



**ATTACHMENT I –  
EXECUTIVE SUMMARY**

**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

This executive summary of the Staff Report (Attachment II) summarizes the key findings and recommendations from the Residential Nexus and Financial Feasibility Study for the City's Affordable Housing Ordinance (AHO) and associated impact fees.

During the January 31, 2017 Council work session on Housing Affordability strategies, Council directed staff to revisit the requirements of the Affordable Housing Ordinance (AHO) for potential adjustments in response to the escalation in local housing prices and rents, which have created local housing affordability challenges. Of particular interest to Council was the AHO and associated in lieu impact fees. In response to this direction, staff engaged the services of Keyser Marston Associates, Inc. (KMA) to conduct a Residential Nexus and Financial Feasibility Study to (1) evaluate the impacts of requiring on-site affordable units, (2) assess the extent to which fee increases would be financially feasible for developments to realistically bear, (3) assess options to decrease the applicable threshold from the current AHO twenty-unit threshold, (4) establish the maximum supportable fee levels applicable to residential developments, and (5) assess the potential impacts that new or higher fees could have on the feasibility of those developments.

The complete Nexus Study analysis is included as Attachment III to this report and provides recommendations for Council consideration of potential amendments to the AHO based on the Study's findings. Below is a summary of the key study findings.

**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 the projects' proformas.

*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 that 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).

**CONSIDERATIONS**

The preliminary recommendations that follow reflect the following considerations:

- a) The findings of the Study (listed above and in the attached report). These findings 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.

## RECOMMENDATIONS

### **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 in #6.
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 of 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. 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 Area Median Income (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.

### **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 that 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 includes 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) for consistency 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 for all housing projects 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. 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 stakeholders' comments is that the City considers 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.

## **NEXT STEPS**

Below are key policy questions for Council discussion and direction:

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?
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?

Staff will make any necessary AHO amendments and bring back an agenda item to introduce the ordinance amendments at a regular meeting in November 2017, once Council provides direction.

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*Recommended by:* Sean Reinhart, Director of Library and Community Services  
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Approved by:



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