

OFFICE OF THE CITY MANAGER

June 20, 2005

To: City Council  
From: City Manager  
Subject: AMENDMENTS TO THE INCLUSIONARY HOUSING ORDINANCE AND  
INCLUSIONARY HOUSING REGULATIONS

The Special Committee on Inclusionary Housing reviewed the attached report on May 31, 2005. The Committee approved staff recommendations 1, 2, 3b, 3d, 3e and 4 as presented.

In the case of recommendation 3a, the Committee requested a further reduction of the "over concentration" definition for Sub-area B. The current definition as reflected in the Inclusionary Housing Regulations indicates over concentration of affordable units exist when 50 rental units legally restricted for occupancy by very low and/or low income households are located within one-eighth mile from the parcel proposed for the provision of Inclusionary Units, or when 200 rental units legally restricted to occupancy by very low and/or low income households are located within one-quarter mile from the parcel proposed for the provision of Inclusionary Units. The Committee recommended these numbers be reduced from 50 to 40 and 200 to 100, respectively.


The Committee provided no recommendation for recommendation 3c, deferring to the City Council for further discussion regarding the restructuring of the In Lieu fee to provide greater incentives to build inclusionary units on-site.

In addition, the Committee recommended the City Council approve in concept: a) inclusion of Housing as a city strategic priority and b) consideration of the formation of a standing committee or new advisory body focused on finding ways to better meet the housing needs of the City.

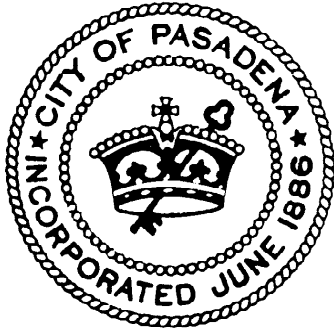
Regarding the Task Force's final recommendation, the Council asked the Community Development Committee (CDC) to be your primary advisors on affordable housing. Before establishing another advisory group, the Council may want to consider revising their role or work plan to better meet your needs.

Council Members' busy schedules make additional Council Policy Committee meetings difficult to schedule. Rather than increased demands on your time, Council may want to consider waiting for Assistant City Manager, Brian Williams to begin (June 27, 2005) his housing assignments. Having additional staff available to focus on Council's ideas might assist in meeting the housing needs of the City.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Cynthia J. Kurtz". The signature is written in a cursive style with a long, sweeping flourish extending upwards and to the right.

CYNTHIA J. KURTZ  
City Manager



# Agenda Report

May 23, 2005

**TO:** CITY COUNCIL

**THRU:** SPECIAL COMMITTEE ON INCLUSIONARY HOUSING

**FROM:** CITY MANAGER

**SUBJECT:** AMENDMENTS TO THE INCLUSIONARY HOUSING ORDINANCE AND INCLUSIONARY HOUSING REGULATIONS

**RECOMMENDATION:**

It is recommended that the City Council after a public hearing take the following actions:

1. Find that the proposed amendments to the Inclusionary Housing Ordinance ("Ordinance") have no negative environmental impacts, and recommend adoption of a Negative Declaration by the City Council.
2. Approve the following amendments to the Ordinance:
  - a. Definition of "Residential Project" shall be expanded to include: a) projects consisting of five to nine dwelling units ("Small Projects"); b) approved Subdivision Maps of five or more lots; and c) single room occupancy (SRO) projects of five or more units;
  - b. Small Projects shall comply with the Ordinance by providing one on-site affordable unit (at moderate income affordability for ownership projects or at low income affordability for rental projects) or, as an alternative: a) one off-site affordable unit; b) land donation; or c) an In-Lieu Fee payment in accordance with the adoption of an In-Lieu Fee Schedule for Small Projects;
  - c. Residential Projects causing displacement of low and moderate-income households shall be required to comply with the Ordinance by providing Inclusionary Units on-site; and
  - d. Increase the affordability covenant period on for-sale (ownership) Inclusionary Units from 30 years to 45 years.

