



DATE: October 17, 2017

TO: Mayor and City Council

FROM: City Manager

SUBJECT: Discussion of Residential Nexus and Financial Feasibility Study Findings and Draft Recommendations for Potential Amendments to the Affordable Housing Ordinance (AHO) and AHO Fees

RECOMMENDATION

That Council reviews and comments on this report.

SUMMARY

On January 31, 2017, Council convened [a work session to review housing affordability strategies and resources in Hayward and Alameda County](#)¹. The City's Affordable Housing Ordinance (AHO) is one of five specific action strategies Council directed staff to research at the January 31 work session. The other strategies will be coming back to Council in separate agenda items in the coming weeks and months. A separate Information Report item published in the October 17, 2017 agenda packet provides Council with a status update and timeline of the five specific action strategies discussed during the Jan. 31st work session.

This report is focused on one specific action strategy, the Affordable Housing Ordinance. It summarizes the Residential Nexus and Financial Feasibility Study (the Study) findings, provides potential options and preliminary recommendations, and seeks Council direction about desired amendments to the AHO and associated fees. The preliminary recommendations for AHO amendments are outlined in the **Recommendations** section of this report. The Executive Summary attached to this staff report also offers a brief summary of the key Study findings and preliminary recommendations for convenient reference.

¹ Source link: <https://hayward.legistar.com/LegislationDetail.aspx?ID=2947412&GUID=7B833FA7-2B44-404D-86D2-031C37926B34&Options=&Search=>

BACKGROUND

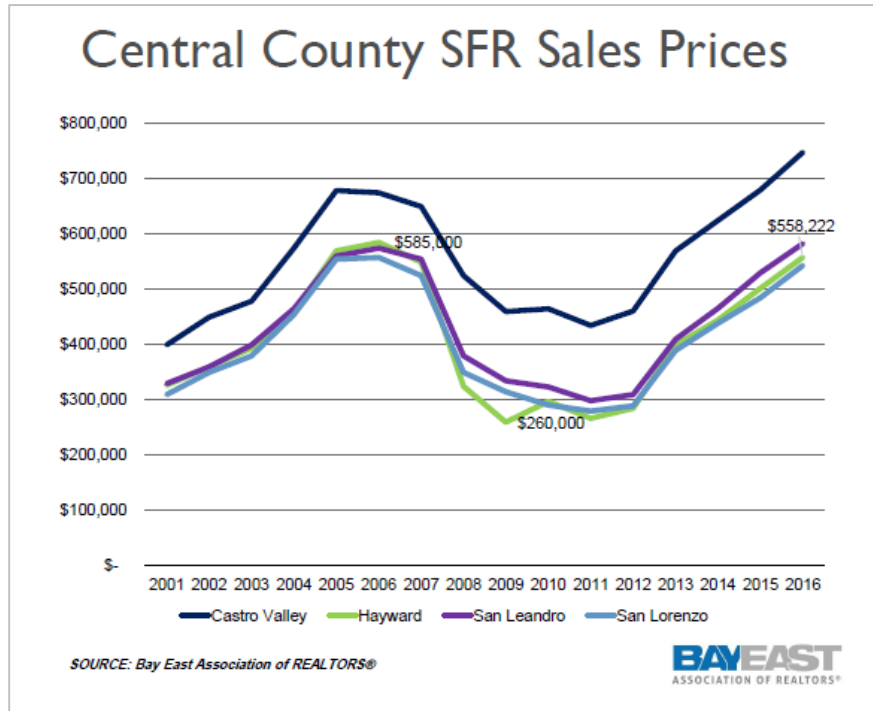
The Housing Affordability Crisis

During the last few years, particularly since the adoption of the AHO in 2015, rising home prices and rents have strengthened the housing market in Hayward and the City is now experiencing an uptick in residential development activity. The escalation in prices and rents has exacerbated local housing affordability challenges. In response, Council directed staff to re-evaluate the AHO for potential requirement increases. The AHO clarifies and facilitates the creation of deed-restricted affordable housing in the City. It does this primarily by incentivizing and/or clarifying various legal and financial requirements for developers who are interested in constructing residential developments within the City. The AHO ensures the availability of equitable, quality housing in our community for people of all income levels. Every aspect of the ordinance, and any changes to it, can have major, long-term ramifications to the local housing market, the feasibility of housing developments, the availability of funding set-asides for creating additional affordable housing, and the overall health and well-being of the residential housing market in the City.

