



**MINUTES OF THE REGULAR MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, July 27, 2017, 7:00 p.m.  
777 B Street, Hayward, CA 94541**

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**MEETING**

A regular meeting of the Hayward Planning Commission was called to order at 7:00 p.m. by Vice-Chair Schott.

**ROLL CALL**

Present: COMMISSIONERS: Willis Jr., McDermott, Faria  
CHAIRPERSON: Schott  
Absent: CHAIR: Enders, Goldstein  
Vacancy: COMMISSIONER: One

**SALUTE TO FLAG**

Commissioner Willis Jr. led in the Pledge of Allegiance.

Staff Members Present: Brick, Buizer, Chan, Martinez

General Public Present: 5

**PUBLIC COMMENT:**

There were none.

**PUBLIC HEARINGS:** For agenda item No. 1, the Planning Commission may make a recommendation to the City Council.

1. Zoning Text Amendment to Update Regulations Related to Accessory Dwelling Units and Establish a New Review Fee Associated with Amendments to Chapter 10, Planning, Zoning and Subdivisions, of the Hayward Municipal Code (Zoning Text Amendment Application No. 201701087); City of Hayward (Applicant)

Assistant Planner Martinez provided a synopsis of the staff report and presented a PowerPoint presentation.

In response to Commissioner Faria's questions regarding: what happens when property owners sell a property that has a deed restriction, will existing ADUs be required to be brought into conformance with State law, how will staff identify the ADUs not registered with the City; and off street parking requirements; staff said the following: Assistant Planner Martinez said the deed restriction would require that the new property owner must live in one of the dwellings and added that new owners can live in the Accessory



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Dwelling Unit (ADU). Planning Manager Buizer said the changes in State law allows flexibility to enable existing ADUs to be brought into conformance. Ms. Buizer said there are several code enforcement cases of existing ADUs and staff will be conducting additional outreach to inform homeowners of the changes in State law that will provide the opportunity for property owners to come in to make their units legal once City Council has adopted the zoning text amendment. Ms. Buizer added homeowners will still have to meet the City's land use regulations, building codes and park requirements. Mr. Martinez said that the proposed off-street parking requirement is to help alleviate parking issues.

In response to Commissioner Willis Jr., Assistant Planner Martinez said through the zoning conformance permit, staff will be able to maintain a record of ADUs within the City and the City has a rental inspection program through the Code Enforcement Division that conducts annual rental property inspections and will be able to confirm the homeowner occupancy requirement is being maintained. Mr. Martinez responded to Mr. Willis that the deed restriction is not a State requirement but that multiple jurisdictions have the deed restriction requirement to enforce the owner occupancy requirement. Mr. Martinez said the addition of a kitchen to a bath and bedroom triggers the ADU and the lower permit fee is for planning review and to cover staff time but noted there were other substantial building and utility permit fees. Mr. Willis has concerns about AirBNB and hopes this does not become a problem in Hayward. In response to Mr. Willis' question about the City Attorney Office's review of the deed restriction requirement for ADUs, Assistant City Attorney Brick said it was reviewed by the City Attorney's Office and no concerns were noted.

Commissioner McDermott recommended that floor plans and photos of the primary residence be submitted to enable staff to see how the ADU will fit into the property, Mr. Martinez confirmed that in the proposed ordinance, project plans are a requirement and the addition of photos is a good suggestion. In response to Ms. McDermott's question about minimum lot size restriction, Mr. Martinez said that there are no lot size restrictions. Ms. McDermott suggested potentially reducing the setback requirement between the principal residence and a detached ADU if the principal residence or ADU had fire sprinklers installed. Mr. Martinez said that that is something the Planning Division could explore, but the City is trying to maintain consistency with its current zoning code. Ms. McDermott suggested a formal plan be put in place to legalize current ADUs and there should be an educational component to inform property owners of landlord and tenant rights. In response to Ms. McDermott question regarding rent controlled units, Assistant City Attorney Brick responded that one ADU on a lot does not qualify as there must be five units to trigger rent control. In response to Ms. McDermott, Mr. Martinez said the ADUs can be counted as part of the affordable housing stock and the ADU can be part of the residential parking permit program.



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In response to Vice-Chair Schott's question regarding developments with Homeowner Associations (HOA), Planning Manager Buizer said a HOA's Conditions, Covenants and Restrictions (CC&Rs) trump State law and some of the City's HOAs limit the ability to convert garages to ADUs. In response to Mr. Schott regarding the parking restriction if you are within half mile from public transit, Assistant Planner Martinez said this is taken straight from State Law and the distance is determined by 'as the crow flies'. Ms. Buizer responded to Mr. Schott regarding AirBNBs, that staff conducted research with the results that it is difficult to identify which residences are participating and that only about 1% of Hayward's housing stock is involved.

Commissioner Willis Jr. said this is a good permit provision and will help reduce the housing shortage in the City but is concerned that the deed restriction could be onerous for the property owner as it could limit the property owner's ability to sell their property at a good price. Mr. Willis recommended that the deed restriction requirement be removed as the deed restriction puts a limit on the benefits of the ADUs and added that the State did not make the deed restriction a requirement.

In response to Commissioner McDermott's question about whether the property taxes will change, Assistant Planner Martinez said the property taxes will increase as the addition will raise the value of the house.

