



DATE: May 26, 2020

TO: Mayor and City Council

FROM: City Manager

SUBJECT: Adopt a Resolution Approving a Financing Model that Supports the Development of Middle-Income Affordable Housing and Authorize the City Manager to Execute Purchase Option Agreements with CalCHA

RECOMMENDATION

That Council adopts a resolution (Attachment II) authorizing participation in a financing model to fund the acquisition and/or development of affordable housing for middle income households that will require the City to:

- 1) Become a member of the California Community Housing Agency (CalCHA);
- 2) Support CalCHA's issuance of tax-exempt bonds for the production, preservation, and protection of essential middle-income rental housing; and
- 3) Authorize the City Manager to execute purchase option agreements with CalCHA to acquire (or assign to a non-profit affordable housing provider) the middle-income housing as a public benefit.

SUMMARY

Catalyst Housing (Catalyst) has developed a financing model to create affordable housing for the essential middle-income workforce and proposes using Essential Housing Revenue Bonds issued by CalCHA to finance the acquisition or development of essential middle-income housing. This housing will be deed restricted for low-income and moderate-income households in the City of Hayward. To satisfy the public purposes for which the bonds will be authorized to be issued, the owner, CalCHA, commits, through the execution of a regulatory agreement, to support, preserve, and provide low-income, median-income, and moderate-income rental housing. Additionally, as a term of the regulatory agreement, Catalyst will not displace existing tenants that are over-income for the program. CalCHA will also satisfy the public purposes of the bonds by granting all surplus project revenues to the City as a term of the Purchase Option Agreement.

Staff recommends approval of a resolution that limits the City Manager’s authority, requires verification of displacement prevention provisions in the regulatory agreement, excludes FPI from participating in the project, and evaluates the option of transferring ownership to tenants. The resolution will authorize the City to:

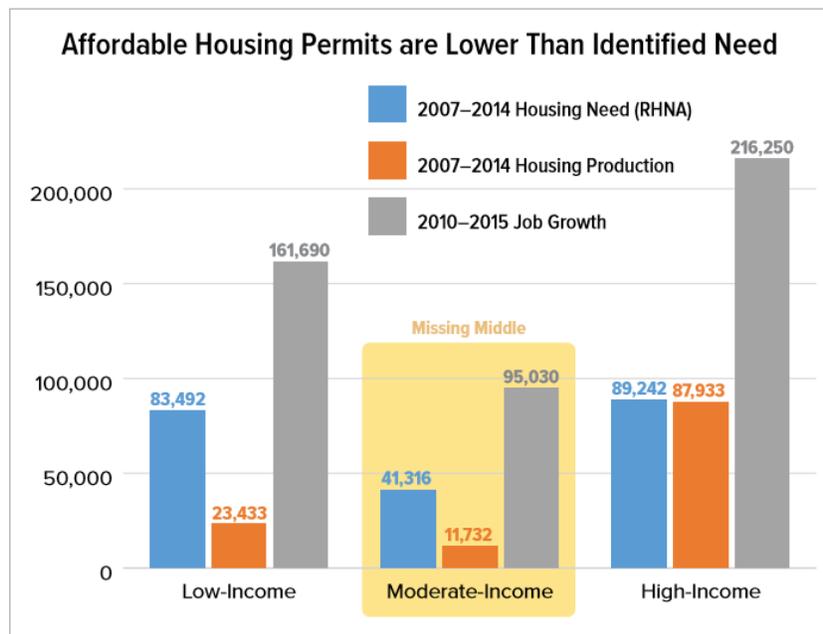
- Become a member of CalCHA;
- Support and approve CalCHA’s issuance of tax-exempt bonds for the acquisition of existing rental properties or development of new units as a means towards the production, preservation and protection of essential middle-income rental housing within the City limits; and
- Enter into a Purchase Option Agreement with CalCHA.

Considering current economic condition related to the COVID-19 pandemic, staff is anticipating even greater need for long-term housing stability for existing low-income and middle-income residents.