The need to create more housing in every level and category of the housing market, from deed-restricted affordable rental units to market-rate homeownership units, continues to rise locally and regionally. The housing affordability crisis affecting communities across the Bay Area, now includes Hayward, which has historically been among the most affordable in the region. The main driver of the housing affordability crisis is the shortfall in housing supply compounded by decades of underproduction unable to keep pace with population growth. Between 1980 and 2010, California metropolitan areas like the Bay Area built on average 120,000 housing units per year, which at a glance, seems like a significant number of new housing units. However, the Legislative Analyst's Office (LAO) projects that *2.7 million more housing units should have been built during this time.*

The Bay Area region is a highly desirable place to live and work, resulting in a continuous upward regional population growth; upwards of 7.2 million people as of 2010. The impact of this regional population growth combined with the shortage of housing supply has driven up demand and price. Between 2011 and 2016, single family residence sales prices in Hayward increased by 214 percent, and although prices have increased sharply, they remain among the lowest in Alameda County.

Figure 1: Central County Single Family Residence Sales Prices



It is anticipated that the Bay Area population will grow from 7.2 million to 9.5 million people between 2010 and 2040. According to the LAO, an additional 823,000 new housing units will be needed to meet this projected housing demand. Only 8% of that total was achieved by 2015.

Summary of Current AHO Requirements

The current 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 and:

1. Permits developers to pay AHO Fees “by right” rather than providing units on site, at the developers’ option.
2. Stipulates that if for-sale housing developers elect to comply with the AHO by providing units on-site, they must include units affordable to moderate-income households equal to a minimum of 7.5% of the attached dwelling units and 10% of detached dwelling units.
3. Provides that the Fees be calculated on a per-square-foot basis rather than on a per-unit basis.

4. Provides that the Fees for for-sale housing shall be adjusted annually based on the percentage change (increase or decrease) in the three-year trailing median home prices in the City.
5. Allows payment of the Fees at the time the building permits are pulled at the adopted levels or at issuance of certificates of occupancy plus a 10% increase.
6. Removed the 2003 Inclusionary Housing Ordinance (IHO-2003) requirements for rental housing and in its place adopted Fees – unless, to comply with the Palmer court decision and the Costa Hawkins Act, the developer receives funding or City regulatory assistance of some type, such as a density bonus, and enters into a regulatory agreement with the City acknowledging their obligation to limit the rents.
7. Provides that if rental housing developers elect to provide units according to No. 6, above, they should include a minimum of 7.5% of the units and make them available at affordable rents to low- and very low-income households for a minimum of 55 years.
8. Provides that the Fees for rental housing be adjusted based on the change in local market rents.
9. Sets aside 10% of the Fees for administration of the AHO.
10. Allows the use of the Fees for the acquisition and rehabilitation of existing housing for affordable housing purposes.

Summary of Current AHO Fees

When Council adopted the AHO in 2015, by separate resolution the Council also established the AHO Fees. The current Fees, which became effective January 1, 2017, are shown in Table 1.

Table 1: Current AHO Fees

Type of Housing and Timing of Fees*	Detached		Attached	
	At Building Permit	At C. of O.	At Building Permit	At C. of O.
For-sale	\$ 4.61	\$ 5.06	\$ 3.87	\$ 4.26
Rental	N/A		\$ 3.63	\$ 3.99

**Per-square-foot of habitable space fees*

DISCUSSION

The Nexus Study

In response to Council’s direction to revisit the requirements of the Affordable Housing Ordinance (AHO) for potential adjustments, staff initiated a process to reexamine the AHO

and as a first step, in June 2017, engaged the services of professional firm Keyser Marston Associates, Inc. (KMA) to conduct a Residential Nexus and Financial Feasibility Study (Nexus Study). KMA has extensive experience in preparing nexus analyses, and has been responsible for nexus-supported affordable housing programs in a wide range of large, medium, and small jurisdictions. The firm recently prepared residential nexus and financial feasibility analyses for ten area jurisdictions that included Union City, San Leandro and Unincorporated Alameda County.