Commissioner Faria expressed surprise that the ordinance includes a park dedication in-lieu fee, Planning Manager Buizer explained how the fee is applicable as there will be an impact to the City's green space based on the unit type and an ADU is considered a multifamily type unit pursuant to the Hayward Municipal Code.

Vice-Chair Schott opened the public hearing at 7:37 p.m.

Mr. Eduardo Padilla, Hayward resident, said it does not make sense to be charged steep impact fees of \$30,000, as it will cost him \$30,000 to build the addition and has concerns about the process. Vice-Chair Schott explained that the City collects the park dedication in-lieu fees which are then given to the Hayward Area Recreation and Park District (HARD) and added that the park-in-lieu fee schedule is set by HARD. Assistant City Attorney Brick said the only fee being discussed is recommending the application fee and said there is a mechanism to adjust the impact fees. Planning Manager Buizer addressed Mr. Padilla that what is being discussed tonight is the land use regulations and the fee associated with the application which is the Zoning Conformance Permit fee. Ms. Buizer said there will be a separate process to discuss Mr. Padilla's impact fees and continuing discussions with Public Works and Utilities and Environmental Services.



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Ms. Ellen McBarnette, Hayward resident, spoke about how she is an Airbnb user and that this mechanism has enabled her to keep her house. Ms. McBarnette is concerned that the City will look unfavorably at Airbnb users and offered her experience on Airbnb.

Vice-Chair Schott closed the public hearing at 7:51 p.m.

In response to Commissioner McDermott's question about the Airbnb short-term rental timeframe, Assistant Planner Martinez said State law identifies a short-term rental as anything less than 30 days and anything longer than 30 days is considered a form of sublet. Mr. Martinez said short-term rental regulations are not covered under the proposed ordinance.

Commissioner Willis Jr. made a motion to approve the staff recommendation but recommended the removal of the deed restriction and wanted the fee structure revisited to make sure it is equitable and fair. The motion died for lack of a second.

Commissioner McDermott made a motion per the staff recommendation. Commissioner Faria seconded the motion.

Commissioner Willis Jr. objected and will not vote for the motion. Mr. Willis said the State does not require the deed restriction and that the motion should remove the deed restriction.

Vice-Chair Schott explained that for a vote to pass it must be unanimous.

The motion failed with the following vote:

**3:1 (AYES: Schott, McDermott and Faria; NOES: Willis Jr.)**

Commissioner Willis Jr. made a motion to approve the staff recommendation but remove the deed restriction. The motion died for lack of a second.

Assistant Planner Martinez commented that the deed restriction requirement is not uncommon as municipalities that have the owner occupancy requirement need a mechanism to enforce the requirement and notify prospective and future buyers that there is an owner occupancy requirement.

Commissioner McDermott spoke about how the deed restriction discloses to future buyers that there is an ADU which can provide additional income for the buyer and could actually be viewed as positive.



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Commissioner Willis Jr. said the deed restriction could be viewed as a burden and that in their wisdom, the State did not include the deed restriction as a requirement. Commissioner McDermott and staff provided cities that have the deed restriction as a requirement for the ADU such as Santa Clara, Alameda, Fremont, and Sunnyvale. Commissioner Willis Jr. stated that those cities are located in the Peninsula. Planning Manager Buizer pointed out for Mr. Willis that Alameda and Fremont are located in the east bay. Ms. Buizer explained the purpose of the deed restriction requires that the owner must live in one of the units on site and this is to maintain investment in the Hayward community and the City would like this to continue in perpetuity.

In response to Commissioner Willis Jr.'s request for the City Attorney to explain the deed restriction, Assistant City Attorney Brick said the deed restriction gives the future property owner notice that they must live in one of the two units and prevents property owners from becoming an absentee landowner. Mr. Brick added that the State law is trying to improve affordable housing stock the deed restriction is striving to balance the residential character of the neighborhoods. Mr. Brick suggested to the Commission, that since this procedurally is a recommendation to the City Council and if there is not an agreement, the Commission can recommend the staff recommendation to the City Council with a comment to have the Council look further into deed restrictions.

Commissioner Willis Jr. agreed with Mr. Brick's comments.

Commissioner Willis Jr. made a motion to approve staff recommendations with no modifications or comments. Commissioner Faria seconded the motion. The motion passed with the following vote.

AYES:	Commissioners Willis Jr., McDermott, Faria Vice-Chair Schott
NOES:	None
ABSENT:	Enders, Goldstein
ABSTAIN:	None
VACANCY:	One

Vice-Chair Schott suggested to Ms. McBarnette that she provide her comments to Council.

## **COMMISSION REPORTS**

### **Oral Report on Planning and Zoning Matters:**



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Planning Manager Buizer wished the Commission well and to enjoy the August recess. Ms. Buizer said there should be a full Commission in September as Council has completed the recruitment process.

**Commissioners' Announcements, Referrals:**

In response to Vice-Chair Schott's noted that none of the chain link fences around the city have been removed and asked about enforcement of the chain link fence ordinance, Planning Manager Buizer confirmed that the ordinance was adopted by Council and staff will look into the property that has just put up a chain link fence.

**ADJOURNMENT**

Vice-Chair Schott adjourned the meeting at 8:06 p.m.

**APPROVED:**

\_\_\_\_\_  
Julius Willis, Jr. Secretary  
Planning Commission

**ATTEST:**

\_\_\_\_\_  
Denise Chan, Senior Secretary  
Office of the City Clerk