3. Approve the following amendments to the Regulations:
  - a. The use of Inclusionary Housing Trust Funds to assist residential developments shall be subject to review and threshold criteria which limits the concentration of such developments in Sub-area "B";
  - b. The eligible uses of Inclusionary Housing Trust Funds shall be expanded to include purchase of affordability covenants;
  - c. The In-Lieu Fee Schedule shall be updated and adopted by the City Council every five years, based on a real estate market study, with the following provisions: i) the updated In-Lieu Fees shall incorporate a 10% adjustment which would be fully waivable; and ii) during the five-year period the In-Lieu Fee Schedule shall be adjusted annually in accordance with housing market indices; and
  - d. City shall have a "right of first refusal" to purchase Inclusionary ownership units in the event of a resale.
  - e. The preparation of a Biennial Inclusionary Housing Program Performance Assessment.
4. Direct the City Attorney to prepare within 60 days:
  - a. an ordinance incorporating the amendments to the Pasadena Municipal Code Chapter 17.42 Affordable Housing Incentives and Requirements and Chapter 17.80 Definitions (Inclusionary Housing Ordinance), and
  - b. a resolution amending the Inclusionary Housing Regulations and establishing an In-Lieu Fee Schedule for Small Projects.

### **ADVISORY BODIES**

On February 23, 2005 and April 13, 2005, the Planning Commission conducted a public hearing regarding proposed amendments to the Inclusionary Housing Ordinance. At its meeting on April 13, 2005, the Planning Commission recommended the City Council adopt the amendments to the Pasadena Municipal Code 17.42 Affordable Housing Incentives and Requirements (Inclusionary Housing Ordinance). The Planning Commission also requested that a biennial performance assessment of the Inclusionary Housing Program be prepared for its review and comment.

On February 24, 2005 and April 14, 2005, the Community Development Committee (CDC) considered three proposed amendments to the Inclusionary Housing Regulations. Two of the amendments received the CDC's recommendation on February 24, 2005 for their adoption by the City Council. At its meeting of April 14, 2005, CDC conditionally recommended City Council adoption of the third amendment enabling the use of Inclusionary Housing Trust Funds to purchase affordability covenants. The conditions of the recommendation were 1) a detailed financial analysis of each project where funds would be utilized and 2) a biennial performance assessment of the use of Inclusionary Housing Trust Funds.

## **EXECUTIVE SUMMARY**

Since its adoption of the Inclusionary Housing Ordinance (the "Ordinance") and Inclusionary Housing Regulations (the "Regulations") in July 9, 2001, certain Regulations have been amended pursuant to resolutions adopted by the City Council on July 21, 2003 and August 16, 2004. At this time, amendments are proposed to concisely define the authority and requirements of both the Ordinance and Regulations in accord with the goals of increasing the availability of newly constructed affordable housing units citywide, preserving existing affordable housing, and improving the City's operational effectiveness. The proposed amendments are summarized below with more specific amendment language contained in the following Attachments.

## **BACKGROUND**

The City Council, at its meeting on September 8, 2003, established an ad hoc Special Committee on Inclusionary Housing (the "Special Committee") to review and clarify provisions of the Ordinance and Regulations for improved implementation and effectiveness. After several months of review and discussion the Special Committee forwarded its initial set of recommendations to the City Council for adoption on August 16, 2004. At the meeting, concerns were noted and the Special Committee was requested to further consider issues regarding the applicability of the In Lieu Fee to Small Residential Projects (residential and mixed-use development of 9 units or less), use of Inclusionary Housing Trust Funds and related Inclusionary Unit Requirements. Subsequently, at its meeting of October 26, 2005, the Special Committee directed staff to prepare amendments to the Ordinance and Regulations regarding these matters for review and recommendation by the Planning Commission and Community Development Committee, respectively.

## **PROPOSED AMENDMENTS TO THE ORDINANCE (ATTACHMENT A)**

1. Residential Projects To Include Small Projects, Approved Subdivision Maps, and Single Room Occupancy ("SRO") Projects -- The proposed amendment expands the definition of "Residential Projects" (projects which are subject to the Ordinance) by the addition of: a) "Small Projects" consisting of five to nine dwelling units (the current threshold is ten or more units); b) approved Subdivision Maps for five or more lots; and c) single room occupancy (SRO) projects of five or more units.
2. Small Projects; Compliance Requirements and In-Lieu Fee -- Small Projects will be required to comply with the "Inclusionary Unit Requirement" by providing one on-site Inclusionary Unit at a cost affordable to moderate-income households for for-sale (ownership) projects or one on-site unit at a cost affordable to low-income households for rental projects. Alternatives to providing the Inclusionary Unit requirement would be: a) one off-site inclusionary unit at the stipulated affordability level; b) land donation; or c) an In-Lieu Fee payment in accordance with the In-Lieu Fee Schedule for Small Projects.
3. On-Site Inclusionary Unit Requirement For Development Causing Displacement -- Residential Projects which result in the displacement of low and moderate-income households will be required to provide on-site inclusionary units in accordance with the Ordinance. Alternatives to providing on-site inclusionary units will not be available. This amendment assures the provision of affordable units otherwise removed from the market.