The purpose of the Study was to establish the maximum supportable fee levels applicable to residential developments and to assess the potential impacts that new or higher fees could have on the feasibility of those developments. In response to direction provided by Council, staff also asked KMA to evaluate the impacts of requiring on-site affordable units, assess the extent to which fee increases would be financially feasible for developments to realistically bear, and assess options to decrease the applicable threshold from the current AHO twenty-unit threshold.

The Study analyzed current local market conditions, recent court cases, and recently-approved State legislation. A summary of the Study findings and recent court decisions and legislation affecting inclusionary housing are included in this section. More detailed narratives regarding both the findings and the legal framework can be found in Attachment III.

The Consultant's recommendations reflect the input gathered from Council (at related discussions), stakeholders, and the community, as well as the following considerations:

1. The findings of the Study, which analyzed current local market conditions, recent court cases, and recently-approved State legislation. Among these findings are that fees that would fully mitigate the impact of new market-rate housing on the local need for affordable housing are much higher than the current AHO fees.
2. Relevant court cases and legislation. Among these are *California Building Industry Association v. City of San Jose* where the Court unanimously ruled in favor of the City of San Jose on June 15, 2015 and AB1505 (the "Palmer Fix"), a bill that was part of the "Housing Package" recently signed by State Governor Jerry Brown. The former ruling (the San Jose case) affirmed the appellate court's opinion that inclusionary zoning does not impose "exactions" upon developers' property in a manner that would violate either the federal or California takings clause. AB 1505 restores the right of municipalities to apply inclusionary housing policies to rental developments, overturning the 2009 appellate court ruling on *Palmer/Sixth Street Properties, L.P. v City of Los Angeles*.
3. Signs of strength in the rental market and local home prices. Both have risen significantly over the past several years as a result of the strength of the regional economy, low mortgage rates, and a limited housing inventory. Additionally, KMA tested the financial feasibility of the four prototypes chosen to conduct the Study (single-family detached, townhomes, stacked condos, and multifamily rental housing)

and found that, except for the stacked flat condominium prototype, which was found to be marginally feasible at the moment, all types of residential development projects in Hayward are feasible.

4. Council's housing policy objectives, as specified in the City's Housing Element. Several of the City's Housing Element goals were taken into consideration in the formulation of the Study recommendations. These include Goal H-2. This goal stipulates that the City will "[a]ssist in the provision of housing that meet the needs of all socioeconomic segments of the community." Goal H-6 was also a key consideration. This goal states that the City will help "provide housing choices that serve the needs of 'special needs' populations, including seniors, homeless, female-headed households, large families, and persons with disabilities, including developmental disabilities."
5. Inclusionary requirements in nearby jurisdictions. A survey of affordable housing requirements for eighteen jurisdictions in Alameda and Santa Clara counties conducted by KMA summarized in Attachment III showed that Hayward's fees both for rental projects and for-sale projects are lower compared to those of the other surveyed jurisdictions. However, the survey also showed that most jurisdictions, including Hayward, allow in-lieu fee payments as an alternative to providing the units on site.
6. Striking the right balance of requirements vs. feasibility. Balancing the desire to impose affordable requirements that are aggressive enough to ensure that new market-rate residential projects help mitigate their impact on the local need for affordable housing, but not so overly aggressive that they discourage and/or hinder the feasibility of residential development projects, including affordable projects, from occurring at all.

Grandfathering options are also included in the recommendations section of the report, as well the recommendation to keep the "Combination of Alternatives" option of the AHO. This alternative allows the developers to propose additional alternatives not listed in the AHO that would mitigate the affordable housing impact of a residential development project, should Council find that the alternatives would provide a greater benefit to the City than the options already contemplated in the AHO.

