contribute to the commission?

3. Are you aware of any issues that this commission addressed recently? Have you attended any commission or council meetings?

4. Do you have any thoughts or ideas on how this commission might contribute to the quality of life in El Cerrito?

5. In the few minutes remaining do you have any questions for us?

CITY COUNCIL OF THE CITY OF EL CERRITO PROCLAMATION
May 2018 is Asian Pacific American Heritage Month

WHEREAS, the earliest Asian Americans immigrated to the United States in the 1800s and many Asian laborers contributed to the completion of the transcontinental railroad during the 1860s, and in the development of California's agricultural industry to this day. Asian Americans and Pacific Islanders have played a critical role in the social, economic, and political development of California throughout its history; and

WHEREAS, Asian Americans and Pacific Islander immigrants have contributed greatly to California's economic success, rural growth and urban development; and

WHEREAS, Asian Americans and Pacific Islander entrepreneurs have led many of California's businesses to the pinnacle of their respective industries; and

WHEREAS, approximately 27 million Asian Americans and Pacific Islanders in the nation are one of the fastest growing ethnic populations in the country; and

WHEREAS, Asian Americans and Pacific Islanders represent 27.2 percent of El Cerrito's population, representing ancestries throughout Asia; and

WHEREAS, Asian Americans and Pacific Islanders will continue to be an important part of El Cerrito's cultural diversity and understanding; and

WHEREAS, Asian Americans and Pacific Islanders have a proud legacy of service and dedication to our community, our City, our State and our Country; and

WHEREAS, May has become a symbolic month in which Asian Americans and Pacific Islanders and supporters come together in various celebrations of culture, traditions and history.

NOW THEREFORE, the City Council of the City of El Cerrito hereby proclaims the month of May 2018 Asian Pacific American Heritage Month in the City of El Cerrito and invites everyone to reflect on the notable accomplishments and outstanding services provided by Asian Americans and Pacific Islanders to the Nation, California and the City of El Cerrito.

Dated: May 1, 2018

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Gabriel Quinto, Mayor

Agenda Item No. 4(B)

CITY COUNCIL OF THE CITY OF EL CERRITO PROCLAMATION
May 2018 is Jewish American Heritage Month

WHEREAS, from our Nation's earliest days, Jewish Americans have been a critical part of the American story, greatly contributing to the religious, cultural, political, economic, and intellectual advancement of all people even while in the face of unspeakable discrimination and adversity, fighting tirelessly to realize their piece of the American dream with relentless spirit, and these remarkable achievements have enriched our country, stirred our conscience, and challenged us to extend the miracles of freedom and security; and

WHEREAS, as we celebrate the rich heritage of the Jewish American community, including those who live, work and play in the City of El Cerrito, we recognize that American Jews have worked to strengthen the promise of religious freedom and civil rights by coming together across all faiths to reject ignorance and intolerance, teach empathy and compassion, and root out hatred wherever it exists; and

WHEREAS, we are reminded that the vibrant culture of the Jewish people has not always been embraced and that Jewish communities continue to confront hostility and bigotry, including in America, therefore the City of El Cerrito shares an obligation to condemn and combat anti-Semitism and hatred wherever it exists; and

WHEREAS, May 2018 is recognized as Jewish American Heritage Month by Congressional resolution and by Presidential Proclamation; and

WHEREAS, during Jewish American Heritage Month, the City of El Cerrito celebrates the hard-fought progress won through the struggle and sacrifice of Jewish Americans, and we rededicate ourselves to building a world where diversity is cherished and faith is protected.

NOW THEREFORE, the City Council of the City of El Cerrito hereby approves a proclamation declaring May 2018 as Jewish American Heritage Month in the City of El Cerrito and calls upon all residents to celebrate Jewish Americans who have helped weave the fabric of not only American history, culture and society but also the City of El Cerrito, to visit www.jewishheritagemonth.gov to learn more about the heritage and contributions of Jewish Americans, and to observe this month with solemn remembrance, appropriate programs, activities, and ceremonies.

Dated: May 1, 2018

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Gabriel Quinto, Mayor

Agenda Item No. 4(C)

EL CERRITO CITY COUNCIL PROCLAMATION

Designating May 10 to May 20, 2018 as the 22nd Annual East Bay Affordable Housing Week: "Building Communities"

WHEREAS, quality affordable housing is vital to healthy, safe, vibrant, and diverse communities, and affordable homes are the solution to homelessness, and provide support to seniors, families, youth, veterans, and people with disabilities. The Bay Area is experiencing a housing crisis and as a result the demand for affordable housing continues to grow both locally and throughout the State; and

WHEREAS, local jurisdictions like El Cerrito are committed to providing quality affordable housing opportunities. The 2017 El Cerrito Affordable Housing Strategy identifies the following four policy pillars to produce, preserve and protect affordable housing for very low, low and moderate-income households: 1) Leverage Private Development to Address Affordable Housing Needs; 2) Reduce the Risk of Displacement and Help Stabilize At-Risk Populations; 3) Encourage Development of Missing Middle Housing Types; and 4) Increase Local Funding to Continue Support of Low Income and Special Needs Housing Development

WHEREAS, non-profit organizations, local jurisdictions, community organizations and many others continue to build inclusive communities by providing shelter, housing and support for low-income people and those with special needs; and

WHEREAS, East Bay Housing Organizations has organized Affordable Housing Week for over 20 years and will feature 15 events acknowledging the need for and benefits of affordable housing.

NOW THEREFORE, the City Council of the City of El Cerrito hereby proclaims May 11 to May 20, 2018 as Annual Affordable Housing Week in the City of El Cerrito and confirms the City's commitment to work to support affordable housing at the local, regional and state level and encourage residents of El Cerrito to participate in regional Affordable Housing Week activities (listed at www.ebho.org/events) to raise awareness about the importance of affordable housing for families and communities.

Dated: May 1, 2018

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Gabriel Quinto, Mayor

RESOLUTION NO. 2018-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO SUPPORTING AB 1793 CANNABIS CONVICTIONS: RESENTENCING

WHEREAS, Proposition 215 legalized the medicinal use of cannabis in 1996; and

WHEREAS, Proposition 64 legalized the adult use of cannabis in 2016; and

WHEREAS, the City of El Cerrito voted in 2016 to pass Proposition 64, the Adult Use of Marijuana Act, by over 70%; and

WHEREAS, Proposition 64 states intent to: "authorize courts to resentence persons who are currently serving a sentence for offenses for which the penalty is reduced by the Act so long as the person does not pose a risk to public safety and to redesignate or dismiss such offenses from the criminal records of persons who have completed their sentences as set forth in this Act;" and

WHEREAS, the language in Proposition 64 left the financial burden of having previous convictions expunged on the person convicted; and

WHEREAS, those with previous convictions may not have the legal knowledge or financial resources to expunge their records; and

WHEREAS, according to a report by the Drug Policy Alliance, approximately 500,000 people were arrested for cannabis felonies and misdemeanors from 2006 to 2015, and as of September 2017, only 4,885 people had sought to modify their records; and

WHEREAS, according to the same report, cannabis related convictions have disproportionately affected people of color and created barriers for these individuals to obtain employment and housing; and

WHEREAS, the City of El Cerrito lifted the ban on cannabis dispensaries and now has a city ordinance allowing for the operation of up to two cannabis dispensaries within the City.

NOW THEREFORE BE IT RESOVED, that he City Council of the City of El Cerrito supports the passage of AB 1793 which would require the State Department of Justice to review its database and notify the courts of all cases that are eligible for reduced sentencing or expungement and allow the District Attorney to review and challenge the resentencing or expungement if the person meets the eligibility criteria and does not present an unreasonable risk to public safety.

BE IT FURTHER RESOLVED, that the City Council of the City of El Cerrito requests that the District Attorney of Contra Costa County join the District Attorneys of Alameda County, San Diego County, the County of San Francisco, the County of Sonoma, and Yolo County in supporting these efforts.

I CERTIFY that at a regular meeting on May 1, 2018 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSTAIN: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on May XX, 2018.

Cheryl Morse, City Clerk

APPROVED:

Gabriel Quinto, Mayor

AB 1793 (Bonta) – Cannabis Convictions (As Amended March 22, 2018)

Agenda Item No. 4(D) Attachment

SUMMARY

AB 1793 removes barriers to housing, employment and public benefits by creating a simpler and expedited pathway for Californians to have certain criminal convictions for cannabis-related offenses automatically removed from or reduced on their records.

BACKGROUND

In November 2016, 57 percent of California voters approved Proposition 64: The Control, Regulate and Tax Adult Use of Marijuana Act (AUMA/"Prop. 64"), which legalized the adult-use of cannabis. Prop. 64 contained provisions that not only reduced or eliminated many cannabis law violations, but made those changes retroactive. Under the law, people with certain felonies or misdemeanors on their records are now legally entitled to petition the courts to expunge or reduce their cannabis convictions. Some offenses that were crimes are now legal including possession of up to an ounce of cannabis and growing up to six cannabis plants for personal use.

It is estimated that just under one million people in California have cannabis convictions eligible to be reduced or expunged from their records. According to a report issued by Drug Policy Alliance, there were approximately 500,000 people arrested for cannabis felonies and misdemeanors between 2006-2015. As of September 2017, only 4,885 people have petitioned to the courts to have their records modified.

Data from that same report shows penalties for cannabis-related offenses have disproportionately affected minority communities. While Black, Latino, and white people use and sell cannabis at similar rates, Black and Latino people are more likely to be arrested for a cannabis law violation. The report found that Black people were more than twice as likely as white people to be arrested for cannabis misdemeanors and nearly five times more likely than white people to be arrested for cannabis felonies. Latinos are 35 percent more likely than white people to be arrested for a cannabis offense: 45 percent more likely for a misdemeanor and 26 percent more likely for a felony.

To ease the burden associated with petitioning the courts for relief, several local district attorneys in counties across California are reducing or dismissing Prop. 64-eligible convictions without requiring individuals to initiate the process. These include the counties of Alameda, San Diego, San Francisco, Sonoma, and Yolo.

THE NEED FOR THE BILL

While Prop. 64 included provisions that will either reduce or expunge hundreds of thousands of convictions, the majority of eligible individuals have not gone through the process of petitioning the courts, meaning thousands of Californians still live with convictions that could be changed on their records. Advocates state that many people are unaware of the newly created opportunity to change their records, are unsure of how to navigate the process on their own, or do not have access to free legal resources to engage in the process.

Adjusting records could have a significant impact on peoples' lives. Felonies and misdemeanors create thousands of barriers to employment, housing, public benefits and more. Many low-income communities and people of color have been disproportionally criminalized by the drug war and have had to live with the ramifications. Now that California has legalized adult-use cannabis, the state should be doing all it can to provide people with the relief they deserve and are legally entitled.

SOLUTION

AB 1793 allows for cannabis-related offenses to be automatically removed or reduced from a person's record as long as they meet the criteria established by Prop. 64. AB 1793 will offer almost one million people negatively impacted by the drug war a chance to reclaim their lives.

Specifically, AB 1793

- Requires the State Department of Justice to review its records in the state database by July 1, 2019 to identify past cannabis convictions potentially eligible for resentencing or expungement under Proposition 64.

- Requires the Department to notify the courts of all cases eligible within their jurisdiction.
- Requires the courts to notify the prosecution, allowing them 30 days to review and challenge the resentencing or expungement if the person does not meet the eligibility criteria or presents an unreasonable risk to public safety.
- If no challenge, AB 1793 requires the court to automatically resentence or expunge the conviction.
- Requires the Department to modify the state database to reflect the resentencing or expungement within 30 days and to give notice to the qualified person.
- AB 1793 continues to allow the option under current law for a person to petition for resentencing and expungement.

SUPPORT
Drug Policy Alliance
California Growers Association
California National Organization for the Reform of Marijuana Laws (CA NORML)
Los Angeles Regional Reentry Partnership
WeDrop

CONTACT
Viviana Becerra
Legislative Director
Office of Assemblymember Rob Bonta
Email: Viviana.Becerra@asm.ca.gov
Phone: 916-319-2018

Agenda Item No. 4(D)
Attachment

AMENDED IN ASSEMBLY APRIL 12, 2018

AMENDED IN ASSEMBLY MARCH 22, 2018

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL No. 1793

Introduced by Assembly Member Bonta
(Principal coauthors: Senators Skinner and Wiener)
(Coauthor: Assembly Member Quirk)

January 9, 2018

An act to add Section 11361.9 to the Health and Safety Code, relating to cannabis.

LEGISLATIVE COUNSEL'S DIGEST

AB 1793, as amended, Bonta. Cannabis convictions: resentencing.

Existing law, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), enacted by the voters at the November 8, 2016, statewide general election, regulates the cultivation, distribution, and use of cannabis for nonmedical purposes by individuals 21 years of age and older. Under AUMA, a person 21 years of age or older may, among other things, possess, process, transport, purchase, obtain, or give away, as specified, up to 28.5 grams of cannabis and up to 8 grams of concentrated cannabis. Existing law authorizes a person to petition for the ~~recall and resentencing~~ *recall or dismissal of a sentence, dismissal and sealing of a conviction, or redesignation* of a conviction of an offense for which a lesser offense or no offense would be imposed under AUMA.

This bill would require the Department of Justice, before July 1, 2019, to review the records in the state summary criminal history information database and to identify past convictions that are potentially eligible for ~~resentencing or dismissal~~ *recall or dismissal of sentence, dismissal and sealing, or redesignation* pursuant to AUMA. The bill would require the department to notify the courts of all cases in their jurisdiction that are eligible for ~~resentencing or dismissal.~~ *recall or dismissal of a sentence, dismissal and sealing, or redesignation.* The bill would require the courts to notify the prosecution of all cases under review and would authorize the prosecution to challenge the ~~resentencing or dismissal~~ *resentencing, dismissal and sealing, or redesignation* if the person does not meet the eligibility requirements or presents an unreasonable risk to public safety. The bill would require the court to automatically ~~resentence~~ *reduce* or dismiss the conviction pursuant to AUMA if there is no challenge. The bill would require the department to modify the state summary criminal history information database in conformance with the ~~resentencing or dismissal~~ *recall or dismissal of sentence, dismissal and sealing, or redesignation* within 30 days and to give specified notifications to the eligible person.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 11361.9 is added to the Health and Safety Code, to read:

11361.9. (a) On or before July 1, 2019, the Department of Justice shall review the records in the state summary criminal history information database and shall identify past convictions that are potentially eligible for ~~resentencing or dismissal~~ *recall or dismissal of sentence, dismissal and sealing, or redesignation* pursuant to Section 11361.8. The department shall notify the superior courts of all cases in their jurisdiction that are eligible for ~~resentencing or dismissal~~ *recall or dismissal of sentence, dismissal and sealing, or redesignation* and shall notify the person whose conviction is being considered.

(b) A court that receives notice pursuant to subdivision (a) shall notify the prosecution in all cases under review that the conviction is being reviewed for ~~resentencing or dismissal.~~ *recall or dismissal of sentence, dismissal and sealing, or redesignation.* The prosecution shall have 30 days from receipt of notice to review the case and determine whether to challenge the ~~resentencing or~~

~~dismissal.~~ *recall or dismissal of sentence, dismissal and sealing, or redesignation.*

~~(c) (1) The prosecution may challenge the resentencing or dismissal when the person does not meet the criteria established in Section 11361.8 or presents an unreasonable risk to public safety. When challenging the resentencing or dismissal, the prosecution shall notify the court and the department and shall state the reasons for that challenge. If the resentencing or dismissal is challenged, the court shall review the case pursuant to the provisions of Section 11361.8.~~

(c) (1) The prosecution may challenge the resentencing of a person pursuant to this section when the person does not meet the criteria established in Section 11361.8 or presents an unreasonable risk to public safety.

(2) The prosecution may challenge the dismissal and sealing or redesignation of a person pursuant to this section who has completed his or her sentence for a conviction when the person does not meet the criteria established in Section 11361.8.

~~(2)~~

(3) The department, when it receives notice that a resentencing or dismissal is being challenged pursuant to paragraph ~~(1),~~ *(1) or (2),* shall notify the eligible person.

(d) If the prosecution does not challenge the ~~resentencing or dismissal~~ *recall or dismissal of sentence, dismissal and sealing, or redesignation* within 30 days after receiving notice, the court shall reduce or dismiss the conviction pursuant to Section 11361.8.

(e) The court shall notify the department of the ~~resentencing or dismissal~~ *recall or dismissal of sentence, dismissal and sealing, or redesignation* and the department shall modify the state summary criminal history information database accordingly. The department shall make the changes and notify the person whose record has been modified within 30 days.

O

California LEGISLATIVE INFORMATION

AB-1793 Cannabis convictions: resentencing. (2017-2018)

Senate:

Assembly: 1st Cmt

Bill Status	
Measure:	AB-1793
Lead Authors:	Bonta (A)
Principal Coauthors:	Skinner (S) , Wiener (S)
Coauthors:	Quirk (A)
Topic:	Cannabis convictions: resentencing.
31st Day in Print:	02/09/18
Title:	An act to add Section 11361.9 to the Health and Safety Code, relating to cannabis.
House Location:	Assembly
Last Amended Date:	04/12/18
Committee Location:	Asm Appropriations
Voting Committee Location:	Asm Public Safety
Committee Action Date:	04/17/18
Committee Motion:	Do pass and be re-referred to the Committee on [Appropriations]
Committee Vote Result:	(PASS) »» Ayes: 6; Noes: 0; Abstain: 1;

Type of Measure
Active Bill - In Committee Process
Majority Vote Required
Non-Appropriation
Fiscal Committee
Non-State-Mandated Local Program
Non-Urgency
Non-Tax levy

Last 5 History Actions

Date	**Action**
04/17/18	From committee: Do pass and re-refer to Com. on APPR. (Ayes 6. Noes 0.) (April 17). Re-referred to Com. on APPR.
04/16/18	Re-referred to Com. on PUB. S.
04/12/18	From committee chair, with author's amendments: Amend, and re-refer to Com. on PUB. S. Read second time and amended.
04/02/18	Re-referred to Com. on PUB. S.
03/22/18	From committee chair, with author's amendments: Amend, and re-refer to Com. on PUB. S. Read second time and amended.

AB-1793 Cannabis convictions: resentencing. (2017-2018)

Date	Action
04/17/18	From committee: Do pass and re-refer to Com. on APPR. (Ayes 6. Noes 0.) (April 17). Re-referred to Com. on APPR.
04/16/18	Re-referred to Com. on PUB. S.
04/12/18	From committee chair, with author's amendments: Amend, and re-refer to Com. on PUB. S. Read second time and amended.
04/02/18	Re-referred to Com. on PUB. S.
03/22/18	From committee chair, with author's amendments: Amend, and re-refer to Com. on PUB. S. Read second time and amended.
03/22/18	Referred to Com. on PUB. S.
01/10/18	From printer. May be heard in committee February 9.
01/09/18	Read first time. To print.

Date of Hearing: April 17, 2018
Counsel: Liah Burnley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1793 (Bonta) – As Amended April 12, 2018

SUMMARY: Requires the court to automatically resentence, redesignate, or dismiss cannabis-related convictions. Specifically, **this bill**:

1) States that on or before July 1, 2019, the Department of Justice (DOJ) shall review the records in the state summary criminal history information database to identify past cannabis-related convictions, and notify the superior courts of all cases in their jurisdiction that are eligible for resenting or dismissal.

2) Requires the DOJ to notify the person whose conviction is being considered for resenting or dismissal.

3) Provides that a court, when it receives notice, to notify the prosecution that the conviction is being reviewed for resentencing or dismissal.

4) States that the prosecution may challenge resentencing or dismissal if a person does not meet specified criteria, or presents an unreasonable risk to public safety.

5) States that the prosecution has 30 days from the receipt of notice to review the case and determine whether to challenge the resentencing or dismissal.

6) Requires the prosecutor to notify the court and the DOJ of its challenge and reasons for its challenge.

7) Provides that the court must review a case if the prosecutor challenges the resentencing, redesignation, or dismal.

8) Requires the DOJ to notify the eligible person when it receives notice that resentencing, redesignation, or dismal is being challenged by the prosecution.

9) Provides that if the prosecution does not challenge resentencing, redesignation, or dismal within 30 days of receiving notice, the court shall reduce, redesignate, or dismiss the conviction.

10) States that the court must notify the DOJ of the resentencing, redesignation, or dismal and the DOJ must modify the state summary criminal history information database accordingly.

11) Requires the DOJ to notify the person whose record has been modified within 30 days.

EXISTING LAW:

1) Allows a person currently serving a sentence for a cannabis-related conviction, who would not have been guilty of an offense, or who would have been guilty of a lesser offense under the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), to petition for a recall or dismissal of sentence. (Health & Saf. Code, § 11361.8 subd. (a).)

2) Provides that the court shall grant the petition to recall the sentence or dismiss the sentence because it is legally invalid unless the court determines that granting the petition would pose an unreasonable risk of danger to public safety. (Health & Saf. Code, § 11361.8 subd. (b).)

3) Defines an "unreasonable risk of danger to public safety" as an unreasonable risk that the petitioner will commit a violent felony within the meaning of Section 667. (Health & Saf. Code, § 11361.8 subd. (b)(2).)

4) States that a person who is serving a sentence and is resentenced shall be given credit for any time already served and shall be subject to supervision for one year following completion of his or her time in custody, or whatever supervision time he or she would have otherwise been subject to after release, whichever is shorter, unless the court, in its discretion, releases the person from supervision. (Health & Saf. Code, § 11361.8 subd. (c).)

5) States that under no circumstances may resentence result in the imposition of a term longer than the original sentence or the reinstatement of charges dismissed pursuant to a negotiated plea agreement. (Health & Saf. Code, § 11361.8 subd. (d).)

6) Provides that a person who has completed a sentence for a cannabis-related conviction, and would not have been guilty of an offense or would have been guilty of a lesser offense under the AUMA, may file an application to have the conviction dismissed and sealed because the prior conviction is now legally invalid or redesignated as a misdemeanor or infraction, as specified. (Health & Saf Code, § 11361.8 subd. (e).)

7) States that the court shall redesignate the conviction as a misdemeanor or infraction or dismiss and seal the conviction as legally invalid as now established under the AUMA. (Health & Safety Code, § 11361.8 subd. (f).)

8) Provides that unless requested by the applicant, no hearing is necessary to grant or deny an application filed for dismissal or redesignation. (Health & Safety Code, § 11361.8 subd. (g).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 1793 creates a simpler and expedited pathway for Californians to turn the page by having certain criminal convictions for cannabis-related offenses automatically removed from or reduced on their records. Proposition 64 – which voters passed with 57 percent approval in November 2016 – contained provisions that not only prospectively reduced or eliminated many cannabis law violations, but made those changes retroactive. This means people with felonies or

misdemeanors for cannabis-related offenses that were changed by Proposition 64 are now legally entitled to petition the courts to expunge or reduce those convictions.

"AB 1793 will help Californians take advantage of this opportunity to clear their own records by removing barriers and streamlining the process. AB 1793 will require automatic expungement of these prior criminal convictions and create a path that is less onerous on the individual.

"AB 1793 will give people the fresh start to which they are legally entitled and allow them to move on with their lives. The drug war unjustly and disproportionately targeted young people of color. Long after paying their debt to society, individuals are burdened by the collateral consequences of having a criminal conviction, which may permanently affect their ability to obtain employment, housing, and social services.