4. Affordability Period For Ownership Inclusionary Units – Presently, For-Sale Inclusionary Units are required to be affordable pursuant to an Inclusionary Housing Agreement for a period of 30 years. The proposed amendment to the Ordinance would increase the restrictive affordability period to 45 years consistent with the State of California Redevelopment Law.

#### **PROPOSED AMENDMENTS TO THE REGULATIONS (ATTACHMENT B)**

1. Threshold Criteria for Developments Assisted with Inclusionary Housing Trust Funds Proposes PCDC/City Council review and threshold criteria for consideration of affordable housing developments located in Sub-area B that seek assistance from Inclusionary Housing Trust Funds. The purpose of the proposed review and criteria is to guard against the concentration of assisted units in Sub-area B.

2. Use of Inclusionary Housing Trust Funds To Purchase Affordability Covenants Expands the eligible uses of Inclusionary Housing Trust Funds to include the purchase of restrictive covenants on existing market rate housing (or increasing the restrictive term of existing affordable housing covenants) and making those units available as affordable housing to very low, low and moderate income households.

3. In-Lieu Fee Schedule -- Five-Year Update, 10% Adjustment, and Annual Indexing The proposed amendment would require: a) adoption by City Council of an updated In-Lieu Fee Schedule every five years based upon a real estate market study; b) a 10% opportunity cost which is added to the base In-Lieu Fee rates; and c) an annual adjustment of the In-Lieu Fee Schedule tied to housing market indices. The objectives of the proposed amendment is to: 1) establish In-Lieu Fees which more accurately reflect prevailing real estate market conditions and the housing affordability gap; and 2) mitigate the potential opportunity cost to the City resulting from the bifurcated payment of In-Lieu Fees by developers over an extended time period.

4. City Right of First Refusal Upon Sale of Inclusionary Ownership Units The Regulations currently do not stipulate a “right of first refusal” provision which can be exercised by the City. The proposed amendment would require that the Purchaser Affordability Agreement contain a provision affording the City the right of first refusal in the event of a resale of an ownership Inclusionary unit. This provision would assist the City in protecting against the loss of affordable ownership units.

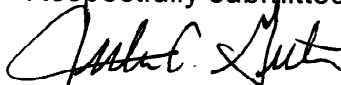
5. Inclusionary Housing Program Performance Assessment The Regulations do not stipulate a review of the Inclusionary Housing Program; particularly the use of Inclusionary Housing Trust Fund. The proposed amendment would require the preparation and presentation of a bi-annual performance assessment of the Inclusionary Program to the City Council, Planning Commission and Community Development Committee.

#### **FISCAL IMPACT**

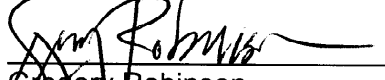
The proposed amendments, in conjunction with existing City incentives (i.e., Density Bonus, Affordable Housing Fee Waivers, Inclusionary Housing Trust Funds, etc.), were devised to encourage the construction and preservation of affordable housing citywide. It is anticipated that additional affordable housing units may result in a modest increase in the city's property tax base. Similarly, the applicability of the Ordinance to small projects and

the proposed adjustments to In-Lieu Fee Schedule may generate added revenues for the Inclusionary Housing Trust Fund. However, it is not possible to accurately estimate the amount of new revenue from these sources at this time.

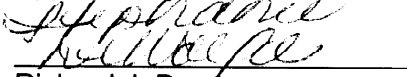
Respectfully submitted,

  
for Cynthia J. Kurtz  
City Manager

Prepared by:

  
Gregory Robinson  
Housing and Community  
Development Administrator

Approved by:

  
for Richard J. Bruckner  
Director of Planning and  
Development

## **ATTACHMENTS**

Attachment A - Proposed Amendment to Inclusionary Housing Ordinance

1. Applicability of Inclusionary Housing Ordinance to Small Projects, Subdivision Maps, and Single Room Occupancy Developments (PMC Chapter 17.80.020 and Chapter 17.42.050)
2. Small Projects Compliance Requirements (PMC Chapter 17.42.040 and Chapter 17.80.020)
3. On-site Inclusionary Units for Development Causing Displacement (PMC Chapter 17.42.040)
4. Inclusionary Housing Agreement for Ownership (For-Sale) Inclusionary Units (PMC Chapter 17.42.070)

