



DATE: June 17, 2025

TO: Mayor and City Council

FROM: City Manager

SUBJECT: Public Art: Consideration of a Public Art Development Impact Fee

RECOMMENDATION

That the City Council receives this report and provides feedback on the possible creation of a public art development impact fee in Hayward.

SUMMARY

Hayward's Mural Art Program has been a point of pride for the City since its inception in 2009, however, budget constraints have prevented meaningful expansion of the program. On April 2, 2024, Council adopted a referral that directed staff to research and provide recommendations on a potential development impact fee and related program to support new public art in Hayward. Staff analyzed public art fees in Alameda, Santa Clara, and San Mateo County cities to determine industry best practices. Staff finds that 0.5 FTE are necessary to run the current program, with a potential need for additional staff resources if the program grows. To comply with the Mitigation Fee Act, Government Code section 66000 et seq., staff seeks Council's approval to contract with a consultant to carry out a nexus study and continue with the development of a public art fee structure.

BACKGROUND

Council Referral

On Feb. 27, 2024, Councilmembers Angela Andrews and Julie Roche submitted a City Council referral to the Mayor and Council members, which directed staff to present a public art development fee proposal to City Council. Councilmembers Andrews and Roche suggested that developers set aside one to two percent of project budgets for public art on site or pay an in-lieu "percent-for-art" fee to a City-administered fund overseen by the Council Economic Development Committee, given the potential of public art to "stimulate the local economy, reduce blight, and support crime reduction by design."

The City Council unanimously advanced the referral on April 2, 2024, highlighting the economic development potential and community connectivity brought about by enhanced public spaces. A council member suggested that a portion of the fund may be allocated “toward permanent public art and culture staffing.”

On April 18, 2024, the Keep Hayward Clean and Green Commission sent the Mayor and City Council a letter of support in favor of the proposed fee. The Commission noted several benefits of public art and suggested “incorporating wind or solar elements” in new art installations to “promote care of the environment and generate interest in environmental sciences.”

Mural Art Program

Hayward’s current Mural Art Program was established in 2009 to celebrate community, beautify neighborhoods and deter vandalism. Through direct one-time fund allocations by the City, the City installed more than 200 murals throughout Hayward, bringing state and national recognition for its commitment to the arts. The City received a Helen Putnam Award in 2011 for community service and economic development. Currently, the program has an annual \$25,000 budget to cover maintenance of existing art. Historically, the City has also commissioned several utility box projects per fiscal year to allow for greater community impact in more areas of Hayward.

Existing Impact Fees

Hayward currently levies two impact fees on developers. The first supports public parks in Hayward, and the second mitigates additional traffic brought on by new development.

The Park Impact Fees, adopted in December 2019, are fees on developers of residential subdivisions and remodels that increase the number of bedrooms of homes built after Feb. 19, 2020, as well as industrial projects. The fee’s revenue supports the creation of parks and open space in Hayward in partnership with the Hayward Recreation and Park District (HARD). The fee amounts are tied to the Engineering News-Record (ENR) Construction Cost Index rather than levied as a standard percentage of construction costs.

In May 2022, City Council adopted a Traffic Impact Fee (TIF), which applies to new single-family and townhome residential units, industrial developments and distribution/e-commerce centers. The fee does not apply to new multi-family, retail or office developments. This fee adjusts annually based on the ENR’s California Cost Index for the Bay Area.

As required by California Government Code Section 66000, the City conducted a nexus study for both the park and traffic fees to justify the fee amounts based on their ability to have desired outcomes of additional open park space and improved traffic conditions, respectively.

DISCUSSION

In the first half of calendar-year 2025, staff conducted an analysis of public art programs and development fees in cities in Alameda, Santa Clara and San Mateo counties, as well as San Francisco, to determine best practices (see Attachment II Bay Area Public Art Fees). Research showed that 17 of 32 cities analyzed had a public art development fee and program, though the structures varied from city to city.

Fee Structure

Of the cities that staff analyzed, most set art impact fees as a certain percentage of the construction cost/building valuation, which can vary based on the type of construction. As an alternative to paying the in-lieu fee, cities allow developers to install art as part of the project. Some cities charge a lower percentage as an in-lieu fee than the percentage required for on-site artwork allocation.

The percentage of construction valuation cities are required to set aside ranges from 0.33 percent to two percent, and the in-lieu fee amount ranges from 0.33 percent to 1.75 percent. The fee in-lieu for cities was typically less than or equal to the required percentage used to fund on-site art and was usually set at or around one percent. Only four of the cities we analyzed required that developers set aside or provide as an in-lieu fee more than one percent of construction valuation.

Anticipated Revenue Generated

Hayward has seen a spike in development in recent years — notably residential development on the former 238 lands, the South Hayward Retail Center and new housing near the South Hayward BART station — but there are fewer projects currently in the development pipeline, with development not expected to accelerate in the coming years. Should the fee be adopted with additional conditions, such as minimum construction valuations for affordable housing, revenue from the fee could be sporadic.