"The role of government should be to ease burdens and expedite the operation of law— not create unneeded obstacles, barriers and delay. This is a practical, common sense bill. These individuals are legally-entitled to expungement or reduction and a fresh start. It should be implemented without unnecessary delay or burden."

2) **Cannabis-Related Convictions Post-Proposition 64:** Proposition 64, the Adult Use of Marijuana Act, was a 2016 statewide ballot initiative that, among other regulations, legalized the possession, use, and cultivation of marijuana for people over age 21. Proposition 64 also reduced the penalties for possession, cultivation of cannabis and possession with the intent to sale, and transportation for sale. The changes to the criminal penalties for these offenses are as follows:

Offense	Old Penalty	Current Penalty
Possession	Possession of concentrated cannabis was a misdemeanor, punishable by one year in jail, a $500 fine, or both.	Possession by persons under 18 years old is an infraction requiring drug education or community service.
	Possession of 28.5 grams or less of cannabis was a $100 infraction.	Possession of 28.5 grams or less of cannabis or eight grams or less of concentrated cannabis by persons age 18- 21 is a $100 infraction.
	Possession of more than 28.5 grams of cannabis by adults over 18 years old was a misdemeanor, punishable by $500, six months in jail, or both.	Possession of more than 28.5 grams of cannabis or eight grams of concentrated cannabis by adults over 18 years old is a misdemeanor, punishable by $500 or six months in jail, or both.
	Possession on the grounds of a K-12 school, of less than 28.5 grams of cannabis, by adults over 18, was a misdemeanor punishable by a fine of $250, or $500 and 10 days in jail for repeat offenses.	Possession on the grounds of a K-12 school, of less than 28.5 grams of cannabis or eight grams of concentrated cannabis, by adults over 18 is a misdemeanor punishable by a fine of $250, or $500 and 10 days in jail for repeat offenses. (Health & Saf. Code, § 11357.)

	Possession on the grounds of a K-12 school, of less than 28.5 grams of cannabis, by minors under 18 was a misdemeanor punishable by a fine of $250, or $500 and commitment to a juvenile hall or camp.	
Cultivation	Cultivation was a felony, punishable by imprisonment pursuant to subdivision (h) of Section 1170.	Cultivation by persons under 18 years old is an infraction requiring drug education or community service. Cultivation of six plants or less by persons age 18-21 is a $100 infraction. Cultivation of more than six plants is a misdemeanor punishable by $500, 6 months in jail, or both. Felony enhancements are permitted for repeat offenders and offenders with serious or violent prior convictions. (Health & Saf. Code, § 11358.)
Possession for Sale	Possession for sale was a felony punishable by imprisonment pursuant to subdivision (h) of Section 1170.	Possession for sale by persons under 18 years old is an infraction requiring drug education or community service. Possession for sale by persons over 18 years old is a misdemeanor punishable by $500 or 6 months in jail, or both. Felony enhancements are permitted for repeat offenders, offenders with serious or violent prior convictions, and sale to a minor under18 years old. (Health & Saf. Code, § 11359.)
Transport for Sale	Transportation for sale was a felony punishable by imprisonment pursuant to subdivision (h) of Section 1170. Transport for sale of not more than 28.5 grams of cannabis, other than concentrated cannabis, was a misdemeanor, punishable by a $100 fine.	Transport for sale by persons under 18 years old is an infraction requiring drug education or community service. Transport for sale of 28.5 grams of cannabis or less, other than concentrated cannabis, is a $100 infraction. Transport for sale is a misdemeanor punishable by $500 or 6 months in jail, or both. Felony enhancements are permitted for importing, exporting, or transporting for sale more than one ounce of marijuana or four grams of concentrate. (Health & Saf. Code, § 11360.)

Anyone who was convicted of one of the above-listed offenses prior to the enactment of the AUMA is eligible to petition for resentencing and/or dismissal or apply for redesignation. (Health & Safety Code, § 11361.8.)

It is estimated that between 1915 and 2016, California law enforcement made 2,756,778 cannabis arrests. (http://sfdistrictattorney.org/district-attorney-george-gascón-applies-proposition-64-retroactively-every-marijuana-case-1975.) According to a report by the Drug Policy Alliance, there were approximately 500,000 people arrested for cannabis felonies and misdemeanors between 2006-2015. (http://www.drugpolicy.org/news/2016/08/its-not-legal-yet-nearly-500000-marijuana-arrests-california-last-decade.) As of September 2017, only 4,885 people petitioned to the courts to have their records modified. (http://www.latimes.com/local/lanow/la-me-san-francisco-marijuana-20180131-story.html.)

a) **Resentencing**:[1] For resentencing, a person must be currently serving a sentence for one of the above-mentioned cannabis offenses, and would not have been guilty of an offense, or would have been guilty of a lesser offense, had the AUMA been in effect at the time of the offense. Resentencing may depend on factors such as the type and quantity of cannabis involved, the date of the offense, the punishment imposed, and the age of the person at the time of the offense. Though the AUMA does not define "currently serving a sentence" is has been interpreted to mean anyone serving a term of imprisonment in county jail, mandatory supervision, parole, postrelease community supervision, and probation.

   There is a four step process for resentencing. (Health & Safety Code, § 11361.8 subd. (a)-(d).) First, the individual seeking resentencing must the file a petition; second the court will conduct an initial screening for eligibility; third the court will hold a qualification hearing where the merits of the petition are considered, and; fourth, the court will resentence the petitioner. Resentencing must be granted if the court finds that the petitioner is eligible, unless there is an unreasonable risk that the person will commit a violent felony. Notably, the court is required to presume the petitioner is eligible unless a prosecutor opposes the petition and proves with clear and convincing evidence that the offense is not eligible for resentencing or if resentencing poses an unreasonable risk of danger to public safety.

   If a petition for resentencing is granted, one of three things will occur: the court will impose a new term of custody or supervision as authorized by the AUMA, redesignate an offense that was previously a felony but now a misdemeanor or infraction, or dismiss a sentence for a conviction that is no longer a crime.

b) **Redesignation**: Individuals who have already completed a sentence for a cannabis-related conviction can apply for redesignation and/or dismissal. Individuals can have their cannabis-related felony conviction reduced to a misdemeanor or infraction, or dismissed

[1] For a more detailed information on the Proposition 64's resentencing, redesignation, and dismissal procedures, see Retired Judge Richard Couzens and Presiding Court of Appeal Justice Tricia A. Bigelow's memorandum on propositions 64's resentencing procedures, available at http://www.courts.ca.gov/documents/prop64-Memo-20161110.pdf

and sealed if the conduct underlying the conviction is no longer a crime. Much like resentencing, redesignation requires a four step process that begins with the individual filing out an application, then the court will screen the application for eligibility and hold a hearing, if necessary and requested by the applicant. If the applicant is eligible for relief, the court must redesignate or dismiss and seal the conviction. (Health & Safety Code, § 11361.8 subd. (a)- (d).)

Proposition 64 offers millions of individuals the opportunity to clear their records of convictions for conduct that California no longer deems criminal. However, many individuals may be unaware of this newly created opportunity, or lack the resources to navigate the record change process on their own. Indeed, hiring an attorney to help expunge a misdemeanor marijuana conviction could cost an individual $2,500 and $3,750 to reduce a marijuana felony to a misdemeanor. (https://convictionfree.com/expungement_fees/)

3) **Local Solutions**: Proposition 64 modeled Proposition 47's redesignation and resentencing provisions, which allows for reclassification and resentencing of wobbler offenses including simple drug possession, petty theft, shoplifting, forgery, and writing a bad check. As many as 1 million people were estimated to be eligible for reclassification under Proposition 47. (http://myprop47.org/reclassification/) However, the barriers to petitioning the court for reclassification are evident: as of March 2017, only a quarter of eligible people have petitioned the court for resentencing. (http://myprop47.org/resources/second-chances-systems-change-proposition-47-changing-california/) The barriers to petition the court for resentencing may affect the opportunities that these individuals have, stifling opportunities to pursue education employment, housing, and more. Unlike Proposition 47, which reduced penalties for low-level offenses, Californian's went a step further and decriminalized most cannabis-related offenses when enacting Proposition 64. Thus, the barriers preventing people from petitioning the court for resentencing and redesignation are arguably more important to eliminate in cannabis-related cases.

   In recognizing the barriers to resenting and redesignation, some district attorney's offices have taken the lead on undoing the damage of the failed war on drugs. The San Francisco District Attorney's Office will dismiss and seal 3,038 misdemeanor convictions and will review 4,940 felony convictions to consider reducing them to misdemeanors, with no action necessary from those who were convicted. San Diego District Attorney's Office has identified 4,700 cases, both felonies and misdemeanors, that it will ask the court and DOJ to dismiss or redesignate. (http://www.sandiegouniontribune.com/news/marijuana/sd-me-pot-revocations-20180201-story.html) However, the majority of California's 58 district attorneys, including in Los Angeles—with more than 40,000 cannabis felony cases alone since 1993—have made no indication that they will review their marijuana charges. The Legislature should consider whether this relief should be also afforded to all eligible Californians with a cannabis-related conviction record.

   This bill would require the DOJ to search its criminal records database to identify all Californians who might qualify for relief, and provide this information to the courts. After a review of the records, the court can modify the record to reflect the appropriate sentence under current law. This bill also requires that prosecutors be given notice and an opportunity to oppose a resentencing request where they believe that the former defendant either does not qualify or where resentencing might pose a danger to society.

4) **Immigration Considerations**: As the Supreme Court stated, "[d]eportation as a consequence of a criminal conviction has become an integral part of the penalty for a criminal conviction for noncitizens, sometimes the most important part." (*Padilla v. Kentucky* (2010) 559 U.S. 356, 364.) For non-citizens, reducing or dismissing a criminal conviction is a powerful tool to obtain citizenship benefits and avoid deportation. For example, reducing a drug possession conviction from felony to a misdemeanor could help an individual qualify for or potential future Deferred Action for Childhood Arrivals (DACA) legislation.

   Sentence reductions and dismissals could also help an individual avoid deportation. Under federal immigration law, a non-citizen is deportable for a single conviction of a crime committed within five years of the first admission, if the offense has a maximum possible sentence of one year or more. (8 USC § 1227, subd., (a)(2)(A).) In California, felony drug convictions have a possible sentence of one year or more. A misdemeanor conviction has a maximum possible sentence of 364 days. (Pen. Code § 18.5.) The Legislature intentionally limited the maximum sentence for misdemeanor convictions to 364 days so that immigrants can avoid immigration consequences for misdemeanor convictions. As stated in the Assembly Public Safety Committee Analysis, "[t]his … will ensure, consistent with federal law and intent, legal residents are not deported from the state and torn away from their families for minor crimes." (Assem. Com. on Public Safety, Analysis on SB 1310, p. 2.)

   Many individuals could face severe immigration consequences if they have a felony conviction. However, a court order that specifies that a conviction has been reduced or dismissed, *specifically because the conviction was "legally invalid,"* will help an individual with immigration matters. This is true even if the sentence reduction is sought solely for immigration purposes. (*See Matter of Cota-Vargas* (2005) 23 I&N Dec. 849 BIA.) Proposition 64 requires redesignation and dismissal orders to state "the court shall grant the petition to recall the sentence or dismiss the sentence because it is legally invalid…" (Health & Safe. Code, § 11361.8 subd. (d).) As such, this bill would ensure that non-citizens, many of whom may be hesitant to initiate contact with the district attorney's office, DOJ, and courts to apply for a dismissal or a sentence reduction, are also able to obtain the benefits of this relief.

5) **Promoting Fairness and Parity**: As explained in California Conference of Bar Association's Resolution 14-01-2017, proposed by the Bay Area Lawyers for Individual Freedom: **"**Cannabis was only recently legalized and many of the legalization movement's most ardent advocates were convicted of felonies during the pursuit of legalization. The modern-day cannabis legalization movement is rooted in the AIDS epidemic, which decimated the LGBT community in the early 80s." Moreover, "[s]tatistics show that minorities, most notably African Americans, have been unjustly affected by the war on drugs. These communities have suffered for years from disproportionate arrest rates, which take a toll on their families, community relations, and personal lives."

   Failure to redesignate, resentence, and dismiss these conviction records "overlooks the sacrifices of people members of the LGBT community and punishes them for their early humanitarian efforts" and furthers "inequity by allowing for increased penalties to be enforced against certain historically disproportionately impacted communities and only serves to further the United States' mass over-incarceration problem, despite the fact that the underlying harm for this victimless crime is no different, regardless of one's status as a prior felon or not. (http://calconference.org/html/wp-content/uploads/2017/08/Series-14-Health-Safety.pdf.)

6) **Marijuana Justice Act of 2018**: A federal analogue to this bill, HR 4815, the "Marijuana Justice Act of 2018" (Representative Barbara Lee, D-CA 13), which would direct federal courts to expunge all previous federal convictions for marijuana use or possession, is currently pending in congress. The Act also aims to remove Marijuana from the Controlled Substance Act.

7) **Arguments in Support**:

   a) Writing in support, the *California Growers Association* states, "When it comes correcting injustice, it is not enough to simply change the law moving forward. We must also work actively to ensure that the damage done by that injustice historically is corrected. The intent of your legislation—to automatically expunge cannabis convictions that are no longer a crime—is consistent with this principle."

   b) According to the *Conference of California Bar Associations*, "A criminal conviction – particularly a felony conviction – can prevent an individual from obtaining employment, getting housing, obtaining a professional license, etc. If the voters have decided that the acts upon which those convictions are based are no longer criminal, and the convictions reduced or erased, we should do every reasonable thing to facilitate and expedite the process. This is particularly true of cannabis-related crimes, which statistics show have been prosecuted with most vigor against people of color and the poor, whose communities have suffered for years from disproportionate arrest rates that take a toll on their families, community relations, and personal lives. And it also is true of the LGBT community, whose members were disproportionately impacted by the War on Drugs during the AIDS epidemic of the 1980s."

   c) *California NORML* states, "In our experience, the majority of prior offenders are unaware of their rights to resentencing under AUMA. Only a few thousand resentencing requests have been processed so far. In addition, our attorneys report that many misdemeanor possession defendants whose records were supposed to be expunged after two years under prior law (HSC 11361.5) never actually had their records cleared."

8) **Argument in Opposition**: According to the *California Police Chiefs Association*, "Under the Adult Use of Marijuana Act, better known as Prop. 64, individuals with cannabis convictions are legally entitled to petition the courts to expunge or reduce their convictions as it relates to cannabis. The author states that many individuals with cannabis convictions are unaware of the opportunity to change their records; however, automatically removing or reducing an individual's cannabis conviction, regardless if they meet the criteria established by Prop. 64, is not the solution.

   "While we recognize that some of the convictions are misdemeanors, such as possession of small amounts of cannabis, we also recognize that some of these offenses are felonies such as the sale of cannabis and the transportation of cannabis for sale. Our members feel these types of felonies still pose a risk to public safety and should not be eligible for automatic expungement or reduction."

9) **Related Legislation**:

a) AB 2599 (Holden), of the 2017-2018 Legislative Session, would require law enforcement agencies and probation departments to increase awareness and access to the arrest record sealing and expungement process. AB 2599 is pending in Assembly Public Safety Committee.

b) AB 2513 (Jones-Sawyer), of the 2017-2018 Legislative Session, would require local law enforcement agencies to purge information in narcotics registries. AB 2513 is pending in Assembly Appropriations Committee.

c) AB 2438 (Ting), of the 2017-2018 Legislative Session, would require automatic expungements of certain convictions, as specified. AB 2438 is pending in Assembly Appropriations Committee.

d) AB 2687 (Gonzales Fletcher), of the 2017-2018 Legislative Session, would clarify the timing and procedural requirements of motions for post-conviction relief that are based on either a legal error regarding a defendant's comprehension of immigration consequences stemming from his or her conviction, or newly discovered evidence of actual innocence. AB 2687 is pending in Assembly Appropriations Committee.

e) AJR 27 (Low), of the 2017-2018 Legislative Session, urges the United States Department of Justice not to direct its enforcement priorities towards California's lawfully and closely regulated cannabis industry. AJR 27 is pending in Assembly Public Safety Committee.

10) **Prior Legislation**:

a) AB 813 (Gonzalez Fletcher) Chapter 739, Statutes of 2016 created a mechanism of post-conviction relief for a person to vacate a conviction or sentence based on error damaging his or her ability to meaningfully understand, defend against, or knowingly accept the immigration consequences of the conviction.

b) SB 124 (Lara), Chapter 789, Statutes of 2016, authorizes a person who was sentenced to a term of one year prior to January 1, 2015, to submit an application to the trial court to have the term of the sentence reduced to the maximum term of 364 days.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union of California
California Cannabis Industry Association
California NORML
California Growers Association
California Public Defender's Association
Center on Juvenile and Criminal Justice
Conference of California Bar Associations
Drug Policy Alliance
Ella Baker Center for Human Rights

Los Angeles Regional Reentry Partnership
National Association of Social Workers – California Chapter
WeDrop

Opposition

California Police Chiefs Association

Analysis Prepared by: Liah Burnley / PUB. S. / (916) 319-3744

AGENDA BILL
Agenda Item No. 6(A)

Date: May 1, 2018

To: El Cerrito City Council

From: Aissia Ashoori, Affordable Housing Analyst
Margaret Kavanaugh-Lynch, Development Services Manager
Melanie Mintz, Community Development Director

Subject: Consider creation of Chapter 19.30 of the El Cerrito Municipal Code to establish Inclusionary Zoning

ACTION REQUESTED

Conduct a public hearing and upon conclusion, introduce by title and waive any further reading of an Ordinance of the City of El Cerrito adding Chapter 19.30 to the El Cerrito Municipal Code to require the inclusion of affordable units within new residential development projects and allow the payment of a fee in lieu of providing units. Exempt from CEQA. .

BACKGROUND

The Bay Area is experiencing a housing crisis and as a result, the demand for affordable housing continues to grow both locally and throughout the State. Many households are spending more than one-third of their income on rent, forcing many to move farther away from their jobs, compromising their quality of life and a creating a disconnection from their communities. In order to develop a proactive approach to addressing the need for affordable housing in El Cerrito, the *El Cerrito Affordable Housing Strategy* (*Strategy)* was adopted by City Council in August 2017. The *Strategy* evaluated the City's existing affordable housing programs and resources and identified programs and policies that could be advanced in the near-term and medium-term to meet the City's housing goals consistent with the City's *2015 Housing Element* and *San Pablo Avenue Specific Plan*. One of the affordable housing strategies identified included establishing a new inclusionary zoning policy to ensure that private market-rate development was making a reasonable and feasible contribution towards addressing the need for additional affordable housing. With funding from a MTC Priority Development Area Implementation Grant, City Council awarded a professional services agreement with Keyser Marston Associates (KMA) (Resolution 2017-61) to conduct a financial feasibility analysis to evaluate residential development economics in El Cerrito and test the feasibility of establishing affordable housing requirements, including on-site requirements and an in-lieu option, and to perform an on-site cost equivalency analysis to assist in understanding the cost associated with complying with on-site requirements at various income levels. Inclusionary Zoning is just one of the tools that local government can use to create affordable housing units. It differs from many of the other tools, which require public subsidy, and as such, the policy must be informed by development economics.

For the first quarter of this year, City staff worked with KMA to identify market rate residential prototypes that El Cerrito is likely to see built over the next 5 years. KMA used market data of rents and sales prices along with land values to then analyze the impact that affordability requirements would have on development costs. The findings from this study are included in the attached Inclusionary Policy Analysis (Attachment 2).

Staff would like to highlight that the *Strategy* identified conducting a Nexus Study as a means to collect impact fees for rental units, but as a result of the CA Housing Package (15 bills total) signed by Governor Brown in 2017, this alternative method to collect fees is now no longer required. The court ruled in 2009, *Palmer/Sixth Street Properties L.P. v. City of Los Angeles,* that regulating rents for units built post-1995 violated the Costa Hawkins Act. The Governor signed AB 1505 “Palmer Fix” in late 2017 which restored power to local municipalities to exercise inclusionary zoning requirements on rental projects. This was a milestone for cities and counties across the State as it now allows local jurisdictions to require on-site inclusionary rental units rather than imposing an impact fee.

During preparation of the Ordinance, staff held a study session with the Planning Commission on March 21, 2018 to discuss the draft findings of the Inclusionary Zoning financial feasibility analysis, policy options and to received direction and input towards development of the Ordinance before the Council tonight.

The draft Ordinance and final KMA report were presented to the Planning Commission on April 18, The Planning Commission recommended the City Council move forward with the draft Ordinance, with some changes descried below and adopted Resolution PC18-04.

As a reminder, the *Affordable Housing Strategy* identified four policy pillars, with associated strategies, action items and timelines, to achieve the City’s affordable housing goals. These include:

A. Leverage Private Development to Address Affordable Housing Needs
B. Reduce the Risk of Displacement
C. Encourage Development of “Missing Middle Housing” that Serves Low- and Moderate-Income Households
D. Increase Local Funding to Continue Supporting Development of Affordable and Special Needs Housing

The proposed Inclusionary Zoning Ordinance is a strategy identified in *Policy Pillar A: Leverage Private Development to Address Affordable Housing Needs*. It also contributes, through the option of payment of in-lieu fees, to Pillar D. To get the policy in place as soon as possible, and to capture the next round of development in the Specific Plan Area, the policy was identified for near-term (e.g. less than 1-year from the August 2017 Affordable Strategy adoption) action. Staff will return soon to further other action items identified in Immediate need, including to address demolition of existing housing units (Strategy 4-2) and explore potential tenant protection policies (Strategy 6-1).

Regional Housing Needs Allocation (RHNA)

The Regional Housing Needs Allocation is a state-mandated process for identifying the total number of housing units (by affordability level) that each jurisdiction must accommodate in its Housing Element. For the 2015-2022 reporting period, El Cerrito is tasked with creating 398 new housing units, at different affordability levels as shown below in *Table 1*. As of March 16, 2018, the City is on pace to meet its 2015-2022 numbers. However, it is worth highlighting that our low and moderate-income categories will be our largest hurdle, in this cycle. Recently constructed and pipeline projects, consisting of Eden Housing's Hana Gardens (under construction), Resource for Community Development's Ohlone Gardens (recently constructed) and BRIDGE Housing/Mayfair (entitled; seeking funding) all have provided, or will provide, very-low and low-income units. The adoption of this Ordinance will increase the supply of low and moderate-income units, provide in-lieu funding to leverage additional funding for very-low and low-income units and facilitate us to achieve housing goals for all income levels.