Attachment B - Proposed Amendment to Inclusionary Housing Regulations

1. Threshold Criteria for Use of Inclusionary Housing Trust Funds (Section VII)
2. Purchase of Affordability Covenants with Inclusionary Housing Trust Funds (Section VII)
3. In-Lieu Fee Schedule -- Five-Year Update, 10% Adjustment, Annual Index (Section IV.A.)
4. Right of First Refusal (Section VI.B.)
5. Performance Assessment (Section VII)

## ATTACHMENT A

### PROPOSED AMENDMENT TO THE INCLUSIONARY HOUSING ORDINANCE

1. **APPLICABILITY OF INCLUSIONARY HOUSING ORDINANCE TO SMALL PROJECTS, SUBDIVISION MAPS, AND SINGLE ROOM OCCUPANCY DEVELOPMENTS**

**a) Small Projects**

The current provisions of the Inclusionary Housing Ordinance apply to Residential Projects of ten or more dwelling units (Section 17.80.020 definition "Residential Project"). At its meeting of August 10, 2004 the City Council Special Committee on Inclusionary Housing (the "Committee") was presented an analysis prepared by Keyser Marston & Associates ("KMA"), the City's economics consultant, of a proposed In-Lieu Fee Schedule that would apply to residential developments of five to nine dwelling units ("Small Projects"). Upon review of the KMA presentation, the Committee recommended City Council adoption of the proposed In-Lieu Fee Schedule for Small Projects. On August 16, 2004 the City Council at a public hearing remanded the recommendation to the Committee for further discussion.

On October 26, 2004 the Committee reviewed an informational staff report regarding a threshold of five to nine units ("Small Projects") for Residential Developments that would be subject to the Ordinance. After discussion the Committee instructed staff to develop an amendment to the Ordinance for the Planning Commission's recommendation to the City Council. As proposed, the applicability of the Ordinance would be expanded to include Residential Projects of five to nine dwelling units.

**b) Subdivision Maps**

On October 4, 2004 City Council heard a Predevelopment Plan Review proposal to subdivided 5.86 acres into 28 separate lots for single-family detached dwellings, collectively known as Sierra Madre Villas. City Council questioned if the proposed approval of a subdivision map governed by Title 16, Subdivision, of the Municipal Code is subject to the Inclusionary Housing Ordinance ("Ordinance"). The City Council referred the matter to the City Council Special Committee on Inclusionary Housing ("Committee") for review.

On October 26, 2004 the Committee received an informational staff report in accord with the City Council October 4, 2004 directive and discussed the applicability of the Ordinance to Subdivision Map approvals. After discussion the Committee instructed staff to develop an amendment to the Ordinance that addresses Subdivision Map approvals for the Planning Commission's recommendation to the City Council.

As proposed, the definition for Residential Project would be amended to include approved Subdivision Maps for five or more lots for single-family use. The Inclusionary Unit requirement for each Subdivision Map approval would be extrapolated from the applicable zoning designation and maximum potential unit



build-out. Implementation of the Inclusionary Unit requirement would be achieved by: 1) recording an Inclusionary Housing Agreement against the approved Subdivision which becomes enforceable upon application for building permits and 2) Calculating the In-Lieu Fee based upon the maximum square footage of livable space allowable under the zoning code.

**c) Single Room Occupancy Developments**

Single Room Occupancy is not subject to the Inclusionary Housing Ordinance. However, based upon the legislative intent of the Ordinance that newly constructed residential projects consisting of ten or more units (dwelling units) shall provide inclusionary housing units, SRO developments which meet the Zoning Code definition for dwelling units should also be subject to the Ordinance. If the Ordinance is amended expanding its applicability to projects of five to nine units, the proposed SRO amendment would also apply to developments of five or more SRO units even if they only have a partial kitchen.