Since development is not linear, projecting fee revenue from a similar percent-for-art program is difficult. Using development trends from fiscal year 2024, a one percent fee on building valuation for projects currently subject to park impact fees would have resulted in \$314,720 in revenue. On the other hand, a one percent fee on FY 2024 projects subject to traffic impact fees would have raised only \$6,343. The revenue from a public art fee would be highly dependent on which developments are required to pay.

Public Art Master Plan or Review Board

Many Bay Area cities have established Civic Arts Committees or Public Art Advisory Boards to oversee public art installations in their respective cities. Especially when developers choose to commission their own artwork, some review or oversight will be necessary to ensure that art projects meet City standards and represent the community positively.

One or both of an arts committee or public art master plan may be implemented to maintain quality control. A public art master plan could be completed internally with current Community and Media Relations staff time plus intern/temporary help, depending on the ultimate scope of the program based on City Council feedback.

As part of the development of a potential Public Art Master Plan, staff would conduct an extensive outreach campaign public feedback and comment. Community and industry feedback will be crucial to:

- Avoid overburdening developers and hampering development
- Determine desired themes for public art
- Target specific areas, buildings or corridors for public art

Nexus Study

Per the Mitigation Fee Act, cities are required to establish a nexus between the projected development impacts and the public facilities for which impact fees are imposed. Government Code Section 66001(a) of the Mitigation Fee Act (Section 66000-66025) requires that any city or county that establishes, imposes, or increases a fee as a condition of development approval do all of the following: (1) identify the purpose of the fee, (2) identify the use to which the fee is to be put, (3) determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed, and (4) determine how there is a reasonable relationship between the need for the public facility and the type of development project upon which the fee is imposed.

Government Code Section 66001(b) further requires the locality to determine whether there is a reasonable relationship between the specific amount the fee imposed and the costs of building, expanding, or upgrading public facilities. Such determinations, also known as nexus studies, are made in written form and must be updated whenever new fees are imposed or existing fees are increased.

The Mitigation Fee Act also requires the jurisdiction to segregate fee revenues from other municipal funds and requires the local agency to make certain enumerated findings with respect to any funds remaining unexpended, whether committed or uncommitted, within five years of the original deposit and every five years thereafter. If the findings are not made as required by the Act, the local agency is mandated to refund the monies in the fund in accordance with the Act. Any person may request an audit to determine whether any fee or charge levied by the city or county exceeds the amount reasonably necessary to cover the cost of the service provided (Government Code Section 66006(d)). Under Government Code Section 66014, fees charged for zoning changes, use permits, building permits, and similar processing fees are subject to the same nexus requirements as development fees. Lastly, under Government Code Section 66020, agencies collecting fees must provide project applicants with a statement of the amounts and purposes of all fees at the time of fee imposition or project approval.

If Council decides to pursue an art impact fee, staff recommends contracting with a consultant to carry out a nexus study for a public art development fee, similar to the studies for the Park and Traffic Impact Fees. Based on previous nexus studies the City has contracted out, this study will likely cost about \$50,000 to \$70,000 to carry out.

Staffing Requirements

The current mural art program has been managed by a temporary/seasonal administrative clerk. Without the temporary administrative clerk in the winter and spring of FY 2025, projects have been delayed due to the lack of staff time needed to manage art maintenance and commissioning.

Based on prior analysis of Neighborhood Partnerships staff bandwidth, we estimate that the main functions of running this public art program, including maintenance, project selection, fund allocation, revenue tracking and future planning will require an additional 0.5 FTE. However, since the addition of this fee is meant to promote public art, it is fair to expect the program to increase in size and scope, which may require a dedicated full-time staff member.

An ideal scenario would be for the public art fund to support a full-time staff member — essentially the program would pay for its own management, with no impact to the general fund. However, given concerns with reliably projecting fee revenue in a percent-for-art fee structure, this may be difficult.

In addition, should Council eventually approve the development of a public art master plan, supplemental staff time from an intern/temporary employee may be necessary.

FISCAL IMPACT

There is no fiscal impact from receiving this report.

ECONOMIC IMPACT

New fees imposed on development increase the cost of building and renovations. Given the construction industry's often slim margins, additional fees may prevent developers from completing certain projects. These potential pitfalls must be considered along with the economic development and community benefits of public art.

STRATEGIC ROADMAP

This agenda item supports the Strategic Roadmap Priority of "Enhance Community Safety and Quality of Life." Specifically, this item relates to the implementation of the following project:

- Q14: Create an analysis of the staffing and funding needs to create a public art program

NEXT STEPS

With City Council feedback and approval, staff is prepared to begin the process of contracting with a consultant for a nexus study. The entire process of releasing an RFP, selecting a contractor and carrying out the nexus study will likely take at least one year. With Council approval, staff will return with a consent item on August 19 to allocate funds to issue an RFP for the nexus study.

If Council proceeds with the creation of an art impact fee, staff also recommends quality control measures, such as a public art master plan, which could be completed in house with supplemental staffing, and/or an advisory committee to screen potential new projects to ensure that new public art is in keeping with community values and the diverse backgrounds and perspectives of Hayward community members.

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Recommended by: Regina Youngblood, Assistant City Manager

Approved by:

A handwritten signature in blue ink, appearing to read 'M. Lawson', is positioned above a horizontal line.

Micheal Lawson, J.D.
Acting City Manager