Table 1: Regional Housing Needs Allocation (RHNA) for 2015-2022, and Remaining Need (Units), As of: March 16, 2018

	Very Low (0-50% AMI)	*Low (51-80% AMI)*	*Moderate (81-120% AMI)*	*Above Moderate (over 120% AMI)*	*Total*
2015 – 2022 RHNA	100	63	69	166	398
Permitted and/or Built Units	62	6	13	131	212
Percent of Need Achieved	62%	9.5%	19%	79%	53%
Current Remaining Need	**38**	**57**	**56**	**35**	**186**
*Proposed	10	0	0	136	146
*Entitled	37	30	0	156	223
*Projected Remaining Need	-9	27	56	-257	-183
**Note: RHNA numbers are calculated based upon issuance of building permits. Proposed and entitled figures are estimates pending the issuance of building permits.*					

ANALYSIS

Project Description

The *Inclusionary Policy Analysis Report* (Attachment 2) analyzes various development economics that impact affordable housing requirements and provides recommendations for consideration. It is important to understand that inclusionary housing does not receive public subsidy and, therefore, development of the Ordinance requirements must take into consideration market economics to be successful. This tool is unlike the options available to non-profit or for-project affordable housing developers wherein the project requires multilayering of financing from many State and Federal funding sources, including grants, local set-asides and tax credit financing. The analysis is broken down into the following sections and will be discussed further:

1. Section I, Introduction.
2. Section II, Findings and Recommendations, presents a discussion of KMA's findings and recommendations for the City's inclusionary housing policies.
3. Section III, Residential Market Survey and Prototypes, presents the market survey results and a discussion of the residential prototypes developed for the financial feasibility analysis.
4. Section IV, Financial Feasibility Analysis, presents the findings, methodology, and sources for the financial feasibility analysis.
5. Section V, Affordable Housing Requirements in Other Jurisdictions, presents a summary of the current requirements in other nearby cities.

Project Summary

Based on the financial feasibility analysis, the findings contained in the Report are as follows:

- Rental Projects could support an on-site obligation of up to 5% Low and 5% at Moderate
- For-sale Projects could support up to 12% at Moderate on-site obligation
- Rental Projects could support an in-lieu fee of $17 per square foot, calculated in the manner stated in the Ordinance
- For-sale Projects could support an in-lieu fee of $20 per square foot, calculated in the manner stated in the Ordinance

Planning Commission Recommendations

On April 18, 2018 staff received feedback from the Planning Commission. Overall, the Planning Commission and public speakers were enthusiastic about the Ordinance and encouraged moving forward as quickly as possible. Recommendations that were proposed and considered include:

- Appeals: An Affordable Housing Plan is required to be submitted for all new residential development to make a determination as to how each project will satisfy their affordable housing requirement. It is subject to review and approval by the Community Development Director. Commissioners proposed the Planning Commission as the appeal body for such process. However, after consulting with the City Attorney, it has been determined that the Planning Commission decision would be appealable to City Council which would result in lengthy appeal processes and stall the progress of the project. Given this, staff will refer all appeals directly to City Council.

- Monitoring Fees: Commissioners acknowledge that the adoption of such an Ordinance will require staff time as our housing portfolio grows. To budget for this, staff will account for administration fees based on the time needed to perform the duties of managing an inclusionary program. Staff will monitor the hours spent going forward to determine the reasonable administration costs to be updated on an annual basis and consider introducing such a fee during next year's Master Fee Schedule adoption process.

Other key items of interest to the Commission, that staff is not recommending move forward at this time are listed below:

<u>Affordability Term:</u> Both staff and the Planning Commission have been interested in extending the Affordability Terms beyond the proposed 45 or 55-year time limits. Due to complex issues around financing, consultation with the City's Successor Agency counsel and others, it was determined to maintain the 45 and 55-year limit at this time. This will continue to be studied and may be revised in future updates.

<u>Smaller Projects:</u> The Planning Commission recommended including for-sale projects with less than 9 units and rental projects of less than 10 units. This was previously looked at by staff as well, however, consultation with the City Attorney has led staff to recommend only the number of units for which a whole unit can be provided. In order to apply to a lower threshold, a Nexus Study would need to be conducted so the fee can be collected as an Impact Fee, rather than through Inclusionary Zoning. Staff will monitor the number of projects within this threshold over the next 24-36 months to determine the actual impact of not having an Impact Fee for these projects. If it is determined that a Nexus Study is warranted, staff will recommend it for funding in a future budget.

Implementation Considerations

State Density Bonus Program: CA Government Code Section 65915 promotes the production of affordable housing in exchange for greater density over the local maximum allowable residential density standards, as well as for waivers or concessions. Per State Law, any Inclusionary Units provided on-site in compliance with the proposed Inclusionary Zoning Ordinance may be used to qualify for the State Density Bonus program. As a result, with implementation of Inclusionary Zoning, the City may receive more project applications that seek to utilize the State Density Bonus program. This could result in fewer Tier IV applications under the San Pablo Avenue Specific Plan and more applications for taller residential projects, or project applications seeking other concessions both inside and outside the Specific plan area

Monitoring Fee: Upon adoption of this Ordinance, the City's inclusionary housing stock will begin to grow and require ongoing program administration as part of our asset management. In the case of inclusionary rental units, the developer will be required to recertify households annually and submit a detailed monitoring report to the City for staff consideration. In the case of inclusionary for-sale units, city staff will be required to monitor owner-occupancy on an annual basis. At this time, staff does not have an estimate of hours needed to perform this task. However, the Ordinance does allow City

Council, by resolution, to establish administration fees. Staff will monitor the issue and may propose a fee in a future budget.

Draft Ordinance

As Inclusionary Zoning is allowed pursuant to the City's police power authority to protect the public health, safety and welfare of the community, the proposed *Inclusionary Zoning Ordinance* (Attachment 1) will be integrated into the City's Zoning Ordinance as a new chapter Part IV Regulations Applying in Some or All Districts, Chapter 19.30: Inclusionary Zoning Ordinance. The Ordinance will apply citywide, although the majority of its impact will be in the San Pablo Avenue Specific Plan area. The provisions of the Ordinance were developed based upon the Financial Feasibility Analysis, city goals and state law. The proposed elements of the Ordinance include:

Table 2: Proposed El Cerrito Inclusionary Zoning Ordinance- Summary Table

	For-sale Projects	*Rental Projects*
Applicability	All residential development applications not deemed complete by the Ordinance effective date.	All residential development applications not deemed complete by the Ordinance effective date.
Threshold	9 units	10 units
Exemptions	Accessory Dwelling Unit (ADU) < 9 units	< 10 units
Compliance Options	On-site	In-lieu fee or on-site
Set-aside	12%	10%
	For-sale Projects	*Rental Projects*
Affordability	Moderate income (80-120%)	5% low (up to 80% AMI) + 5% moderate-income
In-lieu Fee	$20.00 per square foot (for fractional units)	$17.00 per square foot - optional
Fractional Unit	≥ .5, provide unit < .5, pay fee	≥ .5, provide unit < .5, pay fee
Exempt	A residential development project that is entitled or with an application that has been deemed complete by the effective date of this Ordinance <u>AND</u> for which a building permit is issued within 2 years from their entitlement date.	
Sunset Provision	All projects that haven't been issued a building permit by June 2021.	

As previously noted, and noted in Attachment 2, the number of newly built projects in the City is currently minimal and establishing rent and sale comparables is challenging. Due to this, staff recommends that the inclusionary requirements set forth in the proposed Ordinance be revisited and new economic analysis be performed once we have a proven market and new comparables. The timeline for this ideally will occur 24-36 months after adoption, and subject to completion of developments currently approved or entitled. The adoption of this Ordinance is another step closer in delivering new affordable housing options that are aligned with our local and regional production goals.

STRATEGIC PLAN CONSIDERATIONS

The proposed development fulfills the City's Strategic Plan Goal C: Deepen a sense of place and community identity and specifically the strategy to promote strong neighborhoods and Goal B: Achieve long-term financial sustainability through the exploration of opportunities for public/private partnerships.

ENVIRONMENTAL CONSIDERATIONS

This action is exempt from the requirements of the California Environmental Quality Act pursuant to CEQA Guidelines Section 15061 (b)(3). The activity is covered by the general rule which exempts activities that can be seen with certainty to have no possibility for causing a significant effect on the environment. Any project that would implement inclusionary housing being constructed would be subject to its own review under the California Environmental Quality Act at the earliest possible time prior to approval.

FINANCIAL CONSIDERATIONS

The proposed Ordinance will set forth requirements for market-rate developers to satisfy their affordable housing obligations by providing inclusionary units on-site or through payment of in-lieu fees to the City's Housing Trust Fund. The funds deposited into the trust fund will be used to address the affordable housing needs identified in the *AH Strategy.* Implementation of the Ordinance will incur City time beyond permit fees in the form of monitoring. City staff will return with next year's Master Fee schedule to establish a monitoring fee.

LEGAL CONSIDERATIONS

The proposed Ordinance and recommended action has been reviewed by the City Attorney and all legal considerations have been addressed.

Reviewed by:

Scott Hanin
City Manager

Attachments:

1. Ordinance
2. Inclusionary Policy Analysis Report, Keyser Marston Associates

Agenda Item No. 6(A)

Attachment 1

ORDINANCE NO. 2018-XX

AN ORDINANCE OF THE CITY OF EL CERRITO AMENDING TITLE 19 OF THE EL CERRITO MUNICIPAL CODE CHAPTER TO ADD CHAPTER 19.30, “INCLUSIONARY ZONING” RELATED TO THE INCLUSION OF AFFORDABLE HOUSING UNITS IN SOME NEW RESIDENTIAL DEVELOPMENT PROJECTS

WHEREAS, the Community Development Department, with direction from the City Council, identifies the City’s goals, objectives, policies and action programs that directly address our housing needs;

WHEREAS, the El Cerrito Affordable Housing Strategy, adopted August 17, 2017, identifies four policy pillars for implementation over the next five years to produce, protect and preserve affordable housing for El Cerrito residents;

WHEREAS, “Pillar A. Leveraging private development to address affordable housing needs,” recommends establishing a new inclusionary zoning ordinance and/or enact new housing in-lieu fees for affordable housing;

WHEREAS, the Housing Element of the adopted El Cerrito General Plan identifies Program H2.8, Inclusionary Housing Ordinance, to study the feasibility, terms and conditions of developing an ordinance that would require affordable housing units and/or in-lieu fees; and

WHEREAS, the Inclusionary Policy Analysis Report prepared by Keyser Marston Associates in April 2018 conducted financial feasibility analysis to test on-site affordable dwelling unit requirements and in-lieu fee options for new residential development and determined the following:

- Rental Projects could support an on-site obligation of up to 5% Low and 5% at Moderate income levels, as defined in State law;
- Ownership Projects could support up to 12% at Moderate income on-site obligation;
- Rental Projects could support an in-lieu fee of $17 per square foot. using a specified formula; and
- Ownership Projects could support an in-lieu fee of $20 per square foot, using a specified formula.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF EL CERRITO DOES HEREBY ORDAIN as follows:

Section 1.Incorporation of Recitals. The City Council finds that the above Recitals are true and correct and are incorporated herein by reference.

Section 2. Amendment of Title 19 of the Municipal Code. Title 19, “Zoning”, of the El Cerrito Municipal Code is hereby is amended to add Chapter 19.30, “Inclusionary Zoning” to read as follows:

Chapter 19.30 - INCLUSIONARY ZONING

19.30.010 - Findings and Purpose.

A. Findings.

The City Council finds and declares as follows:

1. Housing affordability continues to be a regional issue, especially for the residents of El Cerrito.

2. According to the El Cerrito Affordable Housing Strategy, one-third of El Cerrito’s households are cost-burdened or spend more than 30 percent of their household income for housing.

3. The 2015-2023 Housing Element identifies the need to study an inclusionary zoning ordinance to address a portion of the City’s affordable housing needs.

4. According to the 2015-2022 Regional Housing Needs Allocation (RHNA), determined by the Association of Bay Area Governments (ABAG), the City of El Cerrito has a total housing need of 398 units through the year 2022, out of which nearly sixty percent (60%) is for lower- and moderate-income households (232 units). Of the affordable units: 50 units (13%) are for extremely low-income households; 50 units (13%) for very low-income households; 63 units (16%) for lower income households; and 69 units (17%) for moderate income households.

5. The inclusionary ordinance codified in this Chapter will substantially advance the City's legitimate interest in providing additional housing affordable to all income levels and dispersed throughout the City because Inclusionary Units required by the ordinance codified in this Chapter, including both rental and for-sale units, must be affordable to lower, and moderate-income households.

6. The Ordinance codified in this Chapter is being adopted pursuant to the City's police power authority to protect the public health, safety, and welfare. Requiring Inclusionary Units within each residential development is consistent with the community's housing element goals of protecting the public welfare by fostering an adequate supply of housing for persons at all economic levels and maintaining both economic diversity and geographically dispersed affordable housing. Requiring builders of new market rate housing to provide some housing affordable to lower and moderate-income households is also reasonably related to the impacts of

their projects.

B. Purpose.

The purposes of this Chapter are to:

1. Implement the housing goals set forth in the 2015-2023 Housing Element of the El Cerrito General Plan and the Affordable Housing Strategy of the City of El Cerrito.

2. Ensure that private market-rate development is making a reasonable and feasible contribution towards addressing the need for additional affordable housing.

3. Increase the production of affordable housing units for very low, low and moderate-income households.

4. Create a balanced community with a wide variety of housing available to households of all income levels.

5. Support the housing objectives contained in State law.

6. Establish policies and alternative methods of compliance for meeting the City's affordable housing needs.

19.30.020 - Definitions.

The definitions set forth in this part shall govern the application and interpretation of this Chapter. Words and phrases not defined in this Chapter shall be interpreted to give this Chapter its most reasonable application.

Affordable Housing Cost means the housing cost for Dwelling Units as defined by California Health and Safety Code Section 50052.5 for owner-occupied housing and the affordable rent for rental units as defined by California Health and Safety Code Section 50053, as applicable.

Affordable Housing Strategy means the City's affordable housing workplan that identities a range of goals and implementation tools to preserve and expand housing opportunities for households with very low to moderate incomes and for persons with special housing needs

Affordable Sales Price means the maximum allowable sales price for an Inclusionary Unit in effect at the time of initial (first) sale to an Eligible Household. The Affordable Sales Price is a price that includes a reasonable down payment and results in projected average monthly housing payments during the first calendar year of a household's occupancy, including interest, principal, mortgage insurance, property taxes, homeowners' insurance, homeowners' association dues, if any, not exceeding costs equal to thirty five percent of one hundred ten percent (110%) of Area Median Income for Moderate Income units. The City Manager may adjust the percentage of Area Median Income to between eighty percent (80%) and one hundred ten percent (110%) to address major shifts in the housing market or other related economic conditions affecting the demand for Inclusionary Units, as needed.

The Affordable Sales Price shall be determined for a household size based on the number of bedrooms in the Dwelling Unit plus one. The City Manager shall determine the sales price for Inclusionary Units by any reasonable method, so long as average monthly housing payments do not exceed those permitted by this Chapter. Affordable Sales Prices may be adjusted annually by the City Manager and will be provided to the Developer annually upon such adjustment.

Affordable Rent means the total monthly payments by the Tenant of an Inclusionary Unit for all of the following: (1) use and occupancy of the Inclusionary Unit, land and storage lockers, and use of all common areas; (2) any separately charged fees or service charges assessed by the Developer that are required of all tenants of Units in the Project, except security deposits; (3) an allowance for utilities paid by the Tenant as established by the Contra Costa Housing Authority, including garbage collections, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not telephone service or cable TV; and (4) any other interest, taxes, fees or charges for use of the land or associated facilities that are assessed by a public or private entity other than the Developer and paid by the Tenant.

The Affordable Rent shall be determined for a household size based on the number of bedrooms in the Dwelling Unit plus one. The City Manager shall determine the rent for Inclusionary Units by any reasonable method, so long as average monthly housing payments do not exceed those permitted by this Chapter. Affordable Rent may be adjusted annually by the City Manager and shall be provided to the Developer annually upon such adjustment. For purposes of this Chapter, Affordable Rent shall not exceed costs equal to thirty percent (30%) of seventy percent (70%) of Area Median Income for Lower Income units or thirty percent of one hundred ten percent (110%) of Area Median Income for Moderate Income units.

Affordable Housing Trust Fund means a fund or account designated by the City to maintain and account for all monies received pursuant to this Chapter.

Affordable Housing Plan means a plan on a form provided by the City that shall be submitted by the Applicant or Developer, containing all of the information specified in and in conformance with Section 19.30.040 of this Chapter specifying the manner in which Inclusionary Units will be provided in conformance with this Chapter and any regulations adopted to implement this Chapter, and consistent with the El Cerrito General Plan.

Applicant or Developer means a person, persons, or entity that applies for a Residential Development and includes the owner or owners of the property if the Applicant does not own the property on which development is proposed.

Area Median Income or "AMI" means the annual median income for Contra Costa County as published annually by the State of California Department of Housing and Community Development, adjusted for household size, as published periodically in the California Code of Regulations, Title 25, Section 6932, or its successor provision, or as established by the City of El Cerrito in the event that such median income figures are no longer published periodically in the California Code of Regulations.

Building Permit includes full structural building permits as well as partial permits such as foundation-only permits.

City means the City of El Cerrito.

City Manager means the City Manager of the City of El Cerrito or his or her designee.

Certificate of Occupancy is the permit issued by the El Cerrito building division authorizing the initial occupancy of a Dwelling Unit, including a temporary certificate of occupancy.

Common Ownership or Control refers to property owned or controlled by the same person, persons, or entity, or by separate entities in which any shareholder, partner, member, or family member of an investor of the entity owns ten percent (10%) or more of the interest in the property.

Community Development Director means the director of the Community Development Department or his or her designee.

Construction Phase means:

A. The area included within one city approved tentative subdivision map for Residential Development where a single final map implements the entire approved tentative map;

B. The area included within each separate final map for Residential Development where multiple final maps implement the entire approved tentative map; or

C. An area designated as a construction phase in an approved Affordable Housing Plan. For Residential Development that does not require a subdivision map, the Affordable Housing Plan shall identify Construction Phases.

Contiguous Property means any parcel of land that is:

A. Touching another parcel at any point;

B. Separated from another parcel at any point only by a public right of way, private street or way, or public or private utility, service, or access easement; or

C. Separated from another parcel only by other real property of the Applicant which is not subject to the requirements of this Chapter at the time of the planning permit application by the Applicant.

Determined to be Complete is a term that applies to an application for a specific land Planning Permits that is requested by the Applicant and in accordance with Title 19 (Zoning) herein, and means that such application:

A. Accurately includes all data required on the appropriate planning permit checklist that is utilized upon the date of receipt of the application;

B. Is duly executed by the Applicant or the Applicant's authorized representative;

C. Includes the full payment of all required fees;

D. Includes an accurate and complete application for environmental clearance; and

E. Includes the Affordable Housing Plan required by Section 19.30.040.

Density Bonus Units means Dwelling Units approved in a Residential Development pursuant to California Government Code Section 65915 et seq. that are in excess of the maximum residential density otherwise permitted by the El Cerrito General Plan, San Pablo Avenue Specific Plan or zoning ordinance.

Dwelling Unit shall have the definition given for dwellings in Title 19 (Zoning) of the El Cerrito Municipal Code.

Effective Date shall have the definition given in Section 19.30.030.

Eligible Household means a household which has been determined to be eligible to rent or purchase an Inclusionary Unit.

First Approval means the first of the following approvals to occur with respect to a Residential Development: development agreement, General Plan amendment, specific or area plan adoption or amendment, zoning, rezoning, prezoning, annexation, planned development permit, tentative map, parcel map, conditional use permit, special use permit, or building permit.

For-sale means and refers to any Dwelling Unit, including a condominium, stock cooperative, community apartment, or attached or detached single family home, for which a parcel or tentative and final map is required for the lawful subdivision of the parcel upon which the Dwelling Unit is located or for the creation of the unit in accordance with the Subdivision Map Act (California Government Code Section 66410 et seq.), or any Residential Development including such for-sale Dwelling Units.

Inclusionary Housing Agreement means an agreement in conformance with Section 19.30.040 of this Chapter between the City and an Applicant, governing how the Applicant shall comply with this Chapter.

Inclusionary Unit means a Dwelling Unit imposed on new Residential Development as required by this Chapter to be affordable to Lower or Moderate-Income Households.

Livable Square Feet means the total square footage of the interior of all Dwelling Units within a Residential Development.

Lower Income Household means a household with incomes that do not exceed eighty percent (80%) of Area Median Income as set forth in California Health and Safety Code Section 50079.5.

Market Rate Unit means a new Dwelling Unit in a Residential Development that is not an Inclusionary Unit as defined by Section.

Moderate Income Household means a household with income ranging above eighty percent (80%) to one hundred twenty percent (120%) of Area Median Income as set forth in California Health and Safety Code Section 50093(b).

Planning Permit means a tentative map, parcel map, conditional use permit, site development permit, planned development permit, design review, development agreement, or special use permit, or any discretionary permit excluding General Plan amendments, zoning and rezoning, annexation, specific plans, and area development policies.

Rental means and refers to a Dwelling Unit that is not a For-sale Dwelling Unit, and does not include any Dwelling Unit, whether offered for rental or sale, that may be sold as a result of the lawful subdivision of the parcel upon which the Dwelling Unit is located or creation of the unit in accordance with the Subdivision

Map Act (California Government Code Section 66410 et seq.), or any Residential Development including such rental Dwelling Units.

Residential Development means any project requiring a planning permit for which an application has been submitted to the City, and where the Residential Development:

A. Would create ten (10) or more new Rental Dwelling Units or nine (9) or more new For-sale Dwelling Units, additional, or modified Dwelling Units by:

   1. The construction or alteration of structures, or

   2. The conversion of a use to residential from any other use.

B. Is contiguous to property under Common Ownership or Control where the cumulative residential capacity of all of the Applicant's property pursuant to the General Plan designation or zoning at the time of the planning permit application for the Residential Development is ten (10) or more Rental or nine (9) or more For-sale Dwelling Units.

Tenant is a household occupying an Inclusionary Unit pursuant to a valid lease with the Developer.

Unit Type means any form of dwelling or Dwelling Unit described in Title 19 (Zoning) of the El Cerrito Municipal Code.

Utilities means garbage collection, sewer, water, electricity, gas and other heating, cooling, cooking and refrigeration fuels.

19.30.030 - Effective Date and Applicability.

A. Effective Date.

This Chapter shall be effective thirty (30) days from and after the date of its adoption.

B. Applicability.

The provisions of this Chapter shall apply City-wide to:

1. All For-sale Residential Development that consist of nine (9) or more units;
2. All Rental Residential Development that consist of ten (10) or more units; and
3. All Residential Development and Contiguous Property that is under Common Ownership or Control.

C. Exemptions.

This Chapter shall not apply to any of the following:

1. Accessory Dwelling Unit(s).
2. Rental Residential Developments with a total of less than ten (10) Dwelling Units.
3. For-sale Residential Developments with a total of less than nine (9) Dwelling Units.
4. A Residential Development project the application for which has been determined to be complete prior to the Effective Date and for which a building permit has been issued by June 30, 2021.
5. Residential Developments exempted by California Government Code Section 66474.2 or 66498.1, provided that such Residential Developments shall comply with any predecessor ordinance, resolution, or policy in effect on the date the application for the development was determined to be complete.

D. Special Circumstances Related to Exemptions.

1. Planning permit expiration. Upon the expiration of any planning permit, and unless otherwise exempted, a Residential Development shall be subject to the inclusionary housing requirements of this Chapter and shall not proceed until such time as an Affordable Housing Plan is approved in conjunction with any other required planning permit or amendment thereto. This paragraph shall not apply to any discretionary extension of a planning permit or approval beyond its initial term.
2. Limited extension of exemption due to delay. The City Manager, may grant a request for an extension of the timelines in this section exempting Residential Development from this Chapter where a change in federal, state or local law would cause the need for a material redesign of the approved Residential Development that would render any of the approved Planning Permits, if

implemented as approved, in violation of federal, state, or local law and would require amendment or revision of the planning permit.

19.30.040 - Inclusionary Housing Requirements.