Inclusionary Considerations

Council in recent discussions has expressed a desire to explore the possibility of requiring the inclusion of on-site units, and this is a viable option provided that alternate means of compliance are provided under AB 1515. However, Council may also consider using an incentivization approach by keeping the fee-by-right payment option and increasing impact fees, upon the consideration of the comments from the market-rate development community represented by Building Industry Association (BIA) of the Bay Area, which has formally expressed its opposition to the elimination of that option. For Council's reference and consideration, the following components of the City of Hayward Housing Element are relevant to the inclusionary housing policy question:

- a) The inclusion of on-site affordable units promotes integrated, inclusive, and complete communities, therefore promoting important Housing Element goals and the Complete Communities Strategy cited above. Goal H-2.3 of the Housing Element establishes that “[t]he City shall enforce the Inclusionary Housing Ordinance to ensure that a certain percentage of new residential units will be made affordable to lower- and moderate-income households” and Goal H-2.4, Integration of Affordable Housing, states that “[t]he City shall encourage a mix of affordability levels in residential projects and encourage the dispersal of such units to achieve greater integration of affordable housing throughout the community.”
- b) The inclusion of on-site affordable units in for-sale housing projects also helps the City promote goal H-2.1 of the Housing Element. This goal states that “[t]he City shall encourage the development of ownership housing and assist tenants to become homeowners to reach a 60 percent ownership-occupancy rate, within the parameters of federal and state housing laws.”
- c) Keeping the fee-by-right option in place and increasing the impact fees paid by developers would generate substantial revenue to the City’s housing program, which in turn would allow the City to leverage funding from other sources such as the recently-approved Alameda County General Obligation Bond, Measure A1, to create and construct more quality affordable housing in Hayward. The most current version of the Measure A1 rental and homeownership development policies require local jurisdictions to provide local match funding to access Measure A1 funding. AHO Fees could potentially be a source for the bond funding match. Additionally, the Housing Package recently approved by the State legislature and signed by the Governor, includes a new source of funding, SB2 (the “Recording Fee”). This bill, which is effective immediately, will generate approximately \$200 million per year. Most of these funds are envisioned to be designated for local government use. Accessing these funds, however, will almost certainly also require local match funding. The Housing Package also includes the approval of a Bond measure (to be placed on the November 6, 2018 ballot) for affordable housing and for a veteran’s home purchase program. It is very likely that these programs will also require a match from the local jurisdiction.
- d) AHO Fees could help the City meet another important housing goal, Goal H-6, that says that the City will, “provide housing choices that serve the needs of ‘special needs’ populations, including seniors, homeless, female-headed households, large families, and persons with disabilities, including developmental disabilities.” These populations are typically not served by market-rate projects as they require the layering of several sources of financing, a management agent with expertise on managing properties with these populations, and, often, supportive services. The County’s Measure A1 proposed development policies also identify target groups that include most of the City’s Housing Element-identified populations. Therefore, the fees collected through the AHO could also help the City serve these populations by building rental or homeownership affordable housing in partnership with experienced affordable housing developers.

Legal Considerations

Recent court cases, including the following, have affected the application of inclusionary policies in California:

1. Required Justification for Affordable Housing Requirements. At the time of the adoption of the AHO in 2015, the California Supreme Court was considering the issue of whether inclusionary housing ordinances are similar to impact fees and must be justified by a nexus study, or whether local governments may use their police powers to further the general welfare, by requiring the provision of needed affordable housing. To resolve this issue, on September 11, 2013, the California Supreme Court granted a petition for review in *California Building Industry Association v. City of San Jose* (Case No. S212072).

On June 15, 2015, the Court unanimously ruled in favor of the City of San Jose. The ruling affirmed the appellate court's opinion that inclusionary zoning does not impose "exactions" upon developers' property in a manner that would violate either the federal or California takings clause and is not required to be justified by a nexus study. While this was a very positive ruling for inclusionary zoning in California, it only applied to ordinances on for-sale housing developments as, since 2009, municipalities had to suspend enforcement of their inclusionary zoning ordinances for rental housing development based on the appellate court ruling in *Palmer/Sixth Street Properties v. City of Los Angeles*.

