HOUSING COMMISSION RESOLUTION NO. 2014-001

A RESOLUTION OF THE HOUSING COMMISSION OF THE CITY OF CARLSBAD, CALIFORNIA, RECOMMENDING THE CITY COUNCIL (1) ACCEPT THE "AFFORDABLE HOUSING IMPACT FEE NEXUS STUDY" PREPARED BY KEYSER MARSTON ASSOCIATES, INC., AND DATED SEPTEMBER 2013; AND (2) APPROVE, BASED ON THE ANALYSIS AND RECOMMENDATIONS OF THE STUDY, AN AFFORDABLE HOUSING IMPACT FEE AND AN INDEX FOR FEE LEVEL ADJUSTMENT (IMPACT FEE ESCALATOR).

CASE NAME: AFFORDABLE HOUSING IMPACT FEE

WHEREAS, the City of Carlsbad is mandated by state law to provide housing opportunities for persons of all incomes, with an emphasis on persons with lower incomes, and the city's application of its inclusionary housing requirements is a primary and an effective means of achieving "affordable housing," or housing with rents and sales prices affordable to such persons; and

WHEREAS, recent court rulings restrict the city's ability to apply inclusionary requirements to rental units in the absence of a financial or regulatory incentive or concession and a contractual agreement (*Palmer/Sixth Street Properties, L.P. v. City of Los Angeles*) and impact how the city can impose fees to assist with the development of affordable housing (*Building Industry Association of Central California v. City of Patterson*); and

WHEREAS, at a March 20, 2012 workshop, the City Council discussed these court decisions affecting affordable housing production as well as Carlsbad demographic and land use trends that point to an increase in multi-family construction, including apartments, along with a strong rental market and developer-interest in converting non-residential lands to high density apartment sites; and

WHEREAS, based on the workshop discussion, the City Council directed staff to return with proposals to address the city's inability to apply inclusionary requirements to rental housing, including a proposal that would present for City Council consideration a nexus study to establish a rental housing impact fee; and

WHEREAS, staff has hired consultant Keyser Marston Associates, Inc. to prepare the nexus study, which the consultant has completed and which is attached to this resolution; and

WHEREAS, the study, entitled "Affordable Housing Impact Fee Nexus Study" and dated September 2013, quantifies the linkages between new market-rate rental units and the demand for affordable housing and contains a detailed supporting analysis, the conclusion of which reflects the maximum mitigation impact fee supported to offset affordable housing demand caused by the development of market-rate rental housing; and

WHEREAS, in addition to a maximum supportable impact fee, the nexus study also recommends (1) a lesser fee that leaves a margin between the lesser fee and the maximum established by the nexus analysis to allow for minor changes to the many inputs, assumptions, and calculations employed in the nexus analysis while assuring that the adopted fee remains below the maximum supported nexus amount and (2) and potential indices for adjustments to the fee level in the future based on the rise and fall of construction and other costs; and

WHEREAS, the fee would be imposed as a condition of development approval; and

WHEREAS, the Housing Commission did on September 19, 2013, hold a duly noticed public meeting as prescribed by law to consider the nexus study and the proposed affordable housing impact fee; and

WHEREAS, in response to a request from the Building Industry Association of San Diego, the Housing Commission continued the item to a date uncertain; and

WHEREAS, subsequent to the September 19 meeting, Governor Brown vetoed legislation (AB 1229) that, if passed, would have enabled the city to again apply inclusionary requirements to market-rate rental projects; and

WHEREAS, city and BIA staff met in December 2013 to discuss the BIA's concerns; and

WHEREAS, the Housing Commission did on **January 9, 2014**, hold a duly noticed public meeting as prescribed by law to consider the nexus study and the proposed affordable housing impact fee; and

WHEREAS, at said public meeting, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, said Commission considered all factors relating to the nexus study and the proposed affordable housing impact fee.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Housing Commission as follows:

A) That the foregoing recitations are true and correct.