A. Inclusionary housing requirement.

1. All new Residential Developments and Contiguous Property under Common Ownership and Control shall include Inclusionary Units. Calculations of the number of Inclusionary Units required by this section shall be based on the number of Dwelling Units in the Residential Development, excluding any Density Bonus Units as defined in this Chapter.

2. On-site inclusionary requirement. Unless otherwise exempted or excepted from this Chapter, Residential Developments shall include Inclusionary Units upon the same site as the Residential Development as follows:

   a. For-sale Residential Development: For For-Sale Residential Development projects with nine or more Dwelling Units, twelve percent (12%) of the total Dwelling Units in the Residential Development shall be built on-site and made available for purchase at an Affordable Housing Cost to Moderate Income Households.

   b. Rental Residential Development: For Rental Residential Development projects with 10 or more Dwelling Units that elect to provide units, five (5%) of the total Dwelling Units in the Residential Development shall be made available for rent at an Affordable Housing Cost to Moderate Income Households, and five percent (5%) of the total Dwelling Units in the Residential Development shall be made available for rent at an Affordable Housing Cost to Lower Income Households.

3. If a project amendment results in a change in the total number of Dwelling Units, the number of Inclusionary Units will be recalculated to coincide with the final approved Residential Development.

B. Calculation of Inclusionary Units

1. To calculate the number of Inclusionary Units required:

   a. For For-Sale Residential Development projects, multiply 12% by the total number of For-Sale Dwelling Units in the project.

   b. For Rental Residential Development projects with 10 or more Dwelling Units, multiply 5% by the total number of Rental Dwelling Units in the project to determine the number of Dwelling Units that must be made available for rent at an Affordable Housing Cost to Moderate Income Households, and 5% by the total Dwelling Units in the project to determine the number of Dwelling Units that shall be made available for rent at an Affordable Housing Cost to Lower Income Households.

2. For Rental Residential Development projects, when 5% is multiplied by the total number of Dwelling Units to determine the number for each respective income category and the result is less than one unit for each income category, the number of Inclusionary Units required shall be calculated by multiplying 10% by the total number of Dwelling Units, and the required Inclusionary Units may be affordable to Lower or Moderate-Income Households at the discretion of the City Manager.

C. Fractional units.

1. When the calculation of Inclusionary Units according to this section results in a number that includes a fractional unit, the fraction shall be rounded to the next whole number if the fraction is equal to one-half (0.50) or more. In that event an additional Inclusionary Unit shall be provided, or for Rental Residential Development projects either an additional Inclusionary Unit shall be provided or a fee may be paid in lieu of the additional Inclusionary Unit.
2. If the result of the calculation of Inclusionary Units includes a fraction less than one-half (0.50), the Applicant shall have the option of either rounding up to next whole number and providing an additional Inclusionary Unit or paying an in-lieu fee as provided in Chapter 19.30.50 for the fractional unit.

D. State Density Program

Any Inclusionary Units provided on site in compliance with this Chapter may be used to qualify for a density bonus under California Government Code Section 65915 or any ordinance implementing Government Code Section 65915. An Applicant seeking a density bonus under State Law shall provide reasonable documentation to establish eligibility for a requested density bonus, incentive or concession, and waiver or reduction of development standards, as provided for under State Law and as consistent with the process and procedures detailed in a locally adopted ordinance implementing the State Law. The number of Inclusionary Units shall be based upon the total number of Dwelling Units in a Residential Development, including any Market Rate Units allowed as a result of Density Bonus. The Inclusionary Unit requirement for a Residential Development shall be recalculated after a Density Bonus is provided to determine the total Dwelling Units in the project. Regardless of State Density Bonus utilization, the Applicant is required to meet the inclusionary housing requirements defined in this Chapter.

E. Contiguous Property under Common Ownership and Control.

An Applicant for a planning permit shall not avoid the requirements of this Chapter by submitting piecemeal Planning Permit applications. At the time of the application for first approval for the Residential Development, the Applicant shall identify all Contiguous Property under Common Ownership and Control. The Applicant shall not be required to construct Dwelling Units upon the Contiguous Property at the time of the application for first approval; however, the Applicant shall be required to include the Contiguous Property under Common Ownership or Control in its Affordable Housing Plan. The Inclusionary Housing Agreement shall be recorded against the Residential Development and all Contiguous Property under Common Ownership or Control and shall require compliance with this Chapter upon development of each Contiguous Property at such time as there are planning permit applications that would authorize a total of ten (10) or more Rental or nine (9) or more For-sale Dwelling Units for the Residential Development and the Contiguous Property under Common Ownership or Control.

F. Residential Development with overlapping inclusionary requirements.

When overlapping inclusionary housing requirements could be applied to a Residential Development pursuant to this Chapter because the Residential Development is located upon a parcel or parcels subject to more than one of the requirements in this section, the entire Residential Development shall be subject to the requirement that results in the production of the greatest amount and greatest depth of affordability of Inclusionary Dwelling Units.

G. Residential Development with both For-sale and Rental units.

When a Residential Development includes both For-sale and Rental Dwelling Units, the provisions of this Chapter that apply to For-sale Residential Development shall apply to that portion of the development that consists of For-sale Dwelling Units, while the provisions of this Chapter that apply to Rental Residential Development shall apply to that portion of the development that consists of Rental Dwelling Units.

H. Timing of construction of Inclusionary Units.

All Inclusionary Units shall be constructed, completed, ready for occupancy, and marketed concurrently with or prior to the Market Rate Units, unless the City finds that extenuating circumstances exist. In phased developments, Inclusionary Units may be constructed and occupied in proportion to the number of units in each phase.

I. Standards for Inclusionary Units.

1. Single-family detached Inclusionary Units shall be dispersed throughout the Residential Development. Townhouse, row-house, and multifamily Inclusionary Units shall be located so as not to create a geographic concentration of Inclusionary Units within the Residential Development.
2. The quality of exterior design and overall quality of construction of the Inclusionary Units shall be consistent with the exterior design of all Market Rate Units in the Residential Development and meet all site, design, and construction standards included in Title 16 (Buildings and Construction), Title 18 (Subdivisions), and Title 19 (Zoning) of this code, including but not limited to compliance with all design guidelines included in applicable specific plans or otherwise adopted by the City council, and any regulations adopted to implement this Chapter shall have functionally equivalent parking when parking is provided to the Market Rate Units.
3. Inclusionary Units shall have the same interior finishes and features as the Market Rate Units that are durable and of good quality and comply with any regulations adopted to implement this Chapter.

4. The Inclusionary Units shall have the same amenities as the Market Rate Units, including the same access to and enjoyment of common open space and facilities in the Residential Development.

5. The Inclusionary Units shall have the same proportion of unit types as the market rate units in the Residential Development except:
   a. Single-family detached residential projects may include single family attached Inclusionary Units;
   b. Single-family detached Inclusionary Units may have smaller lots than single-family detached Market Rate Units in a manner consistent Title 19 (Zoning); and

   6. The Inclusionary Units shall have a comparable square footage and the same bedroom count and bedroom count ratio as the Market Rate Units.

J. Minimum requirements.

The requirements of this Chapter are minimum requirements and shall not preclude a Residential Development from providing additional Inclusionary Units or Inclusionary Units with lower Affordable Rents or Affordable Sales Prices than required by this Chapter.

K. Affordable Housing Plan and Inclusionary Housing Agreement.

1. An Affordable Housing Plan shall be submitted as part of the application for first approval of any Residential Development whether paying the in-lieu fee or providing Inclusionary Units on-site. No application for a first approval for a Residential Development may be determined to be complete unless an Affordable Housing Plan is submitted and approved by the City in conformance with the provisions of this Chapter.

2. For each construction phase, the Affordable Housing Plan shall specify, at the same level of detail as the application for the Residential Development, all of the following applicable information including, but not limited to:
   a. Developer’s Compliance option as specified in Section 19.30.050;
   b. The calculations used to determine the number of Inclusionary Units;
   c. A floor plan or site plan depicting the location of the Inclusionary Units;
   d. The tenure and affordability level for each Inclusionary Unit;
   e. The term of affordability;
   f. Other affordability requirements;
   g. A phasing plan for phased developments;
   h. A description and details of any requested incentives, waivers or exemptions;
   i. The process by which eligibility of qualified households will be reviewed and selected to purchase or rent Inclusionary Units;
   j. Rental/ownership regulatory provisions;

k. An annual reporting schedule and requirements;
l. A statement signed by the Applicant and property owner, if different, that the Affordable Housing Agreement required by this Chapter shall include a provision that authorizes the City to recover reasonable attorneys' fees, investigation and litigation expenses, and related staff costs associated with enforcing the Inclusionary Housing Agreement; and
m. Any other information that is reasonably necessary to evaluate the compliance of the Affordable Housing Plan with the requirements of this Chapter and any regulations adopted to implement this Chapter.

3. Upon submittal, the Community Development Director shall determine if the Affordable Housing Plan is complete and conforms to the provisions of this Chapter and any regulations adopted to implement this Chapter. The decision of the Community Development Director may be appealed to the City Council.

4. The decision of the Community Development Director may be appealed to the City Council by filing a written appeal with the City Clerk. The appeal shall identify the decision being appealed and shall clearly and concisely state the reasons for the appeal. The appeal shall be accompanied by the fee specified in the City's master fee schedule.

5. The City Clerk shall schedule the appeal for consideration by the City Council within 30 days of the date the appeal was filed. The Community Development Director shall prepare a staff report that responds to the issues raised by the appeal and may include a recommendation for action.

6. The Affordable Housing Plan shall be reviewed as part of the first approval of any Residential Development. The Affordable Housing Plan shall be approved if it conforms to the provisions of this Chapter and any regulations adopted to Implement this Chapter. A condition shall be attached to the first approval of any Residential Development to require recordation of the Inclusionary Housing Agreement described in this Section prior to the approval of any final or parcel map or building permit for the Residential Development.
7. A request for a minor modification of an approved Affordable Housing Plan may be granted by the Community Development Director if the modification is substantially in compliance with the original Affordable Housing Plan and conditions of approval. Other modifications to the Affordable Housing Plan shall be processed in the same manner as the original plan.
8. Following the first approval of a Residential Development, the City shall prepare an Inclusionary Housing Agreement providing for implementation of the Affordable Housing Plan and consistent with any regulations adopted to implement this Chapter. Prior to the approval of any final or parcel map or issuance of any building permit for a Residential Development subject to this Chapter, the Inclusionary Housing Agreement shall be executed by the City and the Applicant and recorded against the entire Residential Development property and any other property used for the purposes of providing inclusionary housing pursuant to this Chapter to ensure that the

Affordable Housing Agreement will be enforceable upon any successor in interest. The Inclusionary Housing Agreement shall not be amended without the prior written consent of the City and shall also not be amended prior to any necessary amendments to applicable planning permits.

9. The City Council, by resolution, may establish fees for the ongoing administration and monitoring of the Inclusionary Units, which fees may be updated periodically, as required.

L. Lottery

At the initial offering of Inclusionary Units in a residential project and any Inclusionary Unit becomes available for sale or for rent in any Residential Project, the City requires the use of a lottery approved by the City to select purchasers or renters.

19.30.050 – Developer's Compliance Options.

A. On-site Provision of Inclusionary Rental Units Instead for Inclusionary For-Sale Units.

When on-site Inclusionary For-Sale Units are required by this Chapter, a Developer may instead construct on-site Inclusionary Rental. If a Developer chooses to construct on-site Inclusionary Rental Units in lieu of on-site Inclusionary For-Sale Units, the requirements for such on-site Rental Inclusionary Units shall be the same as if the Residential Development were a Rental Residential Development project.

B. In lieu fee.

1. The inclusionary housing requirement in Section 19.30.040 for For-Sale Residential Development must be satisfied by the provision of the required Inclusionary Units, except when the number of required Inclusionary Units includes a fraction less than one-half (0.5). In that case, an in-lieu fee may be paid for the fractional unit. The inclusionary housing requirement in Section 19.30.040 for Rental Residential Development may be satisfied by the payment of a fee to the City in lieu of constructing the Inclusionary Units within the Residential Development, including fractional units. In either case, any fee that the Developer chooses to pay must be received by the City upon issuance of a Building Permit for the Residential Development.
2. In lieu fees shall be as follows:
   a. For-sale Residential Development: An in-lieu fee may be paid only for fractional units when the number of required Inclusionary Units includes a fraction less than one-half (0.5). In that case, the in-lieu fee for each For-sale Inclusionary Unit shall be $20.00 per square foot multiplied by the Livable Square Footage of the entire project and divided by the number of required For-sale Inclusionary Units, including fractional units. The in-lieu fee for each fractional For-sale Inclusionary Unit shall be the per-unit in-lieu fee calculated using the preceding formula multiplied by the applicable fraction.
   b. Rental Residential Development: An in-lieu fee may be paid for all or any portion of Inclusionary Units required in a Rental Residential Development,

including fractional units. As noted in Section 19.30.040(C), however, if the number of required Rental Inclusionary Units is one-half (0.5) or greater, the fraction shall be rounded to the next whole number, and the Developer may either provide the Rental Inclusionary Unit or pay a fee in lieu of the Rental Inclusionary Unit. In the event that the Developer chooses to pay a fee in lieu of providing Rental Inclusionary Units, the in-lieu fee for each Rental Inclusionary Unit shall be $17.00 per square foot multiplied by the Livable Square Footage of the entire project and divided by the number of required Rental Inclusionary Units, including fractional units. The in-lieu fee for each fractional Rental Inclusionary Unit shall be the per-unit in-lieu fee calculated using the preceding formula multiplied by the applicable fraction.

3. The amount of in lieu fees established in this Section shall be included in the City's Master Fee Schedule and may be adjusted annually for inflation each July 1 using an appropriate index, as determined by the City Council.

4. If a project amendment results in a change in the total number of Dwelling Units, the in-lieu fee will be recalculated to coincide with the final approved Residential Development.

5. No Building Permit shall be issued by the City for any Market Rate Dwelling Unit in the Residential Development prior to the payment in full of all in-lieu fees to the City. The Developer shall provide both notice by recorded document against the Residential Development and, additionally, for each For-sale Dwelling Unit therein, the Developer shall provide specific written notice to any purchaser of any Dwelling Unit prior to the acceptance of any offer to purchase, and shall obtain executed acknowledgment of the receipt of such notice, that purchaser shall not have any right to occupy the Dwelling Unit until such time as all in lieu fees owing for the Residential Development are paid to the City.

6. All in lieu fees collected under this section shall be deposited in the City of El Cerrito Affordable Housing Trust Fund and utilized for the development of new Affordable Housing units.

19.30.060 - Continuing Affordability and Occupancy.

A. The duration of affordability and occupancy for units created through the inclusionary zoning provisions are this Chapter shall be as follows:

1. The Affordable Sales Price for Inclusionary Units shall be restricted for a period of 45 years pursuant to an Affordable Housing Agreement recorded against the property and resets upon resale of the unit(s).

2. The monthly Affordable Rent for Inclusionary Units shall be restricted for a period of 55 years pursuant to an Affordable Housing Agreement recorded against the property.

3. A longer term of affordability may be required if the Residential Development receives a subsidy of any type, including but not limited to loan, grant, mortgage financing, mortgage insurance, or rental subsidy, and the subsidy program requires a longer term of affordability.

B. The Developer shall be required to execute standard documents, in a form approved by the City Attorney, to ensure the continued affordability of the Inclusionary Units approved for each Residential Development. The documents may include, but are not limited to, Inclusionary Housing Agreements, regulatory agreements, promissory notes, deeds of trust, resale restrictions, rights of first refusal, options to purchase, and/or other documents. The affordability documents shall be recorded against the Residential Development, all Inclusionary Units, and any site subject to the provisions of this Chapter. Affordability documents for For-sale owner-occupied Inclusionary Units shall also include subordinate shared appreciation documents permitting the City to capture at resale the difference between the market rate value of the Inclusionary Unit and the affordable housing cost, plus a share of appreciation realized from an unrestricted sale in such amounts as deemed necessary by the City to replace the Inclusionary Unit.

C. Unless otherwise required by law, all promissory note repayments, shared appreciation payments, or other payments collected under this Section shall be deposited in the City of El Cerrito Affordable Housing Trust Fund established pursuant to Section 19.30.070.

D. Any household that occupies an Inclusionary Unit must occupy that unit as its principal residence at all times, unless the Community Development Director approves rental to a third party for a limited period of time due to household hardship.

E. No household may begin occupancy of an Inclusionary Unit until the household has been determined to be an Eligible Household to occupy that unit. Rental Inclusionary Units shall continue to be rented to income Eligible Households at an Affordable Rent for the entire term of the inclusionary housing restriction. The Community Development Director shall establish standards for determining household income, maximum occupancy, affordable housing cost, provisions for continued monitoring of tenant eligibility, and other eligibility criteria.

F. Officials, employees, or consultants of the City, and members of boards and commissions thereof, shall comply with all applicable laws, regulations, and policies relating to conflicts of interest as to their eligibility to develop, construct, sell, rent, lease, occupy, or purchase an Inclusionary Unit. City Council may adopt additional conflict of interest provisions relating to the administration of this paragraph and the eligibility of persons to occupy Inclusionary Units pursuant to this Chapter.

19.30.070 - Implementation, Waivers, Enforcement.

A. Affordable Housing Trust Fund.

1. Unless otherwise required by law, all in lieu fees, fees, promissory note repayments, shared appreciation payments, or other funds collected under this Chapter shall be deposited into a separate account to be designated as the City of El Cerrito Affordable Housing Trust Fund.
2. The moneys in the Affordable Housing Trust Fund and all earnings from investment of the moneys in the Affordable Housing Trust Fund shall be expended exclusively to provide housing affordable to extremely low income, very low income, Lower Income, and Moderate-Income Households in the City of El Cerrito and administration and compliance monitoring of the inclusionary housing program.

B. Monitoring of compliance.

Each Inclusionary Housing Agreement shall include provisions for the monitoring by the City of each Residential Development and each Inclusionary Unit for compliance with the terms of this Chapter, the applicable Inclusionary Housing Agreement, and as required by law. Such provisions shall require annual compliance reports to be submitted to the City by the owner and the City shall conduct periodic on-site audits to insure compliance with all applicable laws, policies, and agreements. The City Council may adopt fees for the costs of monitoring and compliance by the City, which shall be deposited into the Affordable Housing Trust Fund for that purpose.

C. Waiver.

1. Notwithstanding any other provision of this Chapter, the requirements of this Chapter may be waived, adjusted, or reduced if an Applicant shows, based on substantial evidence, applying the requirements of this Chapter would take property in violation of the United States or California Constitutions.
2. Any request for a waiver, adjustment, or reduction under this section shall be submitted to the City concurrently with the Affordable Housing Plan required by Section 19.30.040 of this Chapter. The request for a waiver, adjustment, or reduction shall set forth in detail the factual and legal basis for the claim.
3. The request for a waiver, adjustment, or reduction shall be reviewed and considered in the same manner and at the same time as the Affordable Housing Plan and is subject to the appeal process for Affordable Housing Plans in Section 19.30.040.
4. In making a determination on an application for waiver, adjustment, or reduction, the Applicant shall bear the burden of presenting substantial evidence to support the claim. The City may assume each of the following when applicable:
    a. That the Applicant will provide the most economical Inclusionary Units feasible, meeting the requirements of this Chapter and any regulations adopted to implement this Chapter.
    b. That the Applicant is likely to obtain housing subsidies when such funds are reasonably available.
5. The waiver, adjustment or reduction may be approved only to the extent necessary to avoid an unconstitutional result, after adoption of written findings, based on substantial evidence, supporting the determinations required by this section.

D. Implementation and enforcement.

1. The Community Development Director may issue regulations or interpretations to assist in the implementation and administration of all aspects of this Chapter.
2. The City shall evaluate the effectiveness of the ordinance codified in this Chapter, for review by the City Council, three (3) years or sooner after the Effective Date of this Chapter.

3. The City Attorney shall be authorized to enforce the provisions of this Chapter and all Inclusionary Housing Agreements, regulatory agreements, covenants, resale restrictions, promissory notes, deed of trust, and other requirements placed on Inclusionary Units by civil action and any other proceeding or method permitted by law. The City may, at its discretion, take such enforcement action as is authorized under this code and/or any other action authorized by law or by any regulatory document, restriction, or agreement executed under this Chapter.
4. Failure of any official or agency to fulfill the requirements of this Chapter shall not excuse any Applicant or owner from the requirements of this Chapter. No permit, license, map, or other approval or Planning Permit for a Residential Development shall be issued, including without limitation a final inspection or Certificate of Occupancy, until all applicable requirements of this Chapter have been satisfied.
5. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.

Section 3. Compliance with the California Environmental Quality Act. Approval of this ordinance is exempt from 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. This ordinance creates obligations for the inclusion of affordable housing units with some residential development projects. Those projects will be the subject of independent environmental review, if required by CEQA, at the earliest possible time prior to approval. It can therefore be seen with certainty that there is no possibility that the adoption of the ordinance itself will have a significant effect on the environment.

Section 4. Severability. If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The city council hereby declares that it would have passed the ordinance codified in this chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this chapter would be subsequently declared invalid or unconstitutional.

Section 5. Effective Date and Publication. This Ordinance shall take effect and be enforced thirty days after the date of its adoption. Prior to the expiration of fifteen days from the passage thereof, the ordinance or a summary thereof shall be posted or published as may be required by law, and thereafter the same shall be in full force and effect.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the City Council on May 1, 2018 and passed by the following vote:

AYES: Councilmembers
NOES: Councilmembers
ABSENT: Councilmembers
ABSTAIN: Councilmembers

ADOPTED AND ORDERED published at a regular meeting of the City Council held on XX, 2018 and passed by the following vote:

AYES: Councilmembers
NOES: Councilmembers
ABSENT: Councilmembers
ABSTAIN: Councilmembers

APPROVED:

____
Gabriel Quinto, Mayor

ATTEST:

____
Cheryl Morse, City Clerk

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on May ___, 2018.

____
Cheryl Morse, City Clerk

ORDINANCE CERTIFICATION

I, Cheryl Morse, City Clerk of the City of El Cerrito, do hereby certify that this Ordinance is the true and correct original Ordinance No. 2018-XX of the City of El Cerrito, that said Ordinance was duly enacted and adopted by the City Council of the City of El Cerrito at a meeting of the City Council held on the XX day of May 2018; and that said Ordinance has been published and/or posted in the manner required by law.

WITNESS my hand and the Official Seal of the City of El Cerrito, California, this XX day of XX, 2018.

____
Cheryl Morse, City Clerk

Agenda Item No. 6(A)
Attachment 2

KEYSER MARSTON ASSOCIATES

INCLUSIONARY POLICY ANALYSIS

Prepared for
City of El Cerrito

Prepared by
Keyser Marston Associates, Inc.

April 23, 2018

TABLE OF CONTENTS

I. INTRODUCTION

This report presents a series of financial analyses prepared by Keyser Marston Associates, Inc. (KMA) to support the City of El Cerrito's adoption of an inclusionary housing policy. The report has been prepared by KMA for the City of El Cerrito pursuant to a contract with the City. As part of this engagement, KMA prepared financial feasibility analyses to evaluate residential development economics in the City and to test the sustainability of providing on-site affordable housing as well as paying fees in-lieu of providing on-site units. To provide context for the City's consideration, KMA prepared a summary of affordable housing requirements in other nearby cities. This report also presents KMA's recommendations for the City, based on the findings of the study.