2. Rental Housing: The Palmer Decision² and Subsequent Enactment of AB 1505. Another court case considered at the time of the adoption the AHO in 2015 was the Palmer decision in which the California Court of Appeals prohibited the City of Los Angeles from enforcing its inclusionary housing requirements on rental housing development. Because of Palmer, cities could no longer impose inclusionary requirements on rental housing unless they provided monetary or other assistance and the owner agreed by contract. However, cities could mitigate the impacts of rental housing on the need for affordable housing by imposing a fee justified by a nexus study, like the one conducted by DRA at the time. For this reason, the AHO removed the IHO-2003 requirements and in its place adopted fees both for rental and homeownership housing.

On September 29, 2017, Governor Jerry Brown signed the "Housing Package" legislation, a package of fifteen bills designed to address California's housing crisis. A part of the package was AB 1505 (the "Palmer Fix"), a bill that restores the right of municipalities to apply inclusionary housing policies to rental developments effective

² *Palmer/Sixth Street Properties, L.P. v City of Los Angeles* (2009) 175 Cal. App. 4th 1396, the California Court of Appeal prohibited the City of Los Angeles from enforcing its inclusionary housing ordinance on the developer's rental housing development. The Court held that forcing Palmer to provide affordable housing units at regulated rents conflicts with the right afforded to residential landlords under Costa-Hawkins Act to establish the initial rental rate and the rate upon vacancy for a dwelling unit. The Court also held that in-lieu fees were "inextricably intertwined" with affordable housing requirements and so were also prohibited. The Costa-Hawkins Act does not apply where the owner has agreed by contract to build affordable housing in consideration for a direct financial contribution or a form of regulatory assistance specified in state density bonus law.

January 1, 2018. However, one requirement of the bill is that, if the City has an on-site requirement, it must also include “alternative means of compliance that may include, but are not limited to, in-lieu fees, land dedication, off-site construction, or acquisition and rehabilitation of existing units.”

Summary Findings

The full Nexus Study is included with this report as Attachment III. What follows is a brief summary of the key Study findings.

- a) Maximum Supportable Fees. KMA’s Nexus analysis, summarized on Table 2, indicates that the maximum supported fees (the fees that would fully mitigate the impact of new market-rate housing on the local need for affordable housing) range from \$28.90 for single-family detached units to \$44.90 for both condominium and apartment units. These are per-square-foot fees for the units’ net residential areas (exclusive of parking, corridors, and other common areas). KMA recommends adopting fees lower than the maximum supportable fees to mitigate the impact of fees on projects’ proformas (the financial feasibility analysis).

Table 2: Maximum Supportable Residential Impact Fees, City of Hayward

	Single Family Detached	Townhome	Condominium	Apartments
Per Market Rate Unit	\$72,200	\$63,400	\$44,900	\$40,400
Per Square Foot	\$28.90	\$31.80	\$44.90	\$44.90

Source: Keyser Marston Associates, DRAFT Summary, Context Materials, and Recommendations – Affordable Housing Ordinance Update. September 2017.

- b) Affordable Housing Requirements in Other Jurisdictions. In 2016, KMA assembled and summarized affordable housing requirements for eighteen jurisdictions in Alameda and Santa Clara counties. KMA’s survey shows that although there is a wide range in fee levels and fees are expressed differently by jurisdiction, in the case of rental projects, Hayward’s fees are well below the fee levels of the other cities. With respect to the requirements for for-sale projects, the survey shows that most jurisdictions, including Hayward, allow in-lieu fee payments as an alternative to providing the units on site. However, Hayward’s fees are also lower compared to those of the other surveyed jurisdictions.
- c) Market Context. KMA’s analysis of the local market concludes that Hayward has a range of residential product types in the development pipeline. It also indicates that the rental market is showing signs of strength and that local home prices have risen significantly over the past several years as a result of the strength of the regional economy, low mortgage rates, and a limited housing inventory.