BACKGROUND

Hayward, like other cities in the Bay Area, is experiencing rising housing prices, severe housing instability for its most vulnerable populations, displacement of existing residents, and increasing homelessness. The increase in Hayward’s and the Bay Area’s population, absent a corresponding increase in housing units, has caused rents and prices to rise as supply has failed to meet demand. **Figure 1** illustrates the disparity between job growth in the region and housing production, which has increased demand for housing throughout the Bay Area and the low housing production rates for moderate-income households¹.

Figure 1. Regional Housing Production Compared to Job Growth.



Source: Casa Compact¹

¹ [Casa Compact](#)

The City has been actively pursuing policies and programs to help alleviate the issues facing the Hayward community due to the housing crisis. Over the past three years, the City Council has subsidized the development of 259 units of affordable housing, adopted a new Residential Rent Stabilization and Tenant Protection Ordinance, updated the Affordable Housing Ordinance, and approved numerous residential developments that include on-site affordable units or are exclusively affordable.

On February 25, 2020², Council held a work session to discuss the proposed financing model that supports the development and/or preservation of middle-income housing. Council was generally supportive of the items, but identified topics for further review including:

- Add limitations to the City Manager’s authority to ensure periodic review of the program by Council.
- Ensure that there is a mechanism to prevent displacement of the existing tenants if the program is used to acquire occupied rental housing.
- Ensure that FPI Property Management will not be responsible for managing properties acquired utilizing the financing.
- Ensure that, when the City exercises its option to purchase, that it evaluates the possibility of transferring ownership to existing residents.

On March 3, 2020, Council approved a workplan to incentivize housing production in the City of Hayward, which included a proposal to pilot a moderate-income affordable housing financing model. This model would utilize tax-exempt bonds to finance the development and/or acquisition of essential middle income housing and would require that the City join the newly formed CalCHA, support CalCHA's issuance of tax-exempt bonds for the production, preservation and protection of essential middle-income housing, and authorize the City Manager to execute purchase option agreements with CalCHA for each housing project.

On March 17, 2020, Alameda County issued a legal order directing residents to shelter at home for three weeks. The order limits activity, travel, and business functions to only the most essential needs. The Shelter-in-Place Order has caused and will continue to cause a decrease in income for many Hayward businesses and residents, which will increase the risk of loss of jobs, displacement, and homelessness, making the provision and retention of low and middle income housing units even more imperative.

The purpose of this staff report is to discuss items posed by Council for further review and seek authorization to participate in the financing model.

Housing Element Compliance and Progress Reports.

Local jurisdictions report their progress meeting their RHNA goals. **Table 1** (below) reflects the progress made towards meeting Hayward’s RHNA goal as of the last report year (2019),

² February 25, 2020 Staff Report and Attachments:
<https://hayward.legistar.com/LegislationDetail.aspx?ID=4340247&GUID=D32E99E0-08C8-4913-A32E-CB20520875F6&Options=&Search=>

estimated progress based on number of units entitled, and progress based on projects seeking approval, for the period between 2015-2023. **Table 2** provides the income limits associated with each income category for Alameda County. Permits to construct the units must be issued in order to count toward the City’s RHNA goals.

Table 1. 2015 -2023 RHNA Goal Progress in the City of Hayward

Income Category	Unit Goal	Reported 2019		Approved		Pending Approval		Estimated Compliance		Estimated Deficiency	
		Units	% of goal	Units	% of goal	Units	% of goal	Units	% of goal	Units	% of goal
Very low	851	40	5%	339	40%	2	0.2%	381	45%	470	55%
Low	480	39	8%	228	48%	0	0.0%	267	56%	213	44%
Moderate	608	27	4%	61	10%	3	0.5%	91	15%	517	85%
Above Moderate	1981	1902	96%	1,588	80%	129	7%	3,619	183%	0	N/A

Table 2. Income limits by Income Category and Household Size for Alameda County as Established by California Department of Housing and Community Development

Income Category	Household Size							
	1	2	3	4	5	6	7	8
Extremely Low 30% AMI*	\$26,050	\$29,750	\$33,450	\$37,150	\$40,150	\$43,100	\$46,100	\$49,050
Very low 50% AMI*	\$43,400	\$49,600	\$55,800	\$61,950	\$66,950	\$71,900	\$76,850	\$81,800
Low 80% AMI*	\$69,000	\$78,850	\$88,700	\$98,550	\$106,450	\$114,350	\$122,250	\$130,100
Median 100% AMI	\$78,200	\$89,350	\$100,550	\$111,700	\$120,650	\$129,550	\$138,500	\$147,450
Moderate 120% AMI	\$93,850	\$107,250	\$120,650	\$134,050	\$144,750	\$155,500	\$166,200	\$176,950