A. Background and Context

Historically, affordable housing units were developed in El Cerrito through the requirements of Redevelopment, funding provided by Redevelopment, and the State density bonus program. More recently, the San Pablo Avenue Specific Plan and Form Based Code have been useful tools to promote housing development. With the dissolution of Redevelopment, the City lost its primary funding source to create new affordable housing. In accordance with the policy recommendations of the City's recently adopted Affordable Housing Strategy, the City engaged in this effort to establish policies that will require market-rate housing developments to provide affordable housing units as part of the development or to contribute funding for affordable housing development.

B. Organization of the Report

The report is organized into the following sections:

- Section I, Introduction.
- Section II, Findings and Recommendations, presents a discussion of KMA's findings and recommendations for the City's inclusionary housing policies.
- Section III, Residential Market Survey and Prototypes, presents the market survey results and a discussion of the residential prototypes developed for the financial feasibility analysis.
- Section IV, Financial Feasibility Analysis, presents the findings, methodology and sources for the financial feasibility analysis.
- Section V, Affordable Housing Requirements in Other Jurisdictions, presents a summary of the current requirements in other nearby cities.

II. FINDINGS AND RECOMMENDATIONS

KMA's program recommendations are based on the following factors:

1. The findings of the financial feasibility analysis.
2. The City's policy objectives specified in the Affordable Housing Strategy.
3. The current requirements in neighboring jurisdictions.
4. The balance between setting an inclusionary requirement or fee high enough to support a meaningful contribution to affordable housing in El Cerrito without discouraging new residential development.

While there are many residential projects in the development pipeline, very few new projects have been completed and are operating. As such, the markets for rentals and condominiums are not yet established in the City. Our recommendations reflect the City's desire to continue to encourage new housing development, particularly along the San Pablo Avenue corridor, while also creating new affordable housing resources in the City.

The findings of the financial feasibility analysis suggest that residential development in El Cerrito is feasible in today's market. In addition, the analysis suggests that projects could support a modest inclusionary requirement, as follows:

- Rental Projects could support an onsite obligation of up to 5.0% at Low and 5.0% at Moderate.
- Ownership Projects could support up to a 12% at Moderate onsite obligation.
- Rental projects could support an in-lieu fee of $15 to $20 per square foot.
- Ownership Projects could support an in-lieu fee of $20 per square foot.

Based on these findings, we recommend that the City of El Cerrito consider the following basic elements for its inclusionary program:

1. *Ownership Residential Projects:*
    a. For projects with nine (9) or more units, twelve percent (12%) of the total number of units in the project shall be made available for purchase by Moderate income households.
    b. Maximum prices for Moderate income homes shall reflect annual affordable housing costs equal to 35% of 110% of the Area Median Income, adjusted for household size.
    c. Projects with fewer than nine units shall be exempt from the requirements of this inclusionary program.
    d. When the on-site calculation yields a fraction of a unit of less than .5, then the on-site obligation shall be rounded down to the nearest whole number and when the fraction

is equal or more than .5, then the on-site obligation shall be rounded up to the nearest whole number. When the number of affordable units is rounded down, the City may charge an in-lieu fee on the fractional unit owed. The fractional fee shall be calculated as follows: ((total livable square feet of project X $20 per square foot) / (12% X number of units in project)) X fraction of unit owed.

2. *Rental Residential Projects:*

   a. Rental projects have the right to choose to either provide on-site affordable units or pay a fee in-lieu of providing on-site affordable units.

   b. For projects with ten to nineteen (10 to 19) units that elect to provide affordable on-site units, ten percent (10%) of the total number of units in the project shall be made available for rent by Moderate income households.

   c. For projects with twenty (20) or more units that elect to provide affordable on-site units, five percent (5%) of the units in the project shall be made available for rent to Low income households and five percent (5%) of the units in the project shall be made available for rent to Moderate income households.

   d. Rental projects with fewer than ten (10) units shall be exempt from the requirements of this inclusionary program.

   e. Monthly rental rates on Low income units (inclusive of utilities) shall reflect monthly affordable housing costs equal to 30% of 70% of the Area Median Income, adjusted for household size.

   f. Monthly rental rates on Moderate income units (inclusive of utilities) shall reflect monthly affordable housing costs equal to 30% of 110% of Area Median Income, adjusted for household size.

   g. For rental projects that elect to pay a fee in-lieu of providing on-site affordable units, the fee shall be equal to $17 per square foot of livable area, applied to the livable square footage of the entire rental project.

3. *Annual Escalations*

   In-lieu fee amounts and fractional fee amounts shall be adjusted annually based on the annual change in a construction cost index, such as the TBD Bid Index, ENR, or RSMeans.

4. *Review of Program*

   Given that this will be a newly adopted inclusionary program, we recommend that the City conduct a review in two (2) years to determine if adjustments would be appropriate to facilitate the administration of the program, to reflect changes in market conditions, or to improve the program.

III. RESIDENTIAL MARKET SURVEY AND PROTOTYPES

One of the underlying components of the financial feasibility analysis is the identification of residential building prototypes that are expected to be developed in El Cerrito both today and in the future, and what the market prices and rents for those prototypes will be.

A. Residential Building Activity

The City has seen increased interest from residential developers over the past few years. There are many residential projects in the development pipeline, although there has been only one significant project built recently (Metro 510). To develop an understanding of the types of units being planned for the City, KMA gathered development program information for these projects under development. The list of projects that we reviewed is shown in the table below.

Current & Recent Development Projects

Project	Unit Type
5828 El Dorado St.	Townhome
1715 Elm St.	Condominiums
Metro 510 / Creekside	Apartments / Condominiums
10192 San Pablo Ave.	Condominiums
10290 San Pablo Ave	Condominiums
10300 San Pablo Ave	Mixed Use / Condominiums
10135 San Pablo Ave	Mixed Use / Apartments
11600/11690 San Pablo Ave	Apartments
10167 San Pablo Ave	Apartments
10919 San Pablo Ave	Mixed Use / Apartments
10963 San Pablo Ave	Mixed Use / Apartments
10810 San Pablo Ave	Apartments
5730 El Dorado St.	Apartments
10534 San Pablo Ave	Apartments
11060 San Pablo Ave	Apartments
921 Kearney St.	Apartments
11965 San Pablo St.	Apartments

B. Residential Prototypes

KMA examined and summarized the residential projects under development in El Cerrito, spoke with active local developers about their planned projects in El Cerrito, and worked with City staff to select representative development prototypes of the units anticipated to be developed in El Cerrito in the future. The prototypes are as follows:

1. *Townhome* – A three-story townhome with a garage located outside of the San Pablo Avenue Specific Plan Area.
2. *Wood Frame Condominium* – A three- to four-story condominium building with a mix of ground-floor garage parking and surface parking.

3. *Wood Frame Over Podium Apartments* – An apartment building with four to five stories of wood frame over a concrete podium parking garage.
4. *Eight Story Apartments* – An eight-story apartment building utilizing the state Density Bonus Law to achieve a height bonus. The building uses steel construction over a concrete podium parking garage.

The prototypes are presented on Table 1 and summarized below.

	Average Unit Size
Ownership Prototypes	
1) Townhomes	1,400 sq. ft.
2) Wood Frame Condominiums	1,000 sq. ft.
Rental Prototypes	
3) Wood Frame Over Podium Apartments	750 sq. ft.
4) Eight Story Apartment Building	700 sq. ft.

Source: KMA in collaboration with City of El Cerrito. See Table 1 for more information.

C. Recent Home Prices of Newer Units

At the time of the market survey in early 2018, there were no new homes being marketed in El Cerrito. As a proxy for new homes sales, KMA analyzed recent resale prices of single family homes built since 2000 and resold since January 2016. For condominiums, KMA included all units, as there are no recently built condominiums. KMA also looked specifically at resales of townhomes units in the Wildwood project, which was identified by a local broker as an example. Table 2 presents a summary of the sales data KMA summarized.

KMA also examined sales prices for new condominiums in Berkeley as a reference point, although prices in Berkeley are higher than in El Cerrito.

To supplement the market data, KMA interviewed active local developers and real estate brokers. These knowledgeable local experts shared their opinions on achievable sales prices for new condominiums and townhomes in El Cerrito.

D. Ownership Prototype Price Estimates

The resale pricing of newer homes, input from local developers and brokers, and KMA's experience in other jurisdictions formed the basis for KMA's prototype price estimates. The prototype pricing estimates took into consideration that in general, newly built homes sell for a premium over re-sales, all else being equal.

The table below summarizes KMA's conclusions regarding current for-sale prototype unit size and pricing.

Ownership Prototypes Price Estimates

	Unit Size	Price	Price PSF
Townhomes	1,400 sq. ft.	$750,000	$536
Wood Frame Condominiums	1,000 sq. ft.	$625,000	$625

Source: KMA market study.

E. Rental Housing Market

In order to inform achievable market rents for new apartment developments in El Cerrito, KMA performed a survey of asking apartment rents in select properties in the city. There is one new apartment project in El Cerrito, Metro 510, which opened in 2017. The one- to three-bedroom units range from 800 to 1,400 square feet, and asking rents are in the $3.20 to $3.50 per square foot range. Village at Town Center was built in 2007; the one- and two-bedroom units range from 600 to 1,150 square feet and asking rents are in the $2.50 to $4.00 per square foot range. Two older apartment projects, Civic Plaza Apartments and Del Norte Place, have rents in the $2.50 to $4.00 range, as well. Current asking rents for these projects are presented in Table 3. To supplement the available market data, KMA also contacted local developers with active projects in El Cerrito. The developers indicated that they are expecting to achieve rents in the $3.00 - $4.25 range for their new projects.

Based on the market rent data and information provided by local developers, KMA estimates the following market rents:

Rental Prototypes Rent Estimates

	Unit Size	Price	Price PSF
Wood Frame Over Podium Apartments	750 sq. ft.	$2,700	$3.60
Eight-Story Apartments	700 sq. ft.	$2,850	$4.07

F. Market Survey Conclusions

A full description of the prototypes, including examples of recent developments, average unit sizes, bedroom mix, and parking ratios are shown in Table 1. The prototypes are the starting point of the financial feasibility analysis.

IV. FINANCIAL FEASIBILITY ANALYSIS

In order for an inclusionary housing program to be an effective tool for creating affordable housing, it must not burden new development to such a degree that it renders new development financially infeasible. A series of analyses testing the financial feasibility of residential development under various assumptions regarding affordable housing obligations were undertaken.

The objective of the financial feasibility analysis is to understand the general development economics of each prototype and then model the impact that a range of affordable housing obligations has on the financial feasibility of new development. KMA modeled both onsite inclusionary obligations (the affordable units are provided within the project) and the payment of in-lieu fees (the developer pays an in-lieu fee to the City and does not provide affordable units within the project). The following scenarios were modeled:

1. The "Base Case," which reflects no inclusionary housing obligation.

2. Onsite inclusionary requirements:
    a. Ownership Projects: 10% at Moderate / Rental Projects: 10% at Low
    b. Ownership Projects: 10% at Moderate / Rental Projects: 5% at Low and 5% at Moderate
    c. Ownership Projects: 12% at Moderate / Rental Projects: 7.5% at Low and 2.5% at Moderate
    d. Ownership Projects: 15% at Moderate / Rental Projects: 7.5% at Low and 7.5% at Moderate
    e. Ownership Projects: 15% at Moderate / Rental Projects: 15% at Low

3. In-Lieu Fees:
    a. An in-lieu fee of $15 per square foot.
    b. An in-lieu fee of $20 per square foot.
    c. An in-lieu fee of $25 per square foot.
    d. An in-lieu fee of $30,000 per unit.

A. Context and Application

Before describing the feasibility analysis, it is useful to put the feasibility analysis into perspective by summarizing how it can be used and where limitations exist in its ability to inform a longer-term policy direction:

- *Prototypical Nature of Analysis* – This financial feasibility analysis, by its nature, can only provide a general assessment of development economics because it is based on prototypical projects rather than specific projects. Every project has unique characteristics that will dictate sales prices and rents supported by the market as well as development costs and developer return requirements. This feasibility analysis is intended to reflect prototypical projects in El Cerrito but it is recognized that the economics of some projects will likely look better and some likely worse than those of the prototypes analyzed.

- *Near Term Time Horizon* – This feasibility analysis is a snapshot of real estate market conditions as of early 2018. Real estate development economics are fluid and are impacted by constantly changing conditions regarding rent potential, construction costs, land costs, and costs of financing. A year or two from now, conditions will undoubtedly be different, so these financial feasibility conclusions may not hold over a longer-term time horizon.

- *Adjustments to Land Costs over Time* – Developers purchase development sites at values that will allow for financially feasible projects. If an inclusionary housing obligation is put in place, developers will "price in" the requirement when evaluating a project's economics and negotiating the purchase price for development sites. Given that the requirements would apply to all or most residential projects, it is possible that downward pressure on land costs could result as developers adjust what they can afford to pay for land. This downward pressure on land prices can, at least to some degree, bring costs back into better balance with the overall economics supported by projects. Therefore, while current projects that have already purchased land may have limitations on the amount of a fee or inclusionary requirement that can be supported, future projects that have not purchased land have a better capacity to absorb a new requirement if at least a portion can be recovered through reduced land prices.

- *Not a Legal Standard* – The financial feasibility analysis provides context as the City considers adopting an inclusionary housing program; it does not set limits on the amount of the fee or any other parameters of a fee program.

B. Methodology

The financial feasibility analysis estimates the costs to develop the four prototype projects and compares it to the sales revenues or the rental income that could be generated by the project upon completion. If the revenue is sufficient to support the development costs and generate a sufficient profit margin, the project is considered feasible. This approach to financial feasibility, known as a pro forma approach, or income approach, is common practice in the real estate industry and is utilized in one form or another by all developers when analyzing new construction projects.

The base case analysis organizes the pro forma as a "land residual analysis", meaning the pro forma solves for what the project can afford to pay for a development site based on the income projections and the non-land acquisition costs of the project. KMA then compared the residual land values with land costs in the current market in order to test whether developers can afford to buy land and develop 100% market rate residential projects. To test the inclusionary requirements, KMA included current land costs in the development costs and tested the impact of the requirements on the developer's return, or profit margin, and compared the calculated return levels relative to industry standard return levels.

1. Revenue / Supported Unit Value

The revenue for ownership units in the Base Case is simply the market rate sales price less a 4% sales expense. For scenarios that include onsite affordable units, the revenue is a weighted average between the market sales price and the affordable sales price less the sales expense equal to 4% of the weighted average sale price. The weighting is based on the percent of units in the project that are affordable.

Affordable sales prices are estimated based on the bedroom count of the prototype units, and assume a household size equal to the number of bedrooms plus one. Moderate income units are priced at 110% of Area Median Income (AMI). The analysis assumes that 35% of income is spent on housing, which includes HOA dues and insurance, utilities, property taxes, and mortgage payments. A 30-year fixed mortgage at 4.07% interest and a 5% down payment is assumed for the affordable units. The affordable sales price calculations are presented in Table 4.

For the rental units, the supported unit value is calculated based on project income, operating expenses, and developer return. Project income includes the unit's rent plus a small allowance for other income. Operating expenses include a 5% vacancy allowance, standard project operating expenses and an estimate of property taxes that is based on total development costs. Developer return is estimated at a 6% Return on Costs for market rate units and a supported investment value is calculated based on the project's net operating income.

For the scenarios with affordable rental units, including the Base Case for the Eight-Story Apartment Building, gross rents are calculated based on the number of bedrooms in the unit and a household size equal to the number of bedrooms plus one. Moderate rents are estimated at 30% of 110% of AMI and Low Income rents are estimated at 30% of 70% of AMI. A utility allowance is then netted out. The affordable rent calculations are presented in Table 5.

Developer return is estimated at 7.25% for affordable units due to the slower growth in rents over time, as rents in the inclusionary units are tied to median income. The 'blended return' shown in the Tables represents a weighted average of the 6% Return on Costs for the market rate units and the 7.25% Return on Costs for the affordable units.

For the Eight-Story Apartment Building, the Base Case assumes that the developer utilizes the state Density Bonus law to achieve a height bonus. Based on our conversations with developers, KMA assumes that the developer sets aside 10% of the base units in the project at Very Low (50% AMI), which earns the developer a 32.5% density bonus. This translates to 7.5% of the total units in the project being affordable at Very Low.

2. Development Costs

The estimates of development costs for each of the prototypes are based on a combination of sources. First, KMA conducted interviews with real estate professionals active in El Cerrito. Second, KMA is actively in the market working on new residential development projects in cities throughout the Bay Area and state. Through this experience, we work in conjunction with private developers, outside construction consultants and cost estimators, general contractors, architects, engineers, and public agencies.

Construction costs vary from project to project depending upon the quality of finishes and architecture, the level of amenities provided, and site-specific construction challenges such as demolition or environmental remediation requirements, unusual site grading or foundation costs, or tight/irregularly shaped parcels that result in cost inefficiencies. The construction cost estimates utilized in this study assume quality construction, architecture, and finishes but do not assume any extraordinary costs that would be atypical for the market.

In addition to hard construction costs, the development cost estimates also include all indirect or soft costs of development such as architecture and engineering, governmental fees and permits costs, taxes, insurance, financing, and developer overhead and administration.

Fees and permits costs were based on information provided by the City and include the existing sewer, water, school district, and other impact fees in addition to City permitting fees. For the prototypes located in the San Pablo Specific Plan Area, the fees include the Stege Sanitary District's San Pablo Avenue fee. The fees and permits estimates also include the proposed City Transportation Impact Fee. The calculation of the fees and permits estimate is shown on Table 6.

3. Base Case Financial Feasibility Findings

Table 7 presents the Base Case financial feasibility analysis. The financial feasibility analysis is based on the relationship between the project's revenue potential, the estimated development costs, and a reasonable developer profit commensurate with the cost of funds and development risk. The residual land value approach, described earlier in this section, produces a residual value that each prototype can afford to pay to acquire a site. If the residual value exceeds the cost to acquire a site for development, the prototype is generally determined to be feasible. If the residual value is less than the cost to acquire and prepare the site, the prototype will need to address economic challenges. As mentioned previously, it would be the case that some projects would have economics that are somewhat better as well as some that are somewhat worse than the "typical" prototype analyzed.

a. Residential Land Values

KMA gathered available data on recent land sales and land currently for sale in El Cerrito. It is important to recognize that each parcel has distinctive elements that affect the land value. These land sales, which occurred primarily from 2015 through 2017, and asking prices for land currently for sale, are shown in Table 8. There was one townhome land sale, for $87 per square foot of land, or $110,000 per unit. There are two condominium land sales, averaging $143 per square foot, or $90,000 per unit. There are several apartment land sales, ranging from $9,000 per unit for a high density project site, to $43,000 per unit and from $59 per square foot to $178 per square foot. Excluding the high FAR project site, the average land value for apartment projects was $29,000 per unit. As is always the case, land values vary depending upon location and other site-specific factors.

b. Base Case Conclusions

For the for-sale units, the metric utilized to measure developer profit is a Return on Sales of 15%. For the rental development units, the metric utilized is a Return on Total Cost (ROC) of 6.0% for market rate units and 7.25% for affordable units, which is incorporated into the unit value supported.

The following table summarizes the base case residual land value conclusions for the four prototypes. The profit levels and cost of sales are incorporated into the development costs per unit. A more detailed pro forma table can be seen in Table 7.

Base Case

Prototype	Value / Unit	(Less) Development Cost / Unit	Residual Land Value / Unit	Residual Land Value / Land Sq. Ft.
Townhome	$750,000	($606,000)	$144,000	$116
Wood Frame Condominium	$625,000	($512,000)	$113,000	$130
Wood Frame/Podium Apartment	$370,200	($327,200)	$43,000	$148
Eight-Story Apartment	$363,500	($352,500)	$11,000	$69

Comparing the residual land values above with the current cost of land in El Cerrito indicates that the four prototypes are generally feasible in today's market. In the top half of the table below, the results of the residual land value analysis are presented. In the lower half of the table, the average of the actual land sales data for examples of the different prototypes is presented.

	Townhome	Wood Frame Condominium	Wood Frame Over Podium Apartment	Eight Story Apartment Building
Estimated Supported Land Value				
Per Unit	$144,000	$113,000	$43,000	$11,000
Per SF of Land Area	$116	$130	$148	$69
Actual Avg. Land Acquisition Cost for Prototype Example Projects				
Per Unit	$110,000	$90,000	$29,000	$9,000
Per SF of Land Area	$87	$143	$131	$59

C. Financial Feasibility of Inclusionary Housing Requirements

To test the impact of potential inclusionary housing requirements on the feasibility of residential projects, KMA included the actual current land acquisition costs in the development costs, and solved for the developer return. The requirements are considered feasible if the developer return is adequate.

Based on input from the City and local developers, KMA modeled a range of onsite inclusionary requirements and in-lieu fee levels. For for-sale units, the onsite requirements ranged from 10% at Moderate to 15% at Moderate. For rental units, the onsite requirements ranged from 5% Low and 5% Moderate to 15% Low.

It is important to note that the Eight Story Apartment Building is setting aside 10% of units at Very Low in the Base Case scenario to earn a density bonus and as such, the project has already complied with most of the inclusionary requirements that were modeled. This assumes that the City's program allows developers to provide units at lower affordability levels than the program requires, a feature that we recommend the City include in its ordinance. In the scenario modeling a 15% at Low inclusionary requirement, KMA assumes that the developer sets aside 18% of base units at Low, with rents set at 60% AMI, to earn a 32% density bonus.

The impact of the inclusionary requirements on developer return is shown in the table below. Detailed calculations for each scenario are presented on Tables 9 through 17.

	Townhome	Wood Frame Condominium	Wood Frame Over Podium Apartment	Eight Story Apartment Building
Threshold Return	15% return on sales	15% return on sales	6% return on costs	6.09% return on costs
FS: 10% Mod / R: 10% Low	16.11%	15.80%	5.87%	6.14%
FS: 10% Mod / **R: 5% Low and 5% Mod**	16.11%	15.80%	**6.00%**	**6.14%**
FS: 12% Mod / R: 7.5% Low and 2.5% Mod	**15.35%**	**15.17%**	5.93%	6.14%
FS: 15% Mod / R: 7.5% Low and 7.5% Mod	14.20%	14.22%	5.85%	6.04%
FS: 15% Mod / R: 15% Low	14.20%	14.22%	5.65%	5.85%
FS: For Sale / R: Rental				

As shown in the table above, the financial feasibility analysis suggests that ownership projects can support an inclusionary requirement of 12% of units at Moderate and that rental projects can support an onsite requirement of 5% Low and 5% Moderate.

KMA also tested a range of in-lieu fee levels, from $15 per square foot to $25 per square foot, and $30,000 per unit. The Eight Story apartment building, which sets aside 10% of the base units at Very Low, is assumed to satisfy the inclusionary obligation with the onsite affordable units and as such, does not pay the in lieu fee in the fee scenarios modeled. The results are shown in the table below.

	Townhome	Wood Frame Condominium	Wood Frame Over Podium Apartment	Eight Story Apartment Building
Threshold Return	15% return on sales	15% return on sales	6% return on costs	6.09% return on costs
In-Lieu Fee of $15 per square foot	16.80%	16.29%	**6.05%**	**6.14%**
In-Lieu Fee of $20 per square foot	**15.85%**	**15.47%**	**5.97%**	**6.14%**
In-Lieu Fee of $25 per square foot	14.89%	14.64%	5.89%	6.14%
In-Lieu Fee at $30,000 per unit	15.57%	13.82%	5.68%	6.14%

The results indicate that ownership projects can support a fee in the $20 per square foot range and rental projects can support a fee in the $15 to $20 per square foot range.