- d) *Financial Feasibility*. KMA tested the financial feasibility of the four prototypes and found that, except for the stacked flat condominium prototype, which was found to be marginally feasible at the moment, all types of residential development projects in Hayward are feasible. This is illustrated by the City's new development pipeline. Additionally, KMA's test showed that an increase in affordable requirements to levels similar to those of area jurisdictions could be absorbed by relatively low market adjustments (an increase in the sales prices or rents or a downward adjustment on the value of land).

RECOMMENDATIONS

This section contains a summary of the draft recommendations outlined in more detail in the Nexus Study (Attachment III). The recommendations are preliminary in nature and are subject to change at Council's direction, and reflect the following considerations:

- a) The data findings of the Study, which analyzed current local market conditions, recent court cases, and recently-approved State legislation;
- b) The housing policy objectives, as specified in the City's Housing Element;
- c) The inclusionary requirements in nearby jurisdictions;
- d) Setting requirements high enough that ensure that new market rate residential projects help mitigate their impact on the local need for affordable housing; and
- e) Requirements low enough that do not discourage local residential development.

For-Sale (Homeownership) Housing Recommendations

1. **Lower the applicability threshold** from twenty (20) units to two (2) units.
2. **Allow in-lieu fee payment for small projects** with nine or fewer units. This would avoid placing a disproportionate burden on small projects for which percentage requirements would result in less than a full affordable unit being owed.
3. **Utilize a step-up calculation of fees for projects with two to nine units** such as the following: $\text{Applicable PSF fee} = \text{Full PSF Fee} \times (\text{No. Units} - 1) / (\text{No. of units})$. This would avoid creating a disincentive for small multi-unit projects,
4. **Require that affordable units be provided on-site within for-sale projects of ten units or more and remove the option to pay an in-lieu fee** except for specific project types further described below.
5. **Set the onsite affordable unit percentage requirement at no more than 10%**, and make the on-site affordable unit percentage requirements consistent for attached and detached units. (Currently, the on-site requirements are 10% for detached and 7.5% for attached units).
6. **Adjust the requirements for specific project types** as follows:

- a. **Allow a fee payment for units with a lot size of 4,000 sq. ft. and higher** because providing affordable units onsite within single-family projects is often costlier on a per-affordable-unit basis, especially with larger lots and higher-priced units.
 - b. **Keep the 7.5% on-site requirement and/or allow fee payments for high density condominium projects.** KMA's analysis indicates that the market in Hayward for condominiums at higher densities, such as over 35 units per acre, remains unproven, however the City may want to encourage these units in some cases..
7. **Increase AHO fees in the range of \$15 to \$20 per square foot** to bring Hayward's fees nearer to the level of the fees charged by other East Bay jurisdictions (see more below). KMA's analysis indicates that selecting a fee at the upper end of the range (\$20) would represent an equivalent cost to complying with the maximum on-site requirement recommended above (10%).

Rental Housing Recommendations

- 1. **Lower the applicability threshold** from twenty (20) units to two (2) units, consistent with the recommendation for ownership units.
- 2. Due to the signing of AB 1505 by the Governor which provides the City the ability to make on-site affordable units mandatory in rental projects, KMA recommends:
 - a. **Require on-site units for projects with over 100 units** to avoid getting small numbers of affordable rental units in scattered locations that could increase the administrative burden of enforcing affordability covenants. To comply with AB 1505, allow developers to propose an alternative means of compliance utilizing the 'Combination of Alternatives' section of the AHO (discussed further below).
 - b. **Reduce the on-site requirement for the above projects from 7.5% to between 6% and 5%** while maintaining the existing low- and very low-income level split, to decrease the compliance cost to the \$20/sq. ft.
 - c. **Alternatively, allow rents for the on-site units to be set up at 80% of AMI**, a level few affordable rentals serve because it is above the rent levels allowed for projects with tax credit financing.
- 3. **Continue to allow fee payment in rental projects with 99 units or less.**
- 4. **Set the applicable fees within the \$15-\$20 per sq. ft. range** as recommended for the ownership projects – See more below.