B) That based on the evidence presented at the public meeting, the Commission recommends the City Council **ACCEPT** the "Affordable Housing Impact Fee Nexus Study" prepared by Keyser Marston Associates, Inc and dated September 2013; and **APPROVE** (1) an affordable housing impact fee, not to exceed $20 per square foot, to be paid by developers of market-rate rental housing to offset the affordable housing demand caused by the construction of market-rate rental housing and (2) the "Construction Costs Index" (CCI) published by Engineering News Record as the index (with no ceiling) for fee level adjustment, all based on the following findings.

Findings:

1. The city is mandated by state law to provide housing opportunities for persons of all incomes, with an emphasis on persons with lower incomes; in fact, the Regional Housing Needs Assessment identifies the need for 1,605 homes for persons with very low and low incomes during the 2013-2021 housing cycle. The city's application of its inclusionary housing requirements is a primary and an effective means of achieving "affordable housing," or housing with rents and sales prices affordable to persons with lower incomes. In light of court rulings that restrict Carlsbad's ability to apply inclusionary housing requirements to rental projects, application of the recommended affordable housing impact fee to developers of market-rate rental projects will help restore the city's ability to achieve affordable housing. This is consistent with the Housing Element, which seeks to provide new housing with diversity in terms of price and tenure and in sufficient quantity to accommodate anticipated growth.

2. As discussed at the March 20, 2012, City Council workshop, Carlsbad demographic and land use trends point to an increase in multi-family construction, including apartments, along with a strong rental market and developer-interest in converting non-residential lands to apartment sites; furthermore, the discussion identified that the majority of residential land in Carlsbad has been developed or planned, shrinking the opportunity for the city to apply its inclusionary requirements and realize affordable housing gains. Application of the recommended affordable housing impact fee to developers of market-rate rental projects will help achieve affordable housing from future apartment developments that are not otherwise subject to inclusionary requirements.

3. The "Affordable Housing Impact Fee Nexus Study" dated September 2013 and prepared by Keyser Marston Associates, Inc., quantifies the linkages between new market-rate rental units and the demand for affordable housing and, through these linkages and the detailed and appropriate analysis, conclusions and recommendations, provides the necessary evidence to support the application of an affordable housing impact fee to developers of market-rate rental projects.

4. The Affordable Housing Impact Fee Nexus Study establishes the reasonable relationship between the construction of market-rate rental housing and the need for affordable housing that the new market-rate housing creates, consistent with the ruling in *Building Industry Association of Central California v. City of Patterson.*

5. The Affordable Housing Impact Fee Nexus Study is also consistent with United States Supreme Court cases *Nollan v. California Coastal Commission* in that the study demonstrates a "logical nexus" between the impacts of development and the use of land or money exacted from the developer to mitigate those impacts; and *Dolan v. City of Tigard* in that the study shows the affordable housing impact fee (an exaction) is at least roughly proportionate in amount to impacts of the development of the land from which the exaction is made.

6. The recommended affordable housing impact fee of $20 per square foot is below the maximum supportable impact fee as identified in the nexus study and thus

allows for minor changes to the many inputs, assumptions, and calculations employed in the nexus analysis while assuring that the adopted fee remains below the maximum supported nexus amount.

7. Charging the fee on a per square foot versus per unit basis ensures fee equity regardless of unit size and may encourage smaller units, which could improve housing affordability.

8. The recommended affordable housing impact fee is excluded from the Proposition 26 definition of a tax that requires voter approval as it is "a charge imposed by a condition of property development."

9. The "Construction Costs Index" (CCI) published by Engineering News Record, the proposed index (with no ceiling) for fee level adjustment, has been recommended by the city's Administrative Services Director and is a commonly used as an escalator on other city impact fees.

PASSED, APPROVED, AND ADOPTED at a regular meeting of the Housing Commission of the City of Carlsbad, held on **January 9, 2014**, by the following vote, to wit:

AYES: IGOE, KIRK AND SMITH

NOES: ANDREWS AND BRADWELL

ABSENT: NONE

ABSTAIN: NONE

BOBBIE SMITH, CHAIRPERSON
CARLSBAD HOUSING COMMISSION

ATTEST:

DEBBIE K. FOUNTAIN
DIRECTOR OF HOUSING AND NEIGHBORHOOD SERVICES