**Amendment:** Section 17.80.020 Definitions. Paragraph A “Affordable Housing Definitions 14”. “Residential Project” definition to read substantially as follows: *Residential Project” means the new construction of a project consisting of (i) five or more single family units for which either a Planned Development (PD) approval is obtained pursuant to Chapter 17.26 or a Subdivision Map approval is obtained pursuant to Title 16 of the Pasadena Municipal Code; or (ii) five or more single-family or multi-family dwelling units, including units in Single Room Occupancy developments as defined in Article 5 Chapter 17.80.020.S of the Code.*

**Amendment:** Section 17.42.050 (A) In-Lieu Fee. New subparagraph A(5) to read substantially as follows : *For approved Subdivision Maps, the calculation of the applicable In-Lieu Fee shall be based on the maximum square footage of livable space allowable under the Zoning Code.*

**2. SMALL PROJECTS COMPLIANCE REQUIREMENTS AND IN-LIEU FEES**

**a) Inclusionary Compliance Requirements**

All existing provisions of the Ordinance and Inclusionary Housing Regulations (“Regulations”) would apply to Small Projects with the exception of the 15% Inclusionary Unit requirement. Instead of requiring that 15% of the dwelling units in a Small Project be designated as affordable housing it is proposed that a Small Project with for-sale (ownership) housing be required to provide one unit at a cost affordable to moderate-income households and a Small Project with rental housing be required to provide one unit at a cost affordable to low-income households. The incentives and alternatives to providing on-site inclusionary units that are specified in the Ordinance would also be available to developers of Small Projects, including payment of an In-lieu Fee.

**Amendment:** Section 17.42.040 Inclusionary Unit Requirement. New paragraph “E” to read substantially as follows : E. *Notwithstanding Paragraph “A”, at least one dwelling unit in Small Projects shall be developed, offered to and sold or rented to Low and Moderate-Income Households, at an Affordable Housing Cost as follows:*

1. If the Small Project consists of for-sale units, the Inclusionary Unit shall be sold to a Low or Moderate-Income Household.
2. If the Small Project consists of rental units the Inclusionary Unit shall be rented to a Low-Income Household.

**Amendment:** Section 17.80.020 Definitions. Paragraph A “Affordable Housing Definitions”. Add “Small Projects” to read substantially as follows: *“Small Projects” means a Residential Project consisting of five to nine single or multi-family units.*

**b) In-Lieu Fee Schedule for Small Projects**

As shown in the table below, 59% of the 107 California cities surveyed by KMA with local Inclusionary Housing programs had inclusionary requirements for smaller projects of five to nine dwelling units.

**Local Inclusionary Housing Programs In California**

	Number of Programs	Percentage of Programs
All Projects Subject to Requirements	21	20%
Projects with 5+ Units Subject to Requirements	42	39%
Projects with 10+ Units Subjects to Requirements	30	28%
Other Threshold Limits	14	13%
<b>TOTAL</b>	<b>107</b>	<b>100%</b>

The survey indicated most local inclusionary housing programs that provided an In-Lieu Fee option recognized the lower economies of scale attendant to the development of small projects and, accordingly, allowed developers of such projects to pay a lower In-Lieu Fee amount per square foot as compared to the In-Lieu Fee assessed against larger projects. Similarly, the percentage of units, required to be affordable, was reduced for smaller projects.

The KMA analyses concluded that the methodology used to calculate In-Lieu Fee levels worked best by establishing a set of ranges representing equity between small, mid-sized and large projects. The range for small projects was five to nine dwelling units.

The proposed In-Lieu Fee Schedule for Small Projects is based upon the methodology utilized by KMA to establish the In-Lieu Fee for projects with 10 to 49 units (mid-sized). The In-Lieu Fee Schedule depicted below represents 75% of the City's current Mid-sized Project In-Lieu Fees, by respective Sub-areas.

**PROPOSED SMALL PROJECT IN-LIEU FEE SCHEDULE**

**SMALL PROJECTS (5 to 9 Units) -- FOR-SALE IN-LIEU FEES**

Number of Units	Per Square Foot
Sub-area A	\$22
Sub-area B	\$ 4
Sub-area C	\$ 5
Sub-area D	\$ 9

**SMALL PROJECTS (5 to 9 Units) -- RENTAL IN-LIEU FEES**

Number of Units	Per Square Foot
Sub-area A	To Be Determined
Sub-area B	\$ 1
Sub-area C	\$12
Sub-area D	\$ 9

Based on the 23 small projects processed since the adoption of the Ordinance, if the proposed Amendment were enacted, approximately 23 affordable units or In-Lieu Fees in the amount of \$2,083,207 would have been available toward the provision of affordable housing units.