* Percent area median income (AMI) is used to identify income and rent levels; however, the method for calculating income limits involves assessment of multiple data points and is not necessarily a percent of the median income. For more information see <https://hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits/docs/Income-Limits-2019.pdf>

Hayward’s progress towards meeting the current RHNA goals identifies the need to incentivize housing for very low-, low-, and moderate-income households. The City has the lowest compliance rate for moderate income households. Over the last Housing Element cycle, most cities did not meet their RHNA goals. In order to meet the RHNA goals, the City will have to approve a mix of 100% affordable housing properties and large mixed-income properties. Small mixed-income properties will not provide enough units to meet the goal. Additionally, the City needs to explore new financing mechanisms that can be used to fund moderate income housing to incentivize housing for the missing middle.

California Community Housing Authority (CalCHA)

In January 2019, the County of Kings and the Housing Authority of Kings County formed the CalCHA under the Joint Exercise of Powers Act. The purpose of CalCHA is to issue tax exempt bonds to finance affordable housing developments. Specifically, CalCHA has the authority to acquire, construct, improve, operate, and dispose of real property. A copy of the original Joint Exercise of Powers Agreement can be found in Attachment III. To date, the cities of Burlingame, Fairfield, Larkspur, Menlo Park, Mountain View, Napa, and Santa Rosa, and the County of Marin, have joined as members of CalCHA.

DISCUSSION

The purpose of this staff report is to address comments from the City Council from the February 25, 2020³ work session about the proposed financing model and to seek authorization to participate in the financing model to support the development of middle-income housing. A brief summary of the proposed financing model follows. More information can be found in the February 25, 2020 staff report.

Summary of Proposed Financing Model

The proposed financing model will use Essential Housing Revenue Bonds to fund the development of rental housing or acquisition of existing housing. The use of these bond funds reduces the projects financing costs and eliminates property tax burden. This enables the owner to charge lower rents and target middle income households. However, to utilize these bond funds, the owner must provide a public benefit.

Public Benefit. Public benefit is achieved through the execution of a regulatory agreement that restricts the use of the property, and by granting all surplus project revenues to the City. The regulatory agreement that restricts use of the property will

- Restricts the occupancy to low-income, median-income, and moderate-income households,
- Limits rent increases to the lesser of the applicable rent limits or 4% of tenants rent, and
- Prevents displacement of existing residents that do not meet the income eligibility requirements.

³ February 25, 2020 Staff Report and Attachments:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=4340247&GUID=D32E99E0-08C8-4913-A32E-CB20520875F6&Options=&Search=>

City's Role. The City's participation in the project is required to create a public benefit. In order for Catalyst to use the proposed financing model in the City of Hayward, the City would need to:

- Become a member of CalCHA;
- Approve CalCHA's issuance of tax-exempt bonds for the acquisition of existing rental properties or development of new housing as a means towards the preservation and protection of essential middle-income rental housing within City limits;
- Enter into a Purchase Option Agreement with CalCHA; and
- Accept any surplus cash or sales proceeds generated by the property to ensure its use as a public benefit.

Terms of the Purchase Option Agreement. To formalize the City's participation in the project and ensure that these public funds will be used for public benefit, the City will need to enter into a Purchase Option Agreement for each property. The terms of the Purchase Option Agreement include:

- **Purchase Option:** Grants the City the right to purchase the property 15 years after the acquisition of a property or at any time thereafter for the remaining term of the 30-year bond. The City can transfer the option to an affordable housing provider with approval from the owner. Entering into this agreement does not obligate the City to purchase the property at any time.
- **Option Price:** The future acquisition price shall be the sum of the amount sufficient to pay all project debt, encumbrances, amounts due to other parties to the transaction, and transaction costs. The price can be reduced by assuming existing project debt or applying project revenue.
- **Surplus Cash:** Any surplus cash will be held by the trustee and then distributed to the City upon acquisition/transfer of ownership.
- **Terms of Conveyance:** City to purchase the property in as is condition with all faults.