Additional Fee-Related Recommendations

- **Continue to use the existing approach of charging fees on a per-square-foot basis.** This approach, KMA notes, is simple to administer, and ensures that fees are kept proportionate to unit size, with small units paying less and large units paying more.
- **Impose a fee structure within the ranges set forth in Table 3.** KMA’s recommendation package does not include any reference to the current fee “payment schedule” of the AHO which allows the developer to pay the base fee plus 10% if the developer chooses to pay the fee at issuance of certificate of occupancy.

Table 3: Recommended Fee Range Structure Options

Timing	Single-Family (Ownership)		Multifamily Rental	Alternative A	Alternative B
	Detached	Attached (Townhomes and Condos)		Both alternatives apply to all development types (for-sale single-family detached and detached homes and multifamily rental housing) with the exceptions described in this report	
	Current	Current	Current		
If Paid at B.P.*	\$ 4.61	\$ 3.87	\$ 3.63	\$ 15.00	\$ 18.15
If Paid at C.O.**	\$ 5.06	\$ 4.28	\$ 3.99	\$ 16.50	\$ 19.97

Grandfathering

KMA recommends that, as in previous ordinance amendments involving a new requirement or an increase in the obligations, the AHO include a provision that avoids a negative impact to projects currently in the pipeline. For this reason, staff recommends including a grandfathering provision (rather than a phase-in provision) as this is the approach that is consistent with the City’s past practices.

Should Council decide to extend a grandfathering provision, it could potentially be provided:

- Only to projects with a complete application at the time the amendments become effective.
- To all projects that have filed an application with the City’s Development Services regardless of whether the project application is deemed complete or not at the time the amendments are adopted.
- All projects that receive discretionary approvals within six or twelve months of the amendments’ adoption.

Council also has the option to include no grandfathering provision - in other words, Council may require that all projects that receive entitlements after the amendments become effective are subject to the new requirements. This could, however, create significant burdens for developers who have already spent significant time and money developing plans based on the requirements that were in place when they made their original application.

Other Recommendations and Considerations

- Retain the “Combination of Alternatives” provision which allows developers to comply with the AHO by providing a combination of on-site construction, off-site construction, in-lieu fees, and land dedication that at least equals the cost of providing the affordable units on-site and/or furthers affordable housing opportunities in the City to a greater extent. This provision would allow the City to comply with AB 1505 which requires that developers of rental housing have the option to comply with the Ordinance through a different alternative in case they cannot or decide not to provide on-site affordable units. The only alternative not applicable to developments of 100 or more units would be the payment of fees.
- Adjust the Fees annually based on the rate of increase in the Consumer Price Index (CPI) published monthly by the Bureau of Labor Statistics or on the Historical Construction Cost Index published by Engineering News Records (ENR). The current methodology proved to be too complicated while the data available for the calculation based on such methodology was too inconsistent.
- Consider transit-oriented inclusionary requirements. One of the stakeholder’s comments is that the City consider that (in case Council decides not to remove the option to pay the Fees) all new residential developments within a half-mile or one mile of high frequency transit (defined as fifteen minutes or less headways) or within Downtown Hayward boundaries be required to include affordable units and not fee out, so as to ensure that these developments provide affordable housing opportunities to lower-income households within close proximity to transit and amenities.

ECONOMIC IMPACT

As stated in the findings of the AHO (see S. 10-17.115), by facilitating the provision of “...affordable units or fees... [the AHO] will mitigate the impacts of market-rate development on the need for affordable housing and will help ensure that part of the City’s remaining developable land is used to provide affordable housing.” By ensuring that new market-rate housing that contributes to the demand for goods and services in the City mitigates its impact on the local need for affordable housing, the Ordinance also constitutes the main tool for balancing market-rate residential growth and associated jobs in the local economy (i.e., the “jobs-housing balance”).