**3. ON-SITE INCLUSIONARY UNIT REQUIREMENT FOR DEVELOPMENT CAUSING DISPLACEMENT**

In an effort to mitigate affordable housing units being lost to the market due to the construction of replacement projects that result in the displacement of low and moderate-income households, the proposed amendment to the Ordinance would require residential developments causing such displacement to provide affordable units on-site in accordance with the Inclusionary Unit requirements of the Ordinance. Relocation assistance benefits are currently addressed in the city's Tenant Protection Ordinance, but the Inclusionary Housing Ordinance currently does not protect against the loss of affordable units.

**Amendment:** Section 17.42.040 Inclusionary Unit Requirement. New paragraph "E" to read substantially as follows: *If the Residential Project causes the displacement of low or moderate-income households, the Residential Project shall provide Inclusionary units on-site. Alternatives to on-site development pursuant to Section 17.42.050 shall not be available*

4. **AFFORDABILITY PERIOD OF FOR-SALE (OWNERSHIP) UNITS**

The Ordinance mandates that for-sale Inclusionary Units be maintained as affordable housing for a 30-year period. By comparison, the provision of affordable ownership housing with assistance from the city's Low and Moderate Income Housing Trust Fund is subject to State of California Redevelopment Law, which requires a restrictive affordability period of 45-year. The proposed amendment seeks to extend the affordability period of for-sale Inclusionary Units so that it achieves parity with affordable ownership units under the State Redevelopment Law. The proposed amendment advances preservation of Inclusionary Units as affordable housing by extending the restrictive period for additional 15-years.

**Amendment:** Section 17.42.070 Standards. Revise sub-section C.1. to read substantially as follows: *Units for sale – 45 years. An Inclusionary Unit that is for sale shall remain reserved for the target household income group at the applicable Affordable Housing Cost for a period of forty-five years.*

## ATTACHMENT "B"

### PROPOSED AMENDMENT TO THE INCLUSIONARY HOUSING REGULATIONS

#### 1. THRESHOLD CRITERIA FOR USE OF INCLUSIONARY HOUSING TRUST FUNDS

A guiding principle of the Ordinance is provision of affordable housing units citywide. Historically the Northwest Pasadena area, which encompasses Inclusionary Housing Sub-area "B," has experienced more development of affordable housing than other areas of the city.

The proposed amendment to the Regulations is intended to assure that affordable housing developments assisted with Inclusionary Housing Trust Funds are dispersed citywide to guard against the concentration of such developments in Sub-area B.

**Amendment:** Section VII. Inclusionary Housing Trust Fund. New paragraph to read substantially as follows: *Inclusionary Housing Trust Funds shall be allocated on a citywide basis and in accordance with the "over concentration" criteria defined in Section IV. B 3 a. (v). of the Regulations. However, proposed projects located in Sub-area B seeking Inclusionary Housing Trust Fund assistance may be initially reviewed by the City Council/Pasadena Community Development Commission on a case-by-case basis prior to the preparation of an Agreement for the allocation of Inclusionary Housing Trust Funds. At the time of its initial review, PCDC/City Council may utilize certain threshold criteria (e.g., advisory bodies recommendation; number of proposed covenanted affordable units; PCDC/City's per unit affordable housing assistance; amount of Inclusionary Housing Trust Funds approved to assist developments in Sub-area B during the fiscal year; total number of covenanted affordable units sited within Sub-area B and assisted with Inclusionary Housing Trust Funds during the fiscal year; etc) in its consideration of the proposed development.*

#### 2. PURCHASE AFFORDABILITY COVENANTS WITH INCLUSIONARY TRUST FUNDS

According to the 2000 Census, 16,440 multi-family housing units in Pasadena are occupied by renters. Less than 12% (1,826) of these units have deed restrictions or affordability covenants that require the units be maintained as housing affordable to lower income households.

Construction of new affordable housing in the City is costly and affordable housing developers have a difficult time competing with other developers for the limited land available in Pasadena. The City may consider purchasing affordability covenants on existing market-rate housing and making those units available to very low, low, or moderate-income households. Additionally, opportunities may exist to preserve affordable housing by utilizing Inclusionary Housing Trust Funds to lengthen the restrictive period of existing affordability covenants.

