

DATE: June 17, 2008

TO: Mayor and City Council

FROM: Director of Community and Economic Development

SUBJECT: Resolution in Support of California Assembly Bill 2939 Giving Cities Authority to Adopt Mandatory Green Building Standards That Exceed State Code Standards Without Having to File Special Findings with State Agencies

RECOMMENDATION

That Council adopts the attached resolution supporting the adoption of Assembly Bill 2939 by the California State Legislature.

BACKGROUND

As local governments seek ways to mitigate climate change and decrease their local carbon footprint, many cities have embarked on the adoption of green building ordinances for their respective jurisdictions. Some of these ordinances require mandatory green building standards that exceed existing State Building Code and Energy Code standards. Build It Green's residential Green Point Rating system contains such standards. Under current California law, the legal validity of such ordinances may be called into question unless filings of "local climatic, geological or topographical" findings have been made with the California Energy Commission or the California Building Standards Commission or, in some instances, both agencies. Existing provisions of the California Building Standards Law generally preempt cities and counties from setting building standards that differ from those set forth in the State Building Code ("State Code"), except where the local agency determines that modifications are "reasonably necessary because of local climatic, geological, or topographical conditions." As such, local governments are restricted from putting a green building ordinance in place that requires mandatory green building standards.

The Council Sustainability Committee is recommending adoption of a green building ordinance that requires mandatory green building standards, and has indicated general support for Build It Green's Green Point checklists for residential construction. If passed, AB 2939 would allow the City of Hayward to adopt mandatory green building standards that exceed those of the State Building Code and Energy Efficiency Standards (Title 24, Part 6 of the California Code of Regulations).

The Energy Efficiency Standards for Residential and Nonresidential Buildings were established in 1978 in response to a legislative mandate to reduce California's energy consumption. The

standards are updated periodically to allow consideration and possible incorporation of new energy efficiency technologies and methods.

Build It Green is a non-profit membership organization whose mission is to promote healthy, energy- and resource-efficient building practices in California. The organization works with mainstream stakeholders in the housing industry to accelerate the adoption of green building practices, and our short-term goal is to facilitate the greening of 10,000-housing units by the end of 2008.

The organization offers green building training, tools, technical expertise, and partnership opportunities for key stakeholders including public agencies, builders, developers, architects, contractors, affordable housing advocates, real estate professionals, suppliers, and homeowners. Build It Green provides strategic assistance to local governments for developing, promoting, and implementing their green building programs. Build It Green uses the Green Point Rated Program as the implementation tool.

The Green Point Rated program provides an objective, third-party verification system that equips consumers to find green homes, understand green benefits, and recognize green features. Trained and certified raters evaluate whether new home construction projects meet program standards. Conservation of natural resources, increased energy efficiency and improved indoor air quality are just a few of the benchmarks a new home must reach to qualify.

DISCUSSION

AB 2939 seeks to lift those restrictions by expanding the current local code modification authority to expressly authorize adoption of mandatory local green building standards.

Specifically, the legislation would:

1. Adopt a “green building” definition similar to that proposed in the current round of the California Building Standards Commission’s (“Commission”) triennial update of the State Code;
2. Expand the existing local authority to modify the State Code based on “local climatic, geological or topographical conditions” to include local modifications that the city or county determines are reasonably necessary to permit it “to implement one or more of the green building guidelines” systems specified in the bill;
3. Specify that the four main green building guidelines currently being used or under consideration for use by local agencies in California all qualify for local adoption;
4. Provide a mechanism for the Commission to approve other green building guidelines for this purpose, including authorizing the Commission to charge a regulatory fee to the private or non-profit entities seeking to have such systems added to the approved list; and
5. Establish a “grandfather” provision, so that any city or county that adopted a mandatory green building ordinance without making the findings authorized by this bill would be deemed to have complied with all applicable statutory requirements so long as it made such a finding by January 1, 2010.

The four green building guidelines systems specified in the bill are: (1) Build-it-Green's "Green Point Rated System;" (2) the U.S. Green Building Council's "LEED" system; (3) the California Building Industry Associations' "California Green Builder Program;" and (4) the Green Building Initiative's "Green Globes" system.

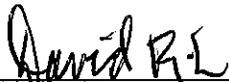
Furthermore, the Northern California Home Builders Association supports Build It Green's Rating program, which would require that green building measures be incorporated into residential building projects and certified as being incorporated by a certified third party rater. Finally, the Alameda County Planning Commission has requested that their Board adopt a resolution supporting AB 2939 while StopWaste.org is urging its members to support the bill as well.

As the City of Hayward continues to explore means of implementing green building standards, it will be beneficial to support and endorse AB 2939.

FISCAL IMPACT

There is no known general fund fiscal impact for this recommendation.

Prepared by:



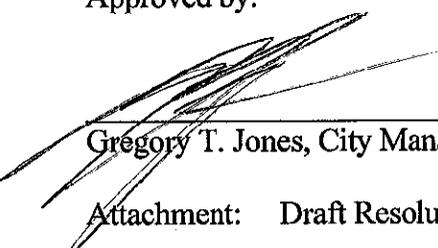
David Rizk, AICP
Planning Manager

Recommended by:



Susan J. Daluddung, Ph.D
Director of Community and Economic Development Department

Approved by:



Gregory T. Jones, City Manager

Attachment: Draft Resolution

HAYWARD CITY COUNCIL

RESOLUTION NO. 08-

Introduced by Council Member _____

Mme
6/11/08

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
HAYWARD IN SUPPORT OF ASSEMBLY BILL 2939
RELATING TO CALIFORNIA GREEN BUILDING
STANDARDS

WHEREAS, many local governments have been seeking ways to mitigate the adverse impacts of climate change and have embarked on the adoption of green building ordinances for their respective jurisdictions; and

WHEREAS, existing provisions of the California Building Standards Law generally preempt cities and counties from establishing building standards for private development that differ from those set forth in the state code, unless the local agency determines that modifications are reasonably necessary because of local climatic, geological, or topographical conditions, thereby restricting local governments from enacting green building ordinances that require mandatory green building standards that exceed state standards; and

WHEREAS, Assembly Bill 2939 seeks to eliminate those restrictions by expanding the authority of local jurisdictions to modify state building standards and by expressly authorizing the adoption of mandatory local green building standards.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby supports the adoption of Assembly Bill 2939, which will expand the authority of local jurisdictions to adopt green building ordinances to mitigate the adverse impacts of climate change.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2008

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward