



DATE: November 7, 2017
TO: Mayor and City Council
FROM: City Manager
SUBJECT: Introduction of Amendments to the Affordable Housing Ordinance and Adoption of Affordable Housing In-Lieu Fees

RECOMMENDATION

That the City Council:

- Holds a public hearing to obtain input on proposed amendments to the Affordable Housing Ordinance and the adoption of Affordable Housing In-Lieu Fees.
- Adopts the attached resolution (Attachment II) finding that enactment of amendments to Chapter 10, Article 17, of the Hayward Municipal Code regarding affordable housing requirements for new housing developments is exempt from the California Environmental Quality Act (CEQA).
- Introduces the attached Ordinance (Attachment III) amending Chapter 10, Article 17, of the Hayward Municipal Code regarding affordable housing requirements for new housing developments.
- Adopts the attached resolution (Attachment IV) rescinding Resolution 16-189 and adopting Affordable Housing In-Lieu Fees.

BACKGROUND

In a work session held on October 17, 2017 (the “Work Session”), staff presented a report to Council¹ containing a series of recommendations for amendments to the City’s Affordable Housing Ordinance (the “AHO”) and increases to the current AHO Impact Fees (the “Fees”). Staff also presented a Residential Nexus Analysis and a Financial Feasibility Analysis (both referred to as the “Nexus Study”, hereby included as Attachment VI) that was prepared by Keyser Marston Associates, Inc. (KMA). The Nexus Study evaluated the impact of the development of new market-rate housing on the need for affordable housing in the City and

¹ The executive summary that accompanied the report is included as Attachment V.

supported increases to the current Fees. In addition to the Nexus Study findings, staff recommendations were informed by: a) the analysis of 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 economic feasibility of various fee levels; and d) the inclusionary requirements in nearby jurisdictions.

Staff recommendations at the Work Session encompassed several aspects of the AHO. However, staff recommended that Council consider the following in relation to the applicable on-site requirements and Fee levels:

1. Lowering the AHO applicability threshold from twenty (20) units to two (2) units for both for-sale and rental housing.
2. Allowing lower Fee payments for small projects with nine or fewer units to avoid placing a disproportionate burden on small projects for which percentage requirements would result in less than a full affordable unit being owed.
3. Utilizing a step-up calculation of the Fees for projects with two to nine units such as the following: $\text{Applicable Fee} = \text{Full Fee} \times (\text{No. Units} - 1) / (\text{No. of units})$. This would avoid creating a disincentive for small multi-unit projects.
4. Requiring that affordable units be provided on-site within for-sale projects of ten units or more and remove the option to pay the applicable Fee except for: a) single-family detached homes with a lot size of 4,000 sq. ft. or more, and b) for high-density condominiums projects (projects with over thirty-five units per acre). As an alternative, staff recommended keeping the current 7.5% on-site requirement for the latter if Council decided not to remove the fee-by-right option for that prototype.
5. Setting the onsite affordable unit percentage requirement for for-sale projects 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).
7. Increasing the AHO fees in the range of \$15 to \$20 per square foot.
8. 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, requiring on-site units for rental projects with over 100 units and allowing fee payments in projects with 99 units or less.
9. To comply with AB 1505, allowing developers of rental projects with 100 units or more to propose an alternative means of compliance utilizing the 'Combination of Alternatives' section of the AHO (discussed further below) and reduce the on-site requirement for those 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 \$20/sq. ft.

10. Alternatively, allowing rents for the on-site units in rental developments of 100 units or more 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.

DISCUSSION

As part of the work session discussion on October 17, Council requested further clarification on some of the recommendations and expressed a desire to maintain the fee-by-right option but increase the in-lieu Fees to the maximum level of the fee-range structure to encourage the provision of on-site units. Table A, below, summarizes a modified proposal based on Council’s discussion and input.