**Amendment:** Section VII. Inclusionary Housing Trust Fund. New sentence to read substantially as follows: *In addition, Inclusionary Housing Trust Funds maybe used to: a) purchase affordability covenants on existing market rate housing; and b) lengthen the term of existing deed restrictions or affordability covenants on currently restricted affordable housing.*

3. **IN-LIEU FEE SCHEDULE - FIVE-YEAR UPDATE, 10% ADJUSTMENT, ANNUAL INDEX**

As proposed, the In-Lieu Fee Schedule would be updated every five years by City Council action based upon a real estate market study analyzing prevailing real estate market conditions and the housing affordability gap. Presently, the Regulations stipulate that the In-Lieu Fee Schedule be amended on a biennial basis. The In-Lieu Fee is typically paid by developers in two installments; at the time of building permit issuance and at the time of occupancy permit issuance. To recapture the financial opportunity cost incurred by the City that is attributable to the bifurcated payment of the In-Lieu Fee and the resultant increased affordability gap due to the time lag between the two installment payments, it is proposed that the base In-Lieu Fee Schedule rates derived from the real estate market study be increased by a 10% across-the-board adjustment. However, developers electing to pay 100% of the In-Lieu Fee applicable to their project at the time of building permit issuance would receive an automatic 10% discount.

There also exists another time lag that impacts the value of the In-Lieu Fees collected. The period is the interval between completion of a real estate market study and adoption of an updated In-lieu Fee Schedule. This results in an outdated In-Lieu Fee Schedule that may not accurately represent the actual housing affordability financial gap. To address this, it is proposed that the adopted In-Lieu Fee Schedule be adjusted annually in accordance with changes in the Consumer Price Index (published by the U. S. Department of Labor), the House Price Index (published by the Office of Federal Housing Enterprise Oversight), a hybrid of these two indices, or some other appropriate housing market index as may be determined from time to time by the Director of the Planning and Development Department. This would enable baseline fee levels to trend with prevailing market conditions and be more reflective of the affordability gap.

**Amendment:** Section IV A. In-Lieu Fee Alternative. New paragraph 3 to read substantially as follows: *3. Once every five (5) years the City Council shall adopt a new In-Lieu Fee Schedule ("Fee Schedule) based upon a real estate market study. The baseline Fee Schedule thus derived shall include an across-the-board 10% adjustment to mitigate the potential loss in revenue to the City resulting from bifurcated In-Lieu Fee payments that are made over an extended time period. However, if a developer elects to pay 100% of the In-Lieu Fee at building permit issuance, a 10% fee discount shall be granted automatically. The Fee Schedule shall also be adjusted annually based upon changes in the Consumer Price Index ("CPI") for the Los Angeles – Long Beach Standard Metropolitan Statistical Area (LA-LB SMSA), the House Price Index for the LA-LB SMSA, a hybrid of these two indices, or some other appropriate housing market index as may be*

*determined by the Director of the Department of Planning and Development.*

**4. RIGHT OF FIRST REFUSAL**

Right of First Refusal means that seller of a covenanted Inclusionary ownership unit shall be required to give the City first option to purchase the property before the property is exposed to the market. Currently, the Regulations do not provide the City with the authority to preserve a covenanted ownership unit in the event of resale. Right of First Refusal assists the city to preserve affordable ownership units.

**Amendment:** Section VI.B. Ownership (For Sale) Units. New sub-paragraph 5 to read substantially as follows: *Resale; Right of First Refusal To City. At initial sale of the Inclusionary Unit, buyer shall enter into a Purchaser Affordability Agreement wherein it is acknowledged that City shall have a right of first refusal in the event of a resale. The City option of first refusal granted by the owner shall be in effect for a period of 60 days. The City shall in writing inform the seller that it intends to exercise the option and purchase the dwelling unit, assign its option to a qualified buyer, or abandon the option. The same conditions shall apply to any successors or assigns.*

**5. INCLUSIONARY HOUSING PROGRAM PERFORMANCE REVIEW**

Both the Planning Commission and Community Development Committee expressed the desire for staff to prepare a performance review of the Inclusionary Housing Program, especially the use of Inclusionary Housing Trust Funds every twenty-four months.

**Amendment:** Section VII. Inclusionary Housing Trust Fund. New paragraph to read substantially as follows: *On or before the date that is twenty-four months from July1, 2005 and bi-annually thereafter, the City Manager or her designee shall prepare and present to the City Council, Planning Commission and Community Development Committee an evaluation of the effectiveness of the Inclusionary Housing Program, including the use of Inclusionary Housing Trust Funds, during the preceding twenty-four month period.*