



DATE: February 21, 2023

TO: Mayor and City Council

FROM: Assistant City Manager

SUBJECT: Affordable Housing Ordinance: Discuss Findings from Affordable Housing Ordinance Feasibility Study and Proposed Modifications of the Affordable Housing Ordinance.

RECOMMENDATION

That the City Council reviews and provides comments on the findings from the Affordable Housing Ordinance Feasibility Study and proposed Modification **to** the Affordable Housing Ordinance.

SUMMARY

In early 2020, with the intention of increasing the supply of affordable housing, Council directed staff to evaluate the existing Affordable Housing Ordinance (AHO) as part of the adoption of the "Preserve, Protect, Produce Housing for All" Priority in the Strategic Road Map and the Incentives to Housing Production work plan. In March 2022, the Homelessness Housing Task Force (HHTF) and the Planning Commission reviewed the outcomes and performance of the existing AHO and provided direction to staff regarding the goals and target populations to be served by any future revisions to the AHO. In consideration of the feedback established by the HHTF and the Planning Commission and in order to ensure economic feasibility of any proposed changes to the City's AHO, the City contracted with Strategic Economics Inc (the Consultant) to conduct a feasibility study. On September 28, 2022 and December 8, 2022, Strategic Economics presented preliminary finding to the HHTF and the Planning Commission respectively to discuss preliminary findings of the feasibility study and receive feedback. The purpose of the report is to discuss the findings and recommendations of the feasibility study and prior feedback. Findings related to the current AHO show that:

- While Hayward had lower inclusionary housing requirements than other comparable jurisdictions, Hayward produced more inclusionary units than most of the other comparable jurisdictions;
- There is some capacity for increasing affordable housing requirements for low density ownership housing project types;

- The sensitivity analysis illustrates how slightest negative change in development conditions can result in projects becoming infeasible; and
- Most rental housing types are financially infeasible with or without City affordable housing requirements.

The Consultant conducted a feasibility analysis in consultation with a Technical Advisory Committee (TAC) that was comprised of developers to ensure