STRATEGIC INITIATIVES

The AHO is one of the main tools to further the Complete Communities strategic initiative. The purpose of the Complete Communities strategy is to create and support structures, services, and amenities to provide inclusive and equitable access with the goal of becoming a thriving and promising place to live, work and play for all. This item supports the following goal and objectives:

Goal 2: Provide a mix of housing stock for all Hayward residents and community members, including the expansion of affordable housing opportunities and resources.

Objective 1: Centralize and expand housing services.

Objective 2: Facilitate the development of diverse housing types that serve the needs of all populations.

Objective 4: Increase supply of affordable, safe and resilient housing in Hayward.

FISCAL IMPACT

The amendment of the AHO will not directly impact the City's General Fund as all of the City's activities related to affordable housing are funded through housing-related special revenue funds. KMA's analysis indicates that the recommended increase in affordable requirements could be absorbed by relatively low market adjustments (an increase in the sales prices or rents or a downward adjustment on the value of land). Thus, the City will continue to gain additional building permit fee revenue, transfer taxes, and property taxes from new housing development of all types as it is likely that the proposed fee increases will not constitute a deterrent to the development of market-rate housing.

To the extent that they are used to assist the development of new affordable homes and match other non-local dollars, the fees collected through the AHO will result in a positive fiscal impact for the City because, to be financially feasible, those development projects will also attract additional funding from County, State, Federal, or private funding sources.

PUBLIC CONTACT

- In July and August 2017, Keyser Marston Associates conducted multiple stakeholder interviews with City staff and members of the development community (market-rate and affordable) to collect data and feedback for the Nexus Study.
- In September 2017, the preliminary draft Nexus Study findings and recommendations were [published to the City website for public review](#)³.

³ Source link: <https://www.hayward-ca.gov/residents/housing-utilities#affordable>

- On September 20, 2017, the Community Services Commission convened a public meeting to review and discuss a preliminary draft of the Nexus Study findings and recommendations, and to provide feedback.
- On September 21, 2017, staff convened a public meeting attended by local housing advocates, affordable and market-rate developers, and other interested parties to review and discuss the preliminary Nexus Study findings and recommendations.
- In all of the above, attendees and interested parties were encouraged to provide written feedback and comments in response to the preliminary Nexus Study. All comments received are included as Attachment IV to this report.

NEXT STEPS

Key policy questions for which staff is seeking Council direction include:

1. **Fees:** Does Council wish to return to an ordinance that requires provision of on-site affordable units but allows for alternative means of compliance for all projects? Should projects only be allowed to pay in-lieu fees upon petition to the Council (except for those smaller projects identified in the report – less than 100 units for rental projects and less than 9 units for for-sale projects)?
2. **Fees:** Does Council wish to impose fees within the recommended range? What is Council's direction regarding desired impact fee levels?
3. **Fees:** Does Council concur with the recommendation that Fees be adjusted annually based on the rate of increase in the Consumer Price Index (CPI) or on the ENR Historical Construction Cost Index?
4. **Grandfathering:** Does Council concur with the recommendation to include a grandfathering provision to mitigate financial impacts to projects currently in the pipeline? What should the grandfathering criteria be?
5. **Inclusionary Requirements:** What is Council's direction regarding inclusionary requirements (on-site units) in rental projects – should in-lieu fee payments be allowed for medium- and small projects with fewer than 100 units?
6. **Inclusionary Requirements:** What is Council's direction regarding inclusionary requirements in homeownership (for-sale) projects – should in-lieu fee payments be allowed for small projects of nine or fewer units?
7. **Inclusionary Requirements:** What is Council's direction regarding the possibility of imposing inclusionary requirements for projects within specifically defined geographic areas, for example projects located in proximity to transit hubs?

8. **Overall Recommendations:** Does Council generally concur with the preliminary recommendations outlined in the Recommendations section of this report?

Should Council so direct, staff will develop AHO amendments that reflect Council's direction and feedback, and bring back an agenda item to introduce the amendments at a regular meeting in November 2017.

Prepared by: Omar Cortez, Acting Housing Manager

Recommended by: Sean Reinhart, Director of Library and Community Services
Maria A. Hurtado, Assistant City Manager

Approved by:



Kelly McAdoo, City Manager