Table A: Summary of Revised Recommendations

Project Type/Requirement	For Sale				Rental Apartments
	H.D. ³ Condos.	L.D. ⁴ Condos.	Single-family detached	Townhomes	
Per Sq. Ft. Fee if at B.P. ¹	\$15.00	\$18.18			
Per Sq. Ft. Fee if paid at C.O. ²	\$16.25	\$20.00			
On-Site Requirement	7.50%	10%		6%	
AMI ⁵ Level for Affordable Rents and Sales Prices	110%				1/2 at 50% & 1/2 at 60%
Min. Applicability Threshold	Two units				
Fee by Right Option?	Yes				
Step-up Fee Calculation?	Yes, for projects with two to nine units				
Fee Adjustment Factor	Rate of Increase in CPI (Consumer Price Index)				

Notes:

- 1. B.P: Building Permit
- 2. C.O.: Certificate of Occupancy
- 3. H.D.: High Density: Projects with 35 units per acre or more
- 4. L.D.: Low Density: Developments with less than 35 units per acre
- 5. AMI: Area Median Income

Important AHO Requirements Carried Forward

Council also directed staff to keep two important features of the current AHO in the new proposal. One is the per-square-foot calculation of the Fee payment. The other is 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 to a greater extent.

In-Lieu Fees vs. Impact Fees

Prior to the Palmer decision in 2009, the City had established in-lieu fees (the “In-Lieu Fees”) as an alternative to provision of on-site affordable housing. However, the Palmer decision did not allow the City to impose In-Lieu Fees on rental projects, saying that this violated the state rent control act (the Costa Hawkins Act). The City then completed nexus studies so that an affordable housing impact fee could be imposed on rental projects. In addition, the California Building Industry Association challenged San Jose's affordable housing ordinance, alleging that a nexus study needed to be completed for every affordable housing requirement.

In 2015, the California Supreme Court agreed with San Jose that a nexus study does not need to be prepared for affordable housing ordinances. On September 29, 2017, Governor Jerry Brown signed AB 1505, which allows cities again to require some affordable housing in rental housing and to impose in-lieu fees.

In-Lieu Fees are based on the cost to the City to provide affordable housing when a developer does not choose to construct units on-site, rather than on the impact of the project on the need for affordable housing. Calling the fees In-Lieu Fees rather than impact fees recognizes the purpose of the fees. However, the amount of the fees is also supported by the KMA's Nexus Study, and so they are justified as both impact fees and in-lieu fees. Nevertheless, from this point forward, the current AHO Fees will be continued to be referred to as Fees and the proposed fees will be referred to as In-Lieu Fees.

On-Site Compliance and Fractional Units

This issue was not part of the Nexus Study or the report from staff for the Work Session. However, in response to input from Council during the discussion at that meeting, staff is introducing a recommendation to address this issue, which occurs when a developer elects to comply with the AHO by providing units on-site and the calculation of the obligation results in a unit plus a fraction. The AHO stipulates that, in this case, any fraction must be rounded up. Given the high cost of compliance, especially for smaller projects where rounding up would mean providing an additional affordable unit, staff proposes that the developer be provided the option to provide the whole number of units and pays the In-Lieu Fee equivalent to the fractional unit. For example, if the developer of a forty-two (42) unit townhome development totaling 85,000 sq. ft. elects to provide affordable units on-site, he or she would need to provide five units ($42 * 10\% = 4.2 \sim 5$) pursuant to the current AHO provisions. However, staff recommends that the developer provides the four affordable units on-site and has the option of paying the In-Lieu Fees for the 0.2 units. The calculation of the In-Lieu Fees would look as follows: $(0.2)/(4.2) \text{ units} * \$18.18 \text{ (the In-Lieu Fee paid at issuance of building permits)} * 85,000 \text{ sq. ft.} = \$ 73,586$. In this example, the developer is meeting approximately ninety-five percent of the AHO obligation (4 of 4.2 units are provided on-site) and paying In-Lieu Fees for the remaining five percent (0.2 of 4.2 units owed). The fractional unit fee of \$73,586 is equivalent to a little less than five percent of the total payment the developer would owe if he or she was paying the fees only.

Grandfathering

Council asked staff to further develop recommendations regarding the applicability of the new requirements to development applications in the pipeline (those not receiving final approvals as of the date of this report). The following is staff's recommendation based on a survey of the current queue of residential development proposals (included here as Attachment VII):

- **Project proposals not yet submitted** will be subject to the new requirements and new In-Lieu Fee levels.
- **Projects not deemed complete by November 28**, the date of the introduction of the AHO amendments, will be subject to the new requirements and new In-Lieu Fees.
- **Projects that are deemed complete by November 28 but do not receive discretionary approvals by the effective date of the ordinance and fee resolution** will be subject to the new requirements. However, if the developer elects to comply by paying the In-Lieu Fees, the fee owed shall be half (1/2) the applicable fee for the prototype (i.e., \$7.50 per sq. ft. for high density condominiums and \$9.09 per sq. ft. for all other project types, if the developer pays the fees at issuance of building permits).
- **Projects that are deemed complete by November 28 and are entitled prior to the effective date of the ordinance and fee resolution**, will be grandfathered into the current AHO requirements and AHO Fees.