As stated at the beginning of this section, over time markets are able to adjust, at least to some degree, to accommodate added costs of development. Since developers purchase land at values that allow for feasible projects, future adjustments to residential land values will reflect new economic realities, with a new inclusionary program being one factor that could be expected to have an influence.

V. RESIDENTIAL AFFORDABLE HOUSING REQUIREMENTS IN OTHER JURISDICTIONS

A presentation of affordable housing requirements and fee levels in neighboring or other relevant jurisdictions is typically helpful in the decision making process. An analysis of other communities' housing programs not only presents what others are adopting, but also illustrates the range in program design and customized features available to meet local needs.
Based on input from City Staff, KMA summarized the requirements in Albany, Berkeley, Emeryville, Oakland, and Richmond. Table 18 presents an overview of the cities' programs.

A. Thresholds for On-Site Affordable Requirement

- Whether development projects have the choice by right between paying a fee or doing on-site units is a critical feature of any program. Albany allows projects with five or six units to pay an in lieu fee, but projects with seven or more units must provide units onsite. Berkeley, Oakland and Richmond allow all projects to pay a fee by right instead of providing units onsite. Emeryville's program is structured as an impact fee for rental projects (with onsite units as a choice for the developer), but for sale projects with 10 or more units must provide units onsite.

- Most fee options are less costly to the developer than providing on-site units. High fees are necessary if the choice between including units onsite and paying fees is to be at all competitive.

- With the loss of redevelopment and tax increment resources dedicated to housing, many cities have revised their programs to generate more fee revenues. Programs can be revised so as to alter options or incentives for projects to provide on-site units versus pay a fee based on the City's preferences.

- The loss of redevelopment has also motivated some cities to lower minimum project sizes to collect fees on very small projects, even single units. Some cities view charging very small projects and single units a matter of fairness and equity in an "everybody contributes" approach to meeting affordable housing challenges.

- During the period when the *Palmer* decision prevented cities from requiring onsite rental units, impact fees were the only avenue for instituting affordable housing requirements on rentals. On-site affordable units were sometimes permitted or encouraged as an alternative to fee payment. Emeryville, for example, adopted an impact fee on rental units during the time.

B. On-Site Requirements

- The cities surveyed have a broad range of on-site requirements. Albany requires projects with seven or more units to set aside 15% of units at Low, for both rental and for-sale projects. Berkeley requires 20% at Low for for-sale projects and 10% Low plus 10% Very Low for rental projects if they provide units onsite, although fee payment is always an option. Emeryville's onsite requirement for for-sale projects is 20% at Moderate, and 8% at Low plus 4% at Very Low for rental projects. Fee payment is always an option for rental projects in Emeryville. Oakland and Richmond provide developers with several onsite options at different affordability levels. In Oakland, options include 5% Very Low, 10% Low, or 10% Moderate. In Richmond, options include 10% Very Low, 15% Low, or 17% Moderate.

- The income levels of the affordable units that are required are summarized in terms of both "eligibility" or "qualifying" levels and the pricing level that is used to establish the purchase price or rent level of the unit. The pricing level is the critical one insofar as the developer's obligation is concerned. The most typical choice for pricing level is to be consistent with the affordable housing cost definitions in the California Health & Safety Code 50052.5 and 50053.

C. Fee Levels

- Fees are expressed in different ways from one city to the next. Some are a flat fee per market rate unit (e.g., Oakland, Emeryville), some are a percent of value (e.g., Richmond) and some are charged per affordable unit owed (e.g., Albany, Berkeley). Many cities charge fees on a per square foot basis, although none of the surveyed cities do. A fee per square foot results in smaller fees for smaller units and larger fees for larger units, a feature that appeals to many jurisdictions.

- Albany and Berkeley's fee for for-sale units is based on the affordability gap (the difference between the market sales price and the affordable price). In Albany, the in-lieu fee is set at 100% of the difference and in Berkeley, at 62.5% of the difference. To convert per unit owed to per market rate unit, one can multiply the per affordable unit owed amount by the percentage requirement.

- Oakland's fee program ranges by the location of the project within the City. The program was recently adopted and the full phase in amount is shown with clarification in the bottom comment section of the chart. The fully phased in fees range from $8,000 per unit to $23,000 per unit, for both rental and for-sale units.

- Richmond’s fee is set at 7% of building permit value for both for-sale and rental projects. The City is considering revising its inclusionary program and may change the fee structure.

- Emeryville and Berkeley charge rental projects a per-market-rate-unit fee equal to $28,122 and $34,000 per unit, respectively.

- Virtually all cities that have on-site requirements for for-sale residential projects without the choice of fee payment, do allow fee payment with special City Council approval. The City’s practice in granting such approvals may be more consequential than what may be written.

For more complete information on the programs, please consult the website and code language of the individual cities.

TABLE 1
MARKET RATE RESIDENTIAL PROTOTYPES
INCLUSIONARY HOUSING ANALYSIS
CITY OF EL CERRITO, CA

	Townhome	**Wood Frame Condominium**	**Wood Frame Over Podium Apartment**	**Eight Story Apartment Building**
Example Projects	5828 El Dorado Street	10192 San Pablo 10290 San Pablo 10300 San Pablo	Metro 510 Mayfair - mkt rate 10810 San Pablo 10919 San Pablo 10135 San Pablo 10167 San Pablo 10963 San Pablo 11060 San Pablo 921 Kearney	11965 San Pablo
Building Type	Three stories, wood frame.	3-4 stories wood frame.	4-5 stories of wood frame over concrete podium	Eight stories, steel over concrete podium.
Parking Type	Parking in unit.	Mix, surface and garage parking.	Podium parking.	Underground parking.
Unit Mix	2, 3 and 4 BR	2 and 3 BR	1, 2, and 3 BR	Studios, 1 and 2 BR
Average Unit Size	1,400 sf	1,000 sf	750 sf	700 sf
Average No. of Bedrooms	3.0 BR	2.5 BR	1.4 BR	1.0 BR
Average Parking Spaces	2 sp/unit	1.1 sp/unit	0.6 sp/unit	0.5 sp/unit
Sales Price/Rent	$750,000	$625,000	$2,700	$2,850
per square foot	$536	$625	$3.60	$4.07
Notes	Outside of the Specific Plan Area			State Density Bonus

TABLE 2
RECENT HOME SALES DATA
INCLUSIONARY HOUSING ANALYSIS
CITY OF EL CERRITO, CA

Homes Sold Since January 2016

All Condominiums

Address	*BRs*	*Baths*	*Unit Size*	*Sales Price*	*Price/SF*	*Year Built*
1708 Lexington Ave 8	1	1	710	$410,000	$577	1991
1751 Liberty St 304	2	2	905	$475,000	$525	1986
1740 Liberty St 6	2	2	974	$460,000	$472	1984
1751 Liberty St 103	2	2	935	$430,500	$460	1986
1751 Liberty St 105	2	2	928	$423,000	$456	1986
1751 Liberty St 206	2	2	928	$420,000	$453	1986
6400 Moeser Ln 5	2	1	704	$425,000	$604	1962
Average	1.9	1.7	869	$434,786	$507	1983

Wildwood Townhomes

Address	*BRs*	*Baths*	*Unit Size*	*Sales Price*	*Price/SF*	*Year Built*
44 Wildwood Pl	2	3	1379	$608,000	$441	1972
62 Wildwood Pl	2	3	1472	$675,000	$459	1972
12 Wildwood Pl	2	3	1349	$606,000	$449	1972
17 Wildwood Pl	3	3	1472	$635,000	$431	1972
19 Wildwood Pl	2	3	1448	$547,500	$378	1972
34 Wildwood Pl	3	3	1472	$685,000	$465	1972
33 Wildwood Pl	3	2	1439	$695,000	$483	1972
52 Wildwood Pl	3	3	1472	$722,000	$490	1972

All Single Family Homes

	# of Units	*Baths*	*Unit Size*	*Sales Price*	*Price/SF*	*Year Built*
One Bedrooms	9	1	847	$656,500	$775	1940
Two Bedrooms	149	1	1,169	$714,268	$611	1946
Three Bedrooms	220	2	1,670	$868,216	$520	1952
Four Bedrooms	65	3	2,368	$963,377	$407	1959
Five Bedrooms	21	4	3,141	$1,099,905	$350	1959
Six Bedrooms	7	4	3,444	$1,402,500	$407	1968

Single Family Homes Built Since 2000

Address	*BRs*	*Baths*	*Unit Size*	*Sales Price*	*Price/SF*	*Year Built*
1548 Madera Cir	6	5	4,596	$2,218,500	$483	2016
1552 Madera Cir	6	5	4,572	$2,150,000	$470	2016
852 Galvin Dr	4	3	2,572	$1,450,000	$564	2010
1348 Brewster Dr	5	5	5,296	$1,800,000	$340	2008
1735 Elm St	3	3	1,665	$775,000	$465	2006
12 Dylans Way	5	7	7,216	$2,000,000	$277	2005
8 Dylans Way	5	5	4,787	$1,100,000	$230	2005
2056 Harper St	3	4	2,748	$975,000	$355	2003
1531 Regency Ct	3	3	2,760	$1,515,000	$549	2003
1591 Regency Ct	3	3	2,802	$1,040,000	$371	2001
Average	4.3	4.3	3901	$1,502,350	$410	2007.3

Source: ListSource, January 2018.

TABLE 3
MARKET RENTS FOR APARTMENTS IN EL CERRITO
INCLUSIONARY HOUSING ANALYSIS
CITY OF EL CERRITO, CA

	Bedrooms	Baths	Square Feet	Asking Rents		Asking Rents / SF	
				Low	High	Low	High
Village at Town Center	1	1	595 sf	$1,940		$3.26	
6410 Schmidt Lane	1	1	607 sf	$2,435		$4.01	
Built 2007	1	1	610 sf	$2,040		$3.34	
	1	1	710 sf	$2,185		$3.08	
	1	1	737 sf	$2,745		$3.72	
	1	1	710 sf	$2,295		$3.23	
	2	2	962 sf	$2,490		$2.59	
	2	2	1,025 sf	$2,585		$2.52	
	2	2	1,075 sf	$2,575		$2.40	
	2	2	1,105 sf	$2,735		$2.48	
	2	2	1,150 sf	$2,960		$2.57	
Metro 510 (Creekside Walk)	1	1	847 sf	$2,865		$3.38	
510 El Cerrito Plaza	1	1	800 sf	$2,799		$3.50	
Built 2017	2	2	1,066 sf				
	2	2	1,153 sf				
	3	3	1,412 sf	$4,520		$3.20	
Civic Plaza Apartments	1	1	674 sf	$1,975	$2,075	$2.93	$3.08
10944 San Pablo Ave	2	2	821 sf	$2,040	$2,180	$2.48	$2.66
Built 1988	2	2	841 sf	$2,365		$2.81	
Del Norte Place	1	1	616 sf	$2,030	$2,448	$3.30	$3.97
11720-11780 San Pablo Ave	1	1	600 sf	$2,105	$2,527	$3.51	$4.21
Built 1992	1	1	745 sf	$2,325	$2,781	$3.12	$3.73
	2	2	864 sf	$2,237	$2,430	$2.59	$2.81
	2	2	910 sf	$2,372	$2,441	$2.61	$2.68
	2	2	901 sf	$2,557	$2,649	$2.84	$2.94
	2	2	920 sf	$2,612	$2,705	$2.84	$2.94

Sources; Apartment project websites, apartments.com, January 2018.

TABLE 4
AFFORDABLE SALES PRICES
INCLUSIONARY HOUSING ANALYSIS
CITY OF EL CERRITO, CA

	Household Size	Notes	3 Person Two Bedroom	4 Person Three Bedroom
	100% AMI Contra Costa County (2017)		$87,650	$97,400
I.	**Moderate Income @ 110% AMI**			
	Household Income @ 110% AMI		$96,415	$107,140
	Available for Housing Costs @ 35%	35%	$33,745	$37,499
	(Less) HOA Dues, Insurance & Maintenance		($6,000)	($6,300)
	(Less) Utilities[1]		($2,200)	($2,580)
	(Less) Taxes & Assessments	1.4%	($5,194)	($5,810)
	Income Available for Mortgage		$20,351	$22,809
	Mortgage	4.07%	$352,249	$394,789
	Downpayment	5%	$18,550	$20,750
	Supported Home Price		**$370,799**	**$415,539**
	Rounded		**$371,000**	**$416,000**
II.	**Low Income @ 70% AMI**			
	Household Income @ 70% AMI		$61,355	$68,180
	Available for Housing Costs @ 30%	30%	$18,407	$20,454
	(Less) HOA Dues, Insurance & Maintenance		($6,000)	($6,300)
	(Less) Utilities (1)		($2,200)	($2,580)
	(Less) Taxes & Assessments	1.4%	($2,072)	($2,352)
	Income Available for Mortgage		$8,135	$9,222
	Mortgage	4.07%	$140,796	$159,619
	Downpayment	5%	$7,400	$8,400
	Supported Home Price		**$148,196**	**$168,019**
	Rounded		**$148,000**	**$168,000**

1. Contra Costa County utility allowances, March 2017, for townhomes units. Unit assumed to have natural gas heat, cooking and water heating.

TABLE 5
AFFORDABLE RENTS
INCLUSIONARY HOUSING ANALYSIS
CITY OF EL CERRITO, CA

		2 Person One Bedroom	3 Person Two Bedroom
	100% AMI Contra Costa County (2017)	$77,900	$87,650
I.	**Moderate Income @ 110%**		
	Household Income @ 110% AMI	$85,690	$96,415
	Available for Housing Costs @ 30%	$2,142	$2,410
	(Less) Utilities[1]	($56)	($68)
	Affordable Monthly Rent	$2,086	$2,342
II.	**Low Income @ 70% AMI**		
	Household Income @ 70% AMI	$54,530	$61,355
	Available for Housing Costs @ 30%	$1,363	$1,534
	(Less) Utilities[1]	($56)	($68)
	Affordable Rent	$1,307	$1,466
III.	**Low Income @ 60% AMI**		
	Household Income @ 60% AMI	$46,740	$52,590
	Available for Housing Costs @ 30%	$1,169	$1,315
	(Less) Utilities[1]	($56)	($68)
	Affordable Monthly Rent	$1,113	$1,247

1. Contra Costa County utility allowances, March 2017, for multifamily apartment units.
Unit assumed to have natural gas heat, cooking and water heating.

TABLE 6
ESTIMATE OF PERMITTING AND IMPACT FEES FOR PROTOTYPES
INCLUSIONARY HOUSING ANALYSIS
CITY OF EL CERRITO, CA

	Townhome	Wood Frame Condominium	Wood Frame Over Podium Apartment	Eight Story Apartment Building
I. Analysis Prototypes				
Product Description	Three stories w/ attached garage.	3-4 stories wood frame.	4-5 stories of wood frame over concrete podium	Eight stories, steel over concrete.
Average Unit Size	1,400 sf	1,000 sf	750 sf	700 sf
Average Number of Bedrooms	3 br	2.5 br	1.4 br	1 br
Average Number of Bathrooms	2 ba	2 ba	1.4 ba	1 ba
II. City Permit Fees				
Sample Projects	1715 Elm 5828 El Dorado	10192 San Pablo Avenue 10290 San Pablo Avenue 10300 San Pablo Avenue	10135 San Pablo Avenue 11600 San Pablo Avenue 10919 San Pablo Avenue Big 5 Sporting Goods	11965 San Pablo Avenue
Average, Estimated City Permitting Fees for Sample Projects	$8,907 /unit	$4,466 /unit	$3,734 /unit	$2,803 /unit
Source: City of El Cerrito.				
III. West Contra Costa County Unified School District Fees				
Current fee: $5.02 per square foot	$7,028 /unit	$5,020 /unit	$3,765 /unit	$3,514 /unit
Source: WCCUSD website.				
IV. Stege Sanitary District Fees				
Connection Fee (all projects)				
Current fee: $2,159 per unit	$2,159 /unit	$2,159 /unit	$2,159 /unit	$2,159 /unit
San Pablo Avenue Sewer Capacity Improvement Impact Fee Program				
Estimated number of fixtures*		26	20.6	17
Current fee: $217.89 per fixture	not in Specific Plan Area			
San Pablo Avenue Fee		$5,665 /unit	$4,489 /unit	$3,704 /unit
*Assumes each unit contains clothes washer, dishwasher, kitchen sink. Assumes each bathroom contains bath and/or shower, toilet and sink.				
Source: Stege Sanitary District website.				

TABLE 6
ESTIMATE OF PERMITTING AND IMPACT FEES FOR PROTOTYPES
INCLUSIONARY HOUSING ANALYSIS
CITY OF EL CERRITO, CA

	Townhome	Wood Frame Condominium	Wood Frame Over Podium Apartment	Eight Story Apartment Building
V. East Bay Municipal Utility District Water Connection Fees				
Water Service Installation Fee	$6,193 /unit	$6,193 /unit	$23,892 /project	$23,892 /project
Average Project Size			72 units	146 units
Estimated Fee / Unit			$332 /unit	$164 /unit
System Capacity Charge	$17,530 /unit	$17,530 /unit	$10,200 /unit	$10,200 /unit
Assumes all ownership units are individually metered.				
Source: EBMUD website.				
VI. Other Fees				
S.M.I.P Fee	$37 /unit	$42 /unit	$51 /unit	$43 /unit
Subregional Transportation Mitigation Program (STMP) Fee	$2,024 /unit	$1,708 /unit	$1,701 /unit	$1,648 /unit
California Building Standards Fee	$11 /unit	$7 /unit	$7 /unit	$6 /unit
Art in Public Places Fee	$2,650 /unit	$1,794 /unit	$1,601 /unit	$1,027 /unit
Specific Plan Maintenance Fee	$238 /unit	$227 /unit	$262 /unit	$229 /unit
Average fees for sample projects.				
Source: City of El Cerrito.				
VII. Proposed City Transportation Impact Fee	$4,989 /unit	$3,492 /unit	$3,492 /unit	$3,492 /unit
Assumes townhomes are considered single family; all other units are multi-family.				
Source: City of El Cerrito.				
	$51,765 /unit	**$48,303 /unit**	**$31,793 /unit**	**$28,989 /unit**

TABLE 7
FINANCIAL FEASIBILITY BASE CASE
INCLUSIONARY HOUSING ANALYSIS
CITY OF EL CERRITO, CA

	Townhome		**Wood Frame Condominium**		**Wood Frame Over Podium Apartment**		**Eight Story Apartment Building**	
Product Description	Three stories w/ attached garage.		3-4 stories wood frame.		4-5 stories of wood frame over concrete podium		Eight stories, steel over concrete. Density Bonus.	
Average Unit Size	1,400 sf		1,000 sf		750 sf		700 sf	
Average Number of Bedrooms	3.0 bedrooms		2.5 bedrooms		1.4 bedrooms		1.0 bedroom	
Density	35 du/acre		50 du/acre		150 du/acre		275 du/acre	
Revenue	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**
Market Rate Units	$536	$750,000	$625	$625,000	$3.60	$32,400	$4.07	$34,200
Affordable Units @ Very Low[1]							7.5%	$11,013
Total Gross Sales / Rents	$536	$750,000	$625	$625,000	$3.60	$32,400	$3.86	$32,461
<Less> Sales Expense (4%)	($21)	($30,000)	($25)	($25,000)	Other Income:	$600		$600
Sales Net of Sales Expenses	$514	$720,000	$600	$600,000	Vac/OpExp:	($10,790)		($10,910)
					NOI:	$22,210		$22,151
					Return:	6.00%	Blended Return:	6.09%
					Supported Investment:	*$370,200*		*$363,500*
Development Costs	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**
Direct Costs	$237	$331,800	$275	$275,000	$330	$247,500	$385	$269,500
Fees & Permits	$37	$51,765	$48	$48,303	$42	$31,793	$41	$28,989
Other Indirect Costs	$47	$66,360	$55	$55,000	$50	$37,125	$58	$40,425
Financing	$10	$13,300	$15	$15,100	$15	$11,000	$19	$13,600
Total Development Costs (excl. land)	$331	$463,225	$393	$393,403	$437	$327,418	$504	$352,514
Residual Land Value								
Net Sales / Supported Investment	$514	$720,000	$600	$600,000		$370,200		$363,500
<Less> Development Costs	($331)	($463,225)	($393)	($393,403)		($327,418)		($352,514)
<Less> Profit Margin		($112,500)		($93,750)		included above		included above
Residual Land Value (Per Unit)		**$144,000**		**$113,000**		**$43,000**		**$11,000**
Per Acre		*$5,040,000*		*$5,650,000*		*$6,450,000*		*$3,025,000*
Per Square Foot of Land Area		*$116*		*$130*		*$148*		*$69*
Profit Margin		*15.0%*		*15.0%*		*6.00%*		*6.09%*
Profit Margin Basis		*return on sales*		*return on sales*		*return on cost*		*blended return on cost*

1. Developer sets aside 10% of the base units at Very Low to earn a 32.5% density bonus (all market rate units). This translates to 7.5% of the units in the total project.

TABLE 8
LAND VALUES
INCLUSIONARY HOUSING ANALYSIS
CITY OF EL CERRITO, CA

Land Sales

Address	APN	Date Sold	Sale Price	Acres	Square Feet	Price / SF	# of Units	Units / Acre	Price/ Unit	Planned Use
5828 El Dorado Avenue	**510-037-001, -002, -027, and -028**	**5/15/2017**	**$3,200,000**	**0.84**	**36,590 sf**	**$87**	**29**	**35**	**$110,345**	**THs**
10135 San Pablo Avenue	510-034-002	10/30/2015	$1,580,000	0.24	10,250 sf	$154				
10163 San Pablo Avenue	510-034-001	10/30/2015	$1,580,000	0.17	7,500 sf	$211				
			$3,160,000	0.41	17,750 sf	$178	73	178	$43,288	Apts.
11155 San Pablo Avenue	509-090-025	1/15/2016	$800,000	0.22	9,502 sf	$84				
5808 Carlos	509-090-022	1/15/2016	$800,000	0.07	2,875 sf	$278				
10069 San Pablo Avenue	510-024-003	8/25/2016	$925,000	0.29	12,600 sf	$73				
11965 San Pablo Avenue	513-340-059-7	12/23/2016	$1,300,000	0.5	21,911 sf	$59	146	292	$8,904	Apts
10963 San Pablo Avenue	509-110-015	1/4/2017	$1,786,000	0.35	15,167 sf	$118	50	143	$35,720	Apts
10167 San Pablo Avenue	510-034-003-2	2/8/2017	$1,100,000	0.26	11,144 sf	$99	62	238	$17,742	Apts
921 Kearney St	503-233-007-7, 503-2	3/27/2017	$1,465,000	0.31	13,364 sf	$110	71	229	$20,634	Apts
10290 San Pablo Avenue	503-394-026-2	5/31/2017	$1,550,000	0.23	10,000 sf	$155	14	61	$110,714	Condos
10192 San Pablo Avenue	504-012-036	12/19/2016	$1,600,000	0.28	12,000 sf	$133	21	75	$76,190	Condos
Average, All Projects			$20,846,000	4.17	180,653 sf	$115				
Avg. for Apts (including unspec)			$14,496,000	2.82	122,063 sf	$118.76				
Avg. Condos			**$3,150,000**	**0.51**	22,000 sf	**$143**	**35**	**69**	**$90,000**	**Condos**
Avg. for Apts with all data available			$8,811,000	1.83	79,336 sf	$111	402	220	$21,918	Apts.
Avg. Apts, ex.11965 San Pablo			**$7,511,000**	**1.33**	57,425 sf	**$131**	**256**	**192**	**$29,340**	**Apts.**
Entitled Lots Currently For Sale										
1715 Elm			$2,000,000	0.42	18,295 sf	$109	15	36	$133,333	Condos
10167 San Pablo Avenue			$4,100,000	0.26	11,112 sf	$369	62	238	$66,129	Apts
921 Kearney			$3,900,000	0.31	13,364 sf	$292	71	229	$54,930	Apts
Older Residential Sales										
5730 El Dorado Ave	510-045-006	9/4/2013	$355,000	0.29	12,502 sf	$28	9		$39,444	Apts

Sources: City of El Cerrito, CoStar, Redfin.

