

Date: September 20, 2017
To: Community Services Commission
From: Omar Cortez, Acting Housing Manager
Thru: Sean Reinhart, Director of Library and Community Services
Subject: **Draft Residential Nexus and Financial Feasibility Study Findings and Recommendations for Potential Amendments to Affordable Housing Ordinance (AHO) and AHO Fees**

Background

On June 3, 2003, to help mitigate the effects of the housing affordability crisis that had worsened during the preceding decades, the City Council adopted an Inclusionary Housing Ordinance (the "IHO-2003").

In 2010, due to the downturn in residential construction caused by the Great Recession, as well as a recent case law¹ that no longer permits inclusionary requirements in most rental projects, the City adopted an Interim Relief Ordinance that reduced the IHO-2003 requirements in for-sale projects and exempted rental housing developments from all IHO-2003 requirements.

On January 27, 2015, the City Council adopted the Affordable Housing Ordinance (the "AHO") currently in effect. The AHO requires developers of projects with twenty (20) units or more to mitigate the impact of new residential development on the need for affordable housing. Council separately adopted Affordable Housing Impact Fees (the "Fees") that work in conjunction with the AHO.

Discussion

Hayward's AHO requirements are comparatively lower than those of nearby jurisdictions as the obligations reflect, for the most part, the Interim Relief Ordinance provisions, which, at the time, the City Council chose to maintain. However, during the last few years, particularly since the adoption of the AHO, rising home prices and rents have strengthened the housing market in Hayward and the City is now experiencing an uptick in residential development activity.

On the other hand, the escalation in prices and rents has exacerbated local housing affordability challenges. Local residents, particularly, those of lower incomes, are not able to afford housing in Hayward. For this reason, the City Council has directed staff to re-evaluate the AHO for potential requirement increases. To this end, staff recommended that a Nexus and Feasibility Study (the "Study") be updated as the nexus analysis establishes maximum supportable Fee levels applicable to residential developments while the feasibility part of the Study assesses the potential impacts that new Fees could have on the feasibility of those developments.

Staff has retained Keyser Marston and Associates, Inc. (KMA) to conduct the Study and has asked them to help the City consider three important areas: a) increasing the Fees to a level that incentivizes the developer to provide affordable units; b) eliminate the option to pay the Fees in ownership projects; and c) to lower the applicability threshold of the requirements.

¹ Such as the *Palmer/Sixth Street Properties v. City of Los Angeles*: 175 Cal.App.4th 1396 (2009) 96 Cal.Rptr.3d 875; PALMER/SIXTH STREET PROPERTIES, L.P., et al., Plaintiffs and Respondents, v. CITY OF LOS ANGELES, Defendant and Appellant. No. B206102. Court of Appeals of California, Second District, Division Four. July 22, 2009.

A summary of the methodology and assumptions and key findings and recommendations of the Study in PowerPoint format will be presented at the Commission meeting.

Next Steps

As part of the stakeholders and community outreach efforts in connection with this update of the AHO, staff will hold a meeting with key stakeholders on September 21. These include representatives of the development community (both market rate and affordable), housing advocates, and other area housing-related organizations.

AHO-amendment recommendations will be brought forward to the City Council at a work session that is currently scheduled for October 17. In addition to the input from stakeholders and the community gathered during the outreach process, the recommendations will reflect:

- 1) The findings of the Study
- 2) The housing policy objectives, as specified in the City's Housing Element
- 3) The inclusionary requirements in nearby jurisdictions
- 4) Requirements high enough that ensure that new market rate residential projects help mitigate their impact on the local need for affordable housing
- 5) Requirements low enough that do not discourage local residential development.