Amendments are Consistent with the Housing Element

As mentioned in the Work Session, the recommendations regarding the proposed amendments to the AHO and the adoption of In-Lieu Fees higher than the current AHO Fees are consistent with the goals and policies of the City's Housing Element and the findings of the economic feasibility of the Nexus Study. The latter suggests that the adoption of the In-Lieu Fees at the recommended level (the equivalent to the on-site compliance cost) does not constitute a deterrent to the development of housing. KMA's analysis indicates that the recommended In-Lieu Fees and related 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).

Amendments do not Require CEQA Review

The resolution amending the AHO and the resolution adopting In-Lieu Fees are exempt from CEQA because they will not have any significant effect on the environment. They only affect the affordability of residences constructed in the City and contain no provisions affecting the physical design or development of residences, and so it can be seen with certainty that there is no possibility that the resolutions may have a significant effect on the environment. (CEQA Guidelines Section 15061(b)(3)). Future projects would go through project specific CEQA review at the time they are proposed.

For these reasons, staff recommends that Council introduces the proposed amendments to the AHO contained in the updated version of the AHO included as Attachment III and adopts

the In-Lieu Fees, as proposed in the Work Session, with the above-described modifications and clarifications. Under state law, the adoption of the In-Lieu Fees cannot become effective for sixty days.

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 AHO also constitutes the main tool for balancing market-rate residential growth and associated jobs in the local economy (i.e., the "jobs-housing balance").

FISCAL IMPACT

The amendment to the AHO will not directly impact the City's General Fund as all 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. 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.

The survey of residential projects mentioned in the background section of this report and included as Attachment VII, shows that fee payments from projects that have been both deemed complete as of the date of this report and will be entitled prior to the effective date of the AHO would pay In-Lieu Fees of approximately \$1.35 million. Payments of reduced (\$10 per sq. ft.) In-Lieu fees from project submittals not deemed complete as of the date of this report but are likely to be entitled prior to the effective date of AHO are estimated at approximately \$2.3 million. Payments of full In-Lieu fees (\$20 per sq. ft.) from project submittals not deemed complete as of the date of this report and not likely to be entitled prior to the effective date of AHO are estimated at approximately \$4.5 million.

If the City used the revenues from In-Lieu Fees, or approximately \$6.8 million (\$2.3 plus \$4.5 million) for the development of rental housing partially financed with Low-Income Housing Tax Credit equity and provided the equivalent of ten percent of the gap for the rental housing prototype identified by the Nexus Analysis (\$170,000 to \$206,000, see page 38 of Attachment VI), the City would facilitate the creation of between 330 to 400 affordable units.

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.

PUBLIC CONTACT

- In September 2017, the preliminary draft Nexus Study was published to the City website for public review.
- 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 stakeholders' 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.
- On October 17, Council held the Work Session to discuss the findings of the Nexus Study and staff's recommendations. Several members of the community, non-profit housing advocates, and affordable and market-rate housing developers provided comments during the public-comment period in connection with the Work Session.
- All comments received during the public outreach hereby described were made available to the public as an attachment to the Work Session staff report.

- In compliance with Government Code Section 66018 of the Mitigation Fee Act, two notices of the public hearing being held tonight were published in the Daily Review: the first on the October 27 issue and the second on the November 3 issue. In sum, City staff has made good faith efforts and complied with public noticing requirements to inform the public and stakeholders (especially the market-rate residential development community) about all the actions leading to the adoption of the proposed AHO amendments and the adoption of the recommended In-Lieu Fees.

NEXT STEPS

If Council introduces the amendments to the AHO, it will be adopted at the November 28 regular Council meeting via a consent item and will become effective on February 1, 2018. If adopted by the Council, the In-Lieu Fees will also become effective on February 1, 2018.

As directed by Council, the In-Lieu Fees will be updated within a year of their effectiveness based on the rate of increase in CPI.

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Approved by:



Kelly McAdoo, City Manager