TABLE 9
FINANCIAL FEASIBILITY: INCLUSIONARY - 10% AT MODERATE (FOR SALE) and 10% AT LOW (RENTAL)
INCLUSIONARY HOUSING ANALYSIS
CITY OF EL CERRITO, CA

	Townhome		**Wood Frame Condominium**		**Wood Frame Over Podium Apartment**		**Eight Story Apartment Building**	
Product Description	Three stories w/ attached garage.		3-4 stories wood frame.		4-5 stories of wood frame over concrete podium		Eight stories, steel over concrete. Density Bonus.	
Average Unit Size	1,400 sf		1,000 sf		750 sf		700 sf	
Average Number of Bedrooms	3.0 bedrooms		2.5 bedrooms		1.4 bedrooms		1.0 bedroom	
Revenue	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**
Market Rate Units	$536	$750,000	$625	$625,000	$3.60	$32,400	$4.07	$34,200
Affordable Units @ 10%	Mod	$416,000	Mod	$393,500	Low	$16,448	Very Low[1]	$11,013
Total Gross Sales / Rents	$511.86	$716,600	$602	$601,850	$3.42	$30,805	$3.86	$32,461
<Less> Sales Expense (4%)	($20)	($28,664)	($24)	($24,074)	Other Income:	$600		$600
Sales Net of Sales Expenses	$491	$687,936	$577.78	$577,776	Vac/OpExp:	($10,520)		($10,880)
					NOI:	$20,885		$22,181
Development Costs	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**
Land	$79	$110,000	$90	$90,000	$39	$29,000	$13	$9,000
Direct Costs	$237	$331,800	$275	$275,000	$330	$247,500	$385	$269,500
Fees & Permits	$37	$51,765	$48	$48,303	$42	$31,793	$41	$28,989
Other Indirect Costs	$47	$66,360	$55	$55,000	$50	$37,125	$58	$40,425
Financing	$9	$12,600	$14	$14,400	$14	$10,600	$19	$13,600
Total Development Costs (incl. land)	$409	$572,525	$483	$482,703	$475	$356,018	$516	$361,514
Developer Return								
Net Sales / Net Operating Income	$491	$687,936	$578	$577,776		$20,885		$22,181
<Less> Development Costs	($409)	($572,525)	($483)	($482,703)		$356,018		$361,514
Developer Profit	$82	$115,411	$95	$95,073				
Profit Margin		*16.1%*		*15.8%*		*5.87%*		*6.14%*
Profit Margin Basis		*return on sales*		*return on sales*		*return on cost*		*return on cost*

1. Developer sets aside 10% of the base units at Very Low to earn a 32.5% density bonus and satisfy inclusionary (bonus units are all market rate units). This translates to 7.5% of the units in the total project.

TABLE 10
FINANCIAL FEASIBILITY: INCLUSIONARY - 10% AT MODERATE (FOR SALE) and 5% AT LOW plus 5% AT MODERATE (RENTAL)
INCLUSIONARY HOUSING ANALYSIS
CITY OF EL CERRITO, CA

	Townhome		Wood Frame Condominium		Wood Frame Over Podium Apartment		Eight Story Apartment Building	
Product Description	Three stories w/ attached garage.		3-4 stories wood frame.		4-5 stories of wood frame over concrete podium		Eight stories, steel over concrete. Density Bonus.	
Average Unit Size	1,400 sf		1,000 sf		750 sf		700 sf	
Average Number of Bedrooms	3.0 bedrooms		2.5 bedrooms		1.4 bedrooms		1.0 bedroom	
Revenue	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**
Market Rate Units	$536	$750,000	$625	$625,000	$3.60	$32,400	$4.07	$34,200
Affordable Units	Mod	$416,000	Mod	$393,500	Mod	$26,264	Very Low[1]	$11,013
					Low	$16,448		
Total Gross Sales / Rents	$512	$716,600	$602	$601,850	$3.48	$31,296	$3.86	$32,461
<Less> Sales Expense (4%)	($20)	($28,664)	($24)	($24,074)	Other Income:	$600		$600
Sales Net of Sales Expenses	$491	$687,936	$578	$577,776	Vac/OpExp:	($10,550)		($10,880)
					NOI:	$21,346		$22,181
Development Costs	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**
Land Costs	$79	$110,000	$90	$90,000	$39	$29,000	$13	$9,000
Direct Costs	$237	$331,800	$275	$275,000	$330	$247,500	$385	$269,500
Fees & Permits	$37	$51,765	$48	$48,303	$42	$31,793	$41	$28,989
Other Indirect Costs	$47	$66,360	$55	$55,000	$50	$37,125	$58	$40,425
Financing	$9	$12,600	$14	$14,400	$14	$10,600	$19	$13,600
Total Development Costs (excl. land)	$409	$572,525	$483	$482,703	$475	$356,018	$516	$361,514
Residual Land Value								
Net Sales / Net Operating Income	$491	$687,936	$578	$577,776		$21,346		$22,181
<Less> Development Costs	($409)	($572,525)	($483)	($482,703)		$356,018		$361,514
	$82	$115,411	$95	$95,073				
Profit Margin		*16.1%*		*15.8%*		6.00%		*6.14%*
Profit Margin Basis		*return on sales*		*return on sales*		*return on cost*		*return on cost*

1. Developer sets aside 10% of the base units at Very Low to earn a 32.5% density bonus and satisfy inclusionary (bonus units are all market rate units). This translates to 7.5% of the units in the total project.

TABLE 11
FINANCIAL FEASIBILITY: INCLUSIONARY - 12% AT MODERATE (FOR SALE) and 7.5% AT LOW plus 2.5% AT MODERATE (RENTAL)
INCLUSIONARY HOUSING ANALYSIS
CITY OF EL CERRITO, CA

	Townhome		Wood Frame Condominium		Wood Frame Over Podium Apartment		Eight Story Apartment Building	
Product Description	Three stories w/ attached garage.		3-4 stories wood frame.		4-5 stories of wood frame over concrete podium		Eight stories, steel over concrete. Density Bonus.	
Average Unit Size	1,400 sf		1,000 sf		750 sf		700 sf	
Average Number of Bedrooms	3.0 bedrooms		2.5 bedrooms		1.4 bedrooms		1.0 bedroom	
Revenue	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**
Market Rate Units	$536	$750,000	$625	$625,000	$3.60	$32,400	$4.07	$34,200
Affordable Units	Mod	$416,000	Mod	$393,500	Mod	$26,264	Very Low[1]	$11,013
					Low	$16,448		
Total Gross Sales / Rents	$507	$709,920	$597	$597,220	$3.45	$31,050	$3.86	$32,461
<Less> Sales Expense (4%)	($20)	($28,397)	($24)	($23,889)	Other Income:	$600		$600
Sales Net of Sales Expenses	$487	$681,523	$573	$573,331	Vac/OpExp:	($10,540)		($10,880)
					NOI:	$21,110		$22,181
Development Costs	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**
Land Costs	$79	$110,000	$90	$90,000	$39	$29,000	$13	$9,000
Direct Costs	$237	$331,800	$275	$275,000	$330	$247,500	$385	$269,500
Fees & Permits	$37	$51,765	$48	$48,303	$42	$31,793	$41	$28,989
Other Indirect Costs	$47	$66,360	$55	$55,000	$50	$37,125	$58	$40,425
Financing	$9	$12,600	$14	$14,400	$14	$10,600	$19	$13,600
Total Development Costs (excl. land)	$409	$572,525	$483	$482,703	$475	$356,018	$516	$361,514
Residual Land Value								
Net Sales / Net Operating Income	$487	$681,523	$573	$573,331		$21,110		$22,181
<Less> Development Costs	($409)	($572,525)	($483)	($482,703)		$356,018		$361,514
	$78	$108,998	$91	$90,628				
Profit Margin		*15.4%*		*15.2%*		*5.93%*		*6.14%*
Profit Margin Basis		*return on sales*		*return on sales*		*return on cost*		*return on cost*

1. Developer sets aside 10% of the base units at Very Low to earn a 32.5% density bonus and satisfy inclusionary (bonus units are all market rate units). This translates to 7.5% of the units in the total project.

TABLE 12
FINANCIAL FEASIBILITY: INCLUSIONARY - 15% AT MODERATE (FOR SALE) and 7.5% AT LOW plus 7.5% AT MODERATE (RENTAL)
INCLUSIONARY HOUSING ANALYSIS
CITY OF EL CERRITO, CA

	Townhome		**Wood Frame Condominium**		**Wood Frame Over Podium Apartment**		**Eight Story Apartment Building**	
Product Description	Three stories w/ attached garage.		3-4 stories wood frame.		4-5 stories of wood frame over concrete podium		Eight stories, steel over concrete. Density Bonus.	
Average Unit Size	1,400 sf		1,000 sf		750 sf		700 sf	
Average Number of Bedrooms	3.0 bedrooms		2.5 bedrooms		1.4 bedrooms		1.0 bedroom	
Revenue	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**
Market Rate Units	$536	$750,000	$625	$625,000	$3.60	$32,400	$4.07	$34,200
Affordable Units	Mod	$416,000	Mod	$393,500	Mod	$26,264	Mod[1]	$25,035
					Low	$16,448	Very Low	$11,013
Total Gross Sales / Rents	$500	$699,900	$590	$590,275	$3.42	$30,743	$3.82	$32,113
<Less> Sales Expense (4%)	($20)	($27,996)	($24)	($23,611)	Other Income:	$600		$600
Sales Net of Sales Expenses	$480	$671,904	$567	$566,664	Vac/OpExp:	($10,520)		($10,870)
					NOI:	$20,823		$21,843
Development Costs	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**
Land Costs	$79	$110,000	$90	$90,000	$39	$29,000	$13	$9,000
Direct Costs	$237	$331,800	$275	$275,000	$330	$247,500	$385	$269,500
Fees & Permits	$37	$51,765	$48	$48,303	$42	$31,793	$41	$28,989
Other Indirect Costs	$47	$66,360	$55	$55,000	$50	$37,125	$58	$40,425
Financing	$9	$12,600	$14	$14,400	$14	$10,600	$19	$13,600
Total Development Costs (excl. land)	$409	$572,525	$483	$482,703	$475	$356,018	$516	$361,514
Residual Land Value								
Net Sales / Net Operating Income	$480	$671,904	$567	$566,664		$20,823		$21,843
<Less> Development Costs	($409)	($572,525)	($483)	($482,703)		$356,018		$361,514
	$71	$99,379	$84	$83,961				
Profit Margin		*14.2%*		*14.2%*		*5.85%*		*6.04%*
Profit Margin Basis		*return on sales*		*return on sales*		*return on cost*		*return on cost*

1. Developer sets aside 10% of the base units at Very Low to earn a 32.5% density bonus, plus 5% Moderate to satisfy inclusionary (bonus units are all market rate units). This translates to 7.5% VL and 3.8% Moderate for the total units in the total project.

TABLE 13
FINANCIAL FEASIBILITY: INCLUSIONARY - 15% AT MODERATE (FOR SALE) and 15% AT LOW (RENTAL)
INCLUSIONARY HOUSING ANALYSIS
CITY OF EL CERRITO, CA

	Townhome		Wood Frame Condominium		Wood Frame Over Podium Apartment		Eight Story Apartment Building	
Product Description	Three stories w/ attached garage.		3-4 stories wood frame.		4-5 stories of wood frame over concrete podium		Eight stories, steel over concrete. Density Bonus.	
	1,400 sf		1,000 sf		750 sf		700 sf	
Average Number of Bedrooms	3.0 bedrooms		2.5 bedrooms		1.4 bedrooms		1.0 bedroom	
Revenue	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**
Market Rate Units	$536	$750,000	$625	$625,000	$3.60	$32,400	$4.07	$34,200
Affordable Units	Mod	$416,000	Mod	$393,500	Low	$16,448	Low[1]	$13,350
Total Gross Sales / Rents	$500	$699,900	$590	$590,275	$3.33	$30,007	$3.73	$31,364
<Less> Sales Expense (4%)	($20)	($27,996)	($24)	($23,611)	Other Income:	$600		$600
Sales Net of Sales Expenses	$480	$671,904	$567	$566,664	Vac/OpExp:	($10,480)		($10,830)
					NOI:	$20,127		$21,134
Development Costs	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**
Land Costs	$79	$110,000	$90	$90,000	$39	$29,000	$13	$9,000
Direct Costs	$237	$331,800	$275	$275,000	$330	$247,500	$385	$269,500
Fees & Permits	$37	$51,765	$48	$48,303	$42	$31,793	$41	$28,989
Other Indirect Costs	$47	$66,360	$55	$55,000	$50	$37,125	$58	$40,425
Financing	$9	$12,600	$14	$14,400	$14	$10,600	$19	$13,600
Total Development Costs (excl. land)	$409	$572,525	$483	$482,703	$475	$356,018	$516	$361,514
Residual Land Value								
Net Sales / Net Operating Income	$480	$671,904	$567	$566,664		$20,127		$21,134
<Less> Development Costs	($409)	($572,525)	($483)	($482,703)		$356,018		$361,514
	$71	$99,379	$84	$83,961				
Profit Margin		*14.2%*		*14.2%*		*5.65%*		*5.85%*
Profit Margin Basis		*return on sales*		*return on sales*		*return on cost*		*return on cost*

1. Assumes project sets aside 13.6% of units at Low, with rents at 60% AMI, (18% of base units) to earn 32% density bonus and satisfy inclusionary.

TABLE 14
FINANCIAL FEASIBILITY: INCLUSIONARY HOUSING IN-LIEU FEE OPTION: $15 PER SQUARE FOOT
INCLUSIONARY HOUSING ANALYSIS
CITY OF EL CERRITO, CA

	Townhome		Wood Frame Condominium		Wood Frame Over Podium Apartment		Eight Story Apartment Building	
Product Description	Three stories w/ attached garage.		3-4 stories wood frame.		4-5 stories of wood frame over concrete podium		Eight stories, steel over concrete. Density Bonus.	
Average Unit Size	1,400 sf		1,000 sf		750 sf		700 sf	
Average Number of Bedrooms	3.0 bedrooms		2.5 bedrooms		1.4 bedrooms		1.0 bedroom	
Revenue	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**
Market Rate Units	$536	$750,000	$625	$625,000	$3.60	$32,400	$4.07	$34,200
Affordable Units							Very Low[1]	$11,013
Total Gross Sales / Rents	$536	$750,000	$625	$625,000	$3.60	$32,400	$3.86	$32,461
<Less> Sales Expense (4%)	($21)	($30,000)	($25)	($25,000)	Other Income:	$600		$600
Sales Net of Sales Expenses	$514	$720,000	$600	$600,000	Vac/OpExp:	($10,770)		($10,880)
					NOI:	$22,230		$22,181
Development Costs	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**
Land Costs	$79	$110,000	$90	$90,000	$39	$29,000	$13	$9,000
Direct Costs	$237	$331,800	$275	$275,000	$330	$247,500	$385	$269,500
Fees & Permits	$37	$51,765	$48	$48,303	$42	$31,793	$41	$28,989
Affordable Housing In-Lieu Fee	$15	$21,000	$15	$15,000	$15	$11,250	$15	$0
Other Indirect Costs	$47	$66,360	$55	$55,000	$50	$37,125	$58	$40,425
Financing	$9	$13,100	$15	$14,900	$15	$11,000	$19	$13,600
Total Development Costs (excl. land)	$424	$594,025	$498	$498,203	$490	$367,668	$516.45	$361,514
Residual Land Value								
Net Sales / Net Operating Income	$514	$720,000	$600	$600,000		$22,230		$22,181
<Less> Development Costs	($424)	($594,025)	($498)	($498,203)		$367,668		$361,514
	$90	$125,975	$102	$101,797				
Profit Margin		*16.8%*		*16.3%*		*6.05%*		*6.14%*
Profit Margin Basis		*return on sales*		*return on sales*		*return on cost*		*return on cost*

1. Assumes project sets aside 7.5% of units at Very Low (10% of base units) to earn 32.5% density bonus and satisfy inclusionary obligation.

TABLE 15
FINANCIAL FEASIBILITY: INCLUSIONARY HOUSING IN-LIEU FEE OPTION: $20 PER SQUARE FOOT
INCLUSIONARY HOUSING ANALYSIS
CITY OF EL CERRITO, CA

	Townhome		**Wood Frame Condominium**		**Wood Frame Over Podium Apartment**		**Eight Story Apartment Building**	
Product Description	Three stories w/ attached garage.		3-4 stories wood frame.		4-5 stories of wood frame over concrete podium		Eight stories, steel over concrete. Density Bonus.	
Average Unit Size	1,400 sf		1,000 sf		750 sf		700 sf	
Average Number of Bedrooms	3.0 bedrooms		2.5 bedrooms		1.4 bedrooms		1.0 bedroom	
Revenue	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**
Market Rate Units	$536	$750,000	$625	$625,000	$3.60	$32,400	$4.07	$34,200
Affordable Units							Very Low[1]	$11,013
Total Gross Sales / Rents	$536	$750,000	$625	$625,000	$3.60	$32,400	$3.86	$32,461
<Less> Sales Expense (4%)	($21)	($30,000)	($25)	($25,000)	Other Income:	$600		$600
Sales Net of Sales Expenses	$514	$720,000	$600	$600,000	Vac/OpExp:	($10,820)		($10,880)
					NOI:	$22,180		$22,181
Development Costs	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**
Land Costs	$79	$110,000	$90	$90,000	$39	$29,000	$13	$9,000
Direct Costs	$237	$331,800	$275	$275,000	$330	$247,500	$385	$269,500
Fees & Permits	$37	$51,765	$48	$48,303	$42	$31,793	$41	$28,989
Affordable Housing In-Lieu Fee	$20	$28,000	$20	$20,000	$20	$15,000	$20	$0
Other Indirect Costs	$47	$66,360	$55	$55,000	$50	$37,125	$58	$40,425
Financing	$9	$13,200	$15	$15,000	$15	$11,100	$19	$13,600
Total Development Costs (excl. land)	$429	$601,125	$503	$503,303	$495	$371,518	$516.45	$361,514
Residual Land Value								
Net Sales / Net Operating Income	$514	$720,000	$600	$600,000		$22,180		$22,181
<Less> Development Costs	($429)	($601,125)	($503)	($503,303)		$371,518		$361,514
	$85	$118,875	$97	$96,697				
Profit Margin		*15.8%*		*15.5%*		*5.97%*		*6.14%*
Profit Margin Basis		*return on sales*		*return on sales*		*return on cost*		*return on cost*

1. Assumes project sets aside 7.5% of units at Very Low (10% of base units) to earn 32.5% density bonus and satisfy inclusionary obligation.

TABLE 16
FINANCIAL FEASIBILITY: INCLUSIONARY HOUSING IN-LIEU FEE OPTION: $25 PER SQUARE FOOT
INCLUSIONARY HOUSING ANALYSIS
CITY OF EL CERRITO, CA

	Townhome		**Wood Frame Condominium**		**Wood Frame Over Podium Apartment**		**Eight Story Apartment Building**	
Product Description	Three stories w/ attached garage.		3-4 stories wood frame.		4-5 stories of wood frame over concrete podium		Eight stories, steel over concrete. Density Bonus.	
Average Unit Size	1,400 sf		1,000 sf		750 sf		700 sf	
Average Number of Bedrooms	3.0 bedrooms		2.5 bedrooms		1.4 bedrooms		1.0 bedroom	
Revenue	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**
Market Rate Units	$536	$750,000	$625	$625,000	$3.60	$32,400	$4.07	$34,200
Affordable Units							Very Low[1]	$11,013
Total Gross Sales / Rents	$536	$750,000	$625	$625,000	$3.60	$32,400	$3.86	$32,461
<Less> Sales Expense (4%)	($21)	($30,000)	($25)	($25,000)	Other Income:	$600		$600
Sales Net of Sales Expenses	$514	$720,000	$600	$600,000	Vac/OpExp:	($10,880)		($10,880)
					NOI:	$22,120		$22,181
Development Costs	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**
Land Costs	$79	$110,000	$90	$90,000	$39	$29,000	$13	$9,000
Direct Costs	$237	$331,800	$275	$275,000	$330	$247,500	$385	$269,500
Fees & Permits	$37	$51,765	$48	$48,303	$42	$31,793	$41	$28,989
Affordable Housing In-Lieu Fee	$25	$35,000	$25	$25,000	$25	$18,750	$25	$0
Other Indirect Costs	$47	$66,360	$55	$55,000	$50	$37,125	$58	$40,425
Financing	$10	$13,400	$15	$15,200	$15	$11,200	$19	$13,600
Total Development Costs (excl. land)	$435	$608,325	$509	$508,503	$500	$375,368	$516.45	$361,514
Residual Land Value								
Net Sales / Net Operating Income	$514	$720,000	$600	$600,000		$22,120		$22,181
<Less> Development Costs	($435)	($608,325)	($509)	($508,503)		$375,368		$361,514
	$80	$111,675	$91	$91,497				
Profit Margin		*14.9%*		*14.6%*		*5.89%*		*6.14%*
Profit Margin Basis		*return on sales*		*return on sales*		*return on cost*		*return on cost*

1. Assumes project sets aside 7.5% of units at Very Low (10% of base units) to earn 32.5% density bonus and satisfy inclusionary obligation.