Under the CalCHA arrangement, the City is not a direct party to the real estate transaction nor financial transaction. The bonds to be issued by the CalCHA for the project will be the sole responsibility of CalCHA, and the City will have no financial, legal, moral obligation, liability, or responsibility for the project or the repayment of the bonds. The City will have no responsibility for managing or maintaining the property unless it chooses to exercise its options and acquire the property.

Comments from City Council

The Council was generally supportive of the financing model but identified topics for further review. The items identified by Council are listed below and staff's response is provided in italics.

- **City Manager's Authority.** Add limitations to the City Manager's authority to ensure periodic review of the program by the Council.

Staff has added language to the authorizing resolution that limits the City Manager's authority to enter into Purchase Option Agreements for up to four properties totaling no more than 1,000 units for essential middle-income housing during the next five years and excludes projects that received their certificate of occupancy after 2019. Additionally, the City Manager is to evaluate the location of the property to promote equitable access to affordable housing and community amenities. In the event that the financing model is successful, staff can request additional authority based on actual performance of the model.

- **Anti-displacement.** Ensure that there is a mechanism to prevent displacement of the existing tenants if the program is used to acquire occupied rental housing.

Catalyst provided sample recorded regulatory agreements that include language that states that at the time of admission to the project, no tenant shall be denied continued occupancy of a unit in the project because their income exceeds the qualifying limit. The authorizing resolution has been revised to require that prior to entering into a Purchase Option Agreement, the City Manager shall ensure that the corresponding regulatory agreement includes such language that enables existing residents to remain in the property even if their income exceeds the qualifying income limits.

- **Exclusion of FPI Property Management.** Ensure that FPI property management will not be responsible for managing any properties acquired utilizing the proposed financing model.

The authorizing resolution has been revised to require that prior to entering into a Purchase Option Agreement, the City Manager shall ensure that the corresponding regulatory agreement prohibits hiring FPI Property Management from managing the property.

- **Ownership Opportunities for Existing Residents.** Evaluate the possibility of transferring ownership to existing residents when the City exercises its option to purchase a property financed with this model.

The authorizing resolution has been revised to state that prior to exercising the option under the Purchase Option Agreement, Council will consider options to acquire the property, assign the City's option including transfer of ownership to the tenants, or to decline the option to purchase and determine use of any surplus revenues.

FISCAL IMPACT

While the project will stabilize much needed middle-income housing and has the potential for generating revenue from operating revenue or sales proceeds, the City will lose property tax revenue received from any existing rental properties acquired using this model. While the City does not wish to reduce its property tax base, it is the Council's goal to create housing units in the Hayward community. Staff feels that the benefit of being able to offer additional low- and moderate-income housing during the regional housing shortage and beyond is of greater value to the City. While there is no near-term fiscal impact for joining CalCHA or executing a

future Purchase Option Agreement, future fiscal impact may arise out of executing a purchase agreement, which may be mitigated via the excess revenue fund. During the 15-year option period, the City would have to evaluate its capacity to acquire the property or explore the option of assigning its option to a nonprofit housing provider or transferring ownership to the tenants. The agreement does not create an obligation on the part of the City to purchase or acquire the property, in the event the City chooses not to purchase the property.

STRATEGIC ROADMAP

This agenda item supports the Strategic Priority of Preserve, Protect, & Produce Housing. Specifically, this item relates to the implementation of the following project(s):

Project 4, Part 4.a: Explore moderate-income financing model.

NEXT STEPS

If Council adopts the resolution (Attachment II), Catalyst will begin to identify potential sites in the City to acquire. Once sites have been identified, staff will work with Catalyst to negotiate the Purchase Option Agreements for approval by the City Attorney's office. Staff will also verify that the corresponding regulatory agreements include all required language, and the City Manager will execute the Purchase Option Agreement consistent with the requirements established in the resolution.

Prepared by: Christina Morales, Housing Division Manager

Recommended by: Jennifer Ott, Deputy City Manager

Approved by:



Kelly McAdoo, City Manager