TABLE 17
FINANCIAL FEASIBILITY: INCLUSIONARY HOUSING IN-LIEU FEE OPTION: $30,000 PER UNIT
INCLUSIONARY HOUSING ANALYSIS
CITY OF EL CERRITO, CA

	Townhome		**Wood Frame**		**Wood Frame Over Podium**		**Eight Story Apartment**	
Product Description	Three stories w/ attached		3-4 stories wood frame.		4-5 stories of wood frame		Eight stories,	
Average Unit Size	1,400 sf		1,000 sf		750 sf		700 sf	
Average Number of Bedrooms	3.0 bedrooms		2.5 bedrooms		1.4 bedrooms		1.0 bedroom	
Revenue	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**
Market Rate Units	$535.71	$750,000	$625.00	$625,000	$3.60	$32,400	$4.07	$34,200
Affordable Units							Very Low[1]	$11,013
Total Gross Sales / Rents	$536	$750,000	$625	$625,000	$3.60	$32,400	$3.86	$32,461
<Less> Sales Expense (4%)	($21)	($30,000)	($25)	($25,000)	Other Income:	$600		$600
Sales Net of Sales Expenses	$514	$720,000	$600	$600,000	Vac/OpExp:	($11,040)		($10,880)
					NOI:	$21,960		$22,181
Development Costs	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**	**Per SF**	**Per Unit**
Land Costs	$79	$110,000	$90	$90,000	$39	$29,000	$13	$9,000
Direct Costs	$237	$331,800	$275	$275,000	$330	$247,500	$385	$269,500
Fees & Permits	$37	$51,765	$48	$48,303	$42	$31,793	$41	$28,989
Affordable Housing In-Lieu Fee	$21	$30,000	$30	$30,000	$40	$30,000	$0	$0
Other Indirect Costs	$47	$66,360	$55	$55,000	$50	$37,125	$58	$40,425
Financing	$10	$13,300	$15	$15,300	$15	$11,500	$19	$13,600
Total Development Costs (excl. land)	$431	$603,225	$514	$513,603	$516	$386,918	$516.45	$361,514
Residual Land Value								
Net Sales / Net Operating Income	$514	$720,000	$600	$600,000		$21,960		$22,181
<Less> Development Costs	($431)	($603,225)	($514)	($513,603)		$386,918		$361,514
	$83	$116,775	$86	$86,397				
Profit Margin		*15.6%*		*13.8%*		*5.68%*		*6.14%*
Profit Margin Basis		*return on sales*		*return on sales*		*return on cost*		*return on cost*

1. Assumes project sets aside 7.5% of units at Very Low (10% of base units) to earn 32.5% density bonus and satisfy inclusionary obligation.

TABLE 18
COMPARISON OF AFFORDABLE HOUSING REQUIREMENTS
INCLUSIONARY HOUSING ANALYSIS
CITY OF EL CERRITO, CA

	Albany	Berkeley	Emeryville	Oakland	Richmond
Year Adopted / Updated	2005	Est. 1986, rental fee 2011, update adopted 2017	Est. 1990, updated 2014.	2016	2001
Minimum Project Size					
For In-lieu/Impact Fee	**FS/R:** 5 units	**FS/R:** 5 units	**R:** 2 units	**FS/R:** 1 unit	**FS/R**: 10 units
For Build Requirement	**FS/R:** 7 units	no build req.	**FS:** 10 units	no build req.	no build req.
Impact / In-Lieu Fee	**FS/R:** (Market Value - Affordable Price/Unit Value) x units owed	**FS:** 62.5% x (Sale Price - Affordable Price) x units owed **R:** $34,000/du or $37,000/du if paid at C/O	**R**: $28,122/du	**FS/R:** *MF* $12,000-$22,000, *SF Attached* $8,000-$20,000, *SF Detached* $8,000-$23,000	**FS/R**: 7% of building permit value
Onsite Requirement/Option					
Percent of Total Units	**FS/R:** 15%	**FS/R:** 20%	**FS**: 20% **R**: 12%	**FS/R:** *Option A* 5% or *Option B* 10% or *Option C* 10%	**FS/R:** *Option A* 10% or *Option B* 15% or *Option C* 17% or *Option D 12.5%*
Income Level for Qualification	**FS/R**: <10 units: Low 10+ units: 50% Low, 50% Very Low	**FS**: Low **R**: 50% Very Low, 50% Low	**FS**: Moderate **R**: 1/3 of units @ VL, 2/3 of units @ Low	**FS/R**: *Option A* Very Low *Option B* Low *Option C* Moderate	**FS/R**: *Option A* Very Low *Option B* Low *Option C* Moderate *Option D* Very Low & Low
Income Level for Pricing(% AMI)	Not specified.	**FS:** Low @ 80% **R:** Low at 80%, Very Low at 50%.	**FS**: Moderate @ 110% **R**: Low @ 60%, VL @ 50%	**FS**: Moderate @ 110%, Low @ 70%, Very Low @ 50% **R**: Moderate 110%, Low @ 60%, Very Low @ 50%	**FS**: VL @ 50%, L @ 70%, Mod @ 110% **R**: VL @ 50%, L @ 60%, Mod @ 110%
Fractional Units	<0.5: pay fee, >0.5: provide unit	pay fee	<0.5: no req. >0.5: provide unit	pay fee or provide unit	<0.5: no req. >0.5: provide unit
Comments				Fees vary by neighborhood. Fees phased in through 2020. Full fee levels shown. On-site: May choose Option A, B, or C.	Planning to update program.

Abbreviations:	R = Rental	FS = For Sale	/sf = per square foot	MF = Multi-Family
	AMI =Area Median Income	DU = dwelling unit		SF = Single Family

Notes: This chart presents an overview, and as a result, terms are simplified. For use other than general comparison, please consult the code and staff of the jurisdiction.
Virtually all cities that do not allow fee payment by right allow developers to seek Council approval of fee payment instead of on-site units, in addition to providing options for off-site construction and land dedication.

EL CERRITO PROPOSED CITY CHARTER AND REAL PROPERTY TRANSFER TAX

MAY 1, 2018

OVERVIEW

- Real Property Transfer Tax
  - What Is It? Why Do We Need It?
  - History in El Cerrito
  - In Surrounding Communities
- Review of City Charter Issues
  - Powers of General Law City vs. Charter City
  - Understanding Home Rule and Municipal Affairs
  - Statewide Concerns
- City Council Direction
- Charter Committee Overview and Recommendation
- Questions and Discussion
- Next Steps

WHY CONSIDER A CHARTER NOW?

- Being a charter city enhances local authority, including control over local funds for local needs
- The list of unfunded needs continues to grow
- Only charter cities, NOT general law cities, may levy a Real Property Transfer Tax (RPTT)
- RPTT provides critical and sustained funding for Albany, Berkeley, Richmond, Emeryville and Oakland
- Larger commercial development on SPA should pay their fair share, which they would through a RPTT
- Much of the revenue from a RPTT would be paid by corporations that benefit from low property taxes
- RPTT can help build an emergency reserve for natural disaster preparedness

WHAT ARE THE ISSUES?

- Residents tell us that they want:
  - To continue the responsiveness and quality of our 9-1-1, fire protection, and emergency medical services
  - To maintain our parks and playfields
  - To preserve our library programs for all ages in a safe and energy-efficient library
  - To offer after-school programs for children and teens
  - To provide for seniors in our own senior center
- Capital funding is well below necessary levels for facilities, parks and playfields
- Budget will likely maintain police vacancies
- City has no emergency reserves for natural disaster preparedness
- El Cerrito like most cities has long term significant pension liabilities
- Another source of revenue is necessary to meet community needs

REAL PROPERTY TRANSFER TAXES

- A "real property transfer tax" (RPTT) is a tax on the purchase/sale of real estate, both residential and commercial
- It's a one-time tax on the sale, not an annual tax on property
- Buyers and sellers typically work out between themselves who will pay the tax
- If you own property and never sell it, you won't pay the tax
- Would be paid as part of the purchase and sale of new development, including by developers of commercial projects
- A typical feature of the tax is a partial rebate to purchasers who use the money to pay for seismic upgrades or energy efficiency improvements
- The tax is generally rolled into the loans for a residential purchase

REAL PROPERTY TRANSFER TAXES

- El Cerrito had a RPTT until 2003 when repealed because of change in California law
- Rate was set at $7.00 per $1,000
- In FY2003, RPPT generated $1.2m in revenue
- In FY 2016, would have brought in ~$1.7m
- $12.00 per $1,000 brings in ~$2.7m
- In 2017, would have brought in $500,000 from sales of commercial property on San Pablo Avenue alone
- No noticeable impact on home prices in other cities
- City Council will set rate in July

Neighboring RPTT Rates:

	Per $1,000
Alameda	$ 12.00
Richmond	$ 7.00
Oakland	$ 15.00
Emeryville	$ 12.00
Berkeley	$ 15.00
Albany	$ 11.50
Piedmont	$ 13.00
AVG	$ 12.21
Median	$ 12.00

WHAT COULD RPTT REVENUE BE USED FOR?

- RPTT would generate approximately $ 2.7 million annually
- RPTT is a general tax that could be used for all aspects of city operations
- Current unfunded needs include:
  - Park, clubhouses, playgrounds, fields and facility deferred maintenance
  - 2-4 sworn officer positions (depending on SRO funding)
  - Emergency reserves – currently zero
  - Affordable housing assistance
  - Public Safety Building
  - Senior Center
  - Library Hours/Operations and facility
  - Pension liabilities

AUTHORITY IN GENERAL LAW VS. CHARTER CITY

- A **General Law** City has the authority to act locally but its acts must be consistent with: the California Constitution, state statutes, state administrative regulations
- A **Charter City** has the additional authority to adopt laws regarding "municipal affairs" that are inconsistent with state statutes. Must still be consistent with US and California Constitutions and with the charter

UNDERSTANDING HOME RULE

- The home rule provision in the California Constitution allows cities to adopt a charter and ordinances that replace state laws in areas related to **municipal affairs**, subject only to the limitations within the charter
- At all times, the City is subject to the U.S. Constitution, federal laws, the California Constitution, and state laws regarding matters of statewide concern
- The decision to become a charter city relates to what legislative body makes decisions regarding municipal affairs: the State Legislature or the City Council

WHAT IS A "MUNICIPAL AFFAIR"?

- Term is undefined
- Legislature may not determine what is a municipal affair nor transform a municipal affair into a matter of statewide concern
- Courts decide on a case-by-case basis
- This concept is fluid and changes over time

EXAMPLES OF MUNICIPAL AFFAIRS

- Elections
- Finance
- Planning and Land Use
- Public Contracts and Prevailing Wages
- Employment and Compensation

CALIFORNIA CHARTER CITIES

Currently 121 Charter Cities

361 General Law Cities

Local Charter cities include Albany, Emeryville, Berkeley, Richmond, Oakland, Alameda, Piedmont, San Francisco, San Leandro and San Rafael

CURRENT TIMELINE

Nov. 7 2017 — Give Direction to Staff

January 2017 — Appoint Council Committee Members

Feb.–March 2018 — Committee Develops Recommendations

May/June 2018 — Recommendations to City Council

July 2018 — City Council places Charter on ballot

Nov. 6 2018 — Election Day

CITY COUNCIL DIRECTION TO COMMITTEE

- The Charter Committee shall prepare a draft charter for the City of El Cerrito to be submitted to the City Council for consideration and potential proposal to the City's voters.
- The draft charter shall contain at least the following elements:
  - It shall reserve to the City Council the power to adopt local rules in all matters of municipal affairs.
  - It shall require the City to follow California law regarding the payment of prevailing wages for public works projects and collective bargaining with represented employee groups.
  - It shall authorize the City Council to consider the use of all available tools for generating revenue, including but not limited to a real property transfer tax.
  - The El Cerrito Municipal Code shall not be altered by the proposed charter.

ROLE OF CHARTER COMMITTEE

- Review and understand options
- Evaluate alternatives within City Council Direction
- Develop Draft Charter for City Council Consideration

CHARTER COMMITTEE

- Charter Committee made up of Seven Members
  - Two Council Members
  - Member of Financial Advisory Board (FAB)(Chair)
  - Labor Representative (Local 1230)
  - Local realtor (Vice Chair)
  - Two members of Public (FAB Member and Former Mayor)
- Committee selected Chair and Vice Chair, approved minutes and followed Brown Act and standard meeting rules of order
- Committee voted unanimously on Draft Charter

CHARTER COMMITTEE OVERVIEW

- Committee met on five separate occasions
- Meetings were noticed and advertised widely
- Public given opportunity to speak during public comment and specific items
- Committee reviewed other relevant charters and gave direction to staff
- Staff developed draft charter based on comments
- Committee reviewed, commented and provided direction on three versions
- Final version recommended unanimously to City Council

DRAFT CHARTER COMPONENTS

(DRAFT CHARTER ATTACHED)

- Statement of Purpose
- Establishment of Home Rule, Power over Municipal Affairs
- Continuation of Boundaries, Form of Government, and Existing Law
- Municipal Revenue
- Prevailing Wages for Public Works and Public Contracting
- Labor Relations
- Elections
- Interpretation, Severability, and Amendment

KEY AREAS OF COMMITTEE FOCUS

- **Statement of Purpose** – The Committee wanted to make sure it reflected the overall reason for the Charter and was written in clear terms that a lay person could readily understand.
- **Form of Government** – The Committee spent a fair amount of time understanding the current form of government and decided it was important that it be reiterated in Charter to affirm it would not change.

KEY AREAS OF COMMITTEE FOCUS

- **Municipal Revenue** – A fair amount of discussion occurred related to revenues in general and specifically the Real Property Transfer Tax. Based on the discussions, the Committee recommended flexible revenue language but also specifically called out the RPTT for transparency leaving the rate to the City Council.
- **Prevailing Wages, Labor Relations and Elections** – These were items directed by the City Council to not be changed. The Committee debated whether they should be included at all since they would remain unchanged if left out of Charter. However, Committee decided to include to strengthen the City Council priorities and make very clear these items would not change with passage of the Charter.

KEY AREAS OF COMMITTEE FOCUS

- Topics that the Committee wanted communicated to Council:
  - Public information about the Charter should describe the full range of powers as a charter city, including financial powers.
  - Explain why the form of government was addressed in the Charter even though the Council didn't provide direction on the topic.
  - The residents of El Cerrito would have the ability to change the Charter in the future should the need or desire arise.

CHARTER PROCESS

1
Develop Framework

2
Select Charter Committee

3
Committee Drafts New Charter

4
Recommendation to City Council
- Meeting Today
- Second Meeting in June

5
Council Decides to Place on Ballot

6
Election

CITY CHARTER PROCESS

QUESTIONS, COMMENTS AND CONCERNS?

CHARTER OF THE CITY OF EL CERRITO

STATEMENT OF PURPOSE

The City of El Cerrito was incorporated as a general law city in 1917 by residents seeking the right to manage local affairs. Since then, the authority of general law cities over local affairs has diminished. Furthermore, the State has continually added mandates for cities that require local resources to address State concerns, increased its control over local matters, and redirected much needed local revenue for its own purposes. Changes in State law have limited the ability of El Cerrito to decide how to use local dollars for local needs. The power of home rule, granted by the California Constitution, makes available to charter cities a variety of tools to use to construct local policy and address local concerns. The voters of each charter city get to decide which tools to put in their tool box. With this Charter, El Cerrito will reclaim more local autonomy and expand the economic and fiscal independence of our City government to promote the health, safety, and welfare of all its residents. Therefore, we do hereby exercise the express right granted by the Constitution of the State of California to enact and adopt this Charter for the City of El Cerrito.

ARTICLE I. ESTABLISHMENT OF HOME RULE, POWER OVER MUNICIPAL AFFAIRS, GENERAL LAW POWERS

Section 100. Powers of the City. The City of El Cerrito (the "City") shall have full power and authority to adopt, make, exercise, and enforce all legislation, laws, ordinance, resolutions, and regulations with respect to municipal affairs, subject only to the limitations and restrictions imposed on that power by this Charter, the Constitution of the State of California, and the laws of the United States.

Section 101. Municipal Affairs. Municipal affairs encompass all matters of local concern as determined by the City Council consistent with the meaning of "municipal affairs" under the constitutional, statutory, and judicially defined law of the State of California. Each of the matters set forth in this Charter are declared to be municipal affairs, consistent with the laws of the State of California. The municipal affairs set forth in this Charter are not intended to be an exclusive list of municipal affairs over which the City Council may govern. The exercise of home rule over each matter set forth in this Charter uniquely benefits the residents of the City and addresses local concerns within the City.

Section 102. Powers under State Law.

(a) In addition to the power and authority granted by this Charter and the Constitution of the State of California, the City shall have the power and authority to adopt, make, exercise, and enforce all legislation, laws, ordinances, resolutions, and regulations and to take all actions and to exercise any and all rights, powers, and privileges heretofore or hereafter established, granted or prescribed by any law of the State of California or by any other lawful authority. In the event of any conflict between this Charter and the general laws of the State of California related to a municipal affair, this Charter shall control.

(b) Nothing in this Charter is intended to restrict the City in exercising any right, power or authority granted under the general laws of the State of California. However, the provisions of this Charter shall prevail in the event of any conflict with the general laws of the State of California, unless preempted by state law on matters of statewide concern.

ARTICLE II. CONTINUATION OF BOUNDARIES, FORM OF GOVERNMENT, AND EXISTING LAW

Section 200. Incorporation and Succession. The City shall continue to be a municipal corporation known as the City of El Cerrito. The boundaries of the City shall continue as established prior to this Charter taking effect until changed in the manner authorized by law. The City shall remain vested with and shall continue to own, have, possess, control, and enjoy all property rights and rights of action of every nature and description owned, had, possessed, controlled, or enjoyed by it at the time this Charter takes effect. The City shall be subject to all debts, obligations, and liabilities of the City at the time this Charter takes effect.

Section 201. Form of Government. The government of the City shall continue to be the Council-Manager form of government as established by the El Cerrito Municipal Code at the time that this Charter takes effect and by the laws of the State of California. The Council-Manager form of government of the City may be changed in the same ways and using the same procedures as a general law city.

Section 202. City Council, City Manager, and City Attorney.

(a) The City Council shall establish the policy of the City. The City Manager shall carry out that policy.

(b) The City Council shall appoint the City Manager.

(c) The City Manager, as the chief administrative officer of the City, shall appoint all department heads other than the City Attorney. Involvement in administrative matters by the City Council or by any individual Councilmember shall occur only through the City Manager or pursuant to direction by the City Manager to members of the administrative staff.

(d) The City Council shall appoint the City Attorney. The City Attorney may be an employee of the City or an independent contractor providing legal services pursuant to a contract.

Section 203. Continuation of Existing Local Laws. All ordinances, codes, resolutions, regulations, rules, and portions thereof, in force at the time this Charter takes effect, and not in conflict or inconsistent herewith, shall continue in force until repealed, amended, changed, or superseded in the manner provided by this Charter and any other applicable laws.

Section 204. General State Laws. Except as provided in this Charter and in any ordinance, code, resolution, or other law adopted by the City Council regarding a matter that is a municipal affair, the City shall be governed by the general laws of the State of California.

ARTICLE III. MUNICIPAL REVENUE

Section 300. Revenue Raising Power. The City may exercise all powers of a charter city to generate revenue, including but not limited to taxes, fees, assessments, and other charges.

Section 301. Real Property Transfer Tax. Without limiting the general power of the City, as expressed in Section 300 above, to generate revenue, the City may impose a tax on the conveyance of real property, based upon the price paid for the real property ("real property transfer tax"). Any real property transfer tax imposed by the City shall be in addition to any similar tax authorized by the general laws of the State of California.

ARTICLE IV. PREVAILING WAGES FOR PUBLIC WORKS AND PUBLIC CONTRACTING

Section 400. State Prevailing Wage Law. The City shall comply with the laws of the State of California applicable to general law cities regarding the payment of prevailing wages for public works projects.

Section 401. Contracting for Public Works. The City shall comply with the laws of the State of California applicable to general law cities regarding contracting for public works. The City's laws, ordinances, codes, resolutions, and policies implementing State laws regarding contracting for public works shall continue to apply when this Charter takes effect and may be amended thereafter.

ARTICLE V. LABOR RELATIONS

Section 500. State Labor Relations Law. The City shall comply with the laws of the State of California applicable to general law cities regarding labor relations. The City's laws, ordinances, codes, resolutions, and policies implementing State laws regarding labor relations shall continue to apply when this Charter takes effect and may be amended thereafter.

ARTICLE VI. ELECTIONS

Section 600. State Elections Law. The City shall comply with the laws of the State of California applicable to general law cities regarding elections. The City's laws, ordinances, codes, resolutions, and policies implementing State laws regarding elections shall continue to apply when this Charter takes effect and may be amended thereafter.

Section 601. Initiative, Referendum, and Recall. Without limiting the general applicability of Section 600 of this Charter, the City shall comply with the laws of the State of California applicable to general law cities regarding initiative, referendum, and recall.

ARTICLE VII. INTERPRETATION, SEVERABILITY, AND AMENDMENT

Section 700. Construction and Interpretation. The language of this Charter is intended to be permissive rather than exclusive or limiting and shall be liberally and broadly construed in favor of the exercise by the City of its power to govern with respect to any matter that is a municipal affair. Every reference in this Charter to state or federal law shall mean that law as it exists when this Charter takes effect or as it may thereafter be amended.

Section 701. Severability. If any provision of this Charter should be held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions shall remain enforceable to the fullest extent permitted by law.

Section 702. Amendment of Charter. As provided by state law, this Charter, and any of its provisions, may be amended by a majority vote of the electors voting on the question. Amendment or repeal may be proposed by initiative or by the City Council.

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Agenda Item No. 6(B)

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MEMORANDUM

DATE: March 6, 2018

TO: Charter Committee
City of El Cerrito

FROM: Sky Woodruff, City Attorney

COPY: Scott Hanin, City Manager

RE: **Summary of How Powers and Law Provisions of Draft Charter Work Together**

At its February 26, 2018 meeting, members of the Charter Committee asked for a written summary of how some of the parts of the draft Charter work together. In particular, the Committee asked for further discussion of the provisions of Article I that define generally the home rule powers of the City, as limited by California and Federal law, and Section 205, which states that even after approval of the Charter, the City would continue to be governed by general California law, except as modified by the Charter or a local law regarding a municipal affair. This memo provides a brief discussion of that issue.

Overall, as drafted, Article I of the draft Charter is intended to set forth the nature of the powers that the City would have, if voters approved the Charter. In contrast, Article II is intended to describe a set of existing legal conditions that would continue after approval of the Charter, unaffected by the City obtaining additional home rule authority over municipal affairs.

Section 100 claims for the City all available control over any legal issue that is a municipal affair. Section 102 has two parts. The first expands the general authority provided by Section 100, explaining that the City may make local laws governing municipal affairs, which will prevail over California law in the event of conflict.[1] The second part of Section 102 adds that

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[1] Subsection (a) does not expressly state that if the issue is a matter of statewide concern or the conflict is with the California Constitution, then state law would prevail. But that is a basic function of the law governing home rule and does not need to be stated.

the powers derived from the Charter do not deny to the City the powers provided under California law to general law cities. Put differently, Section 100 and 102, when read together, provide that the City has all of the powers of a charter city over municipal affairs plus all of the powers of a general law city.

Section 205 addresses a related but slightly different issue. As noted above, Article II is intended to describe a set of legal conditions that would continue to exist after approval of the Charter—the purpose being to provide information to residents of the City and future readers, as well as to avoid ambiguities. As part of that, Section 205 clarifies that, with some exceptions[2], the general laws of California will continue to apply and operate in El Cerrito, even after it becomes a charter city. That issue is broader than the powers of the City. It speaks to what law operates when local law is silent. If local law is silent on an issue, Section 205 informs any reader that the intent of the Charter is that California law will govern as it normally would.

Arguably, Section 205 is unnecessary to the Charter. In the absence of a Charter provision or other local law regarding a subject that is a municipal affair, general California law would continue to operate in El Cerrito, even if the Charter were approved. As we discussed at the February 26 meeting, that is true of a few other provisions. Those parts of the draft Charter help a casual reader understand what a charter means and the basics of the relationship between the Charter and other laws. They are therefore helpful but unnecessary, if the Committee finds that silence on the matter would be the better approach.

SW:sw
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[2] The exceptions are those specified in the Charter itself and in any other local law that conflicts with state law regarding a matter that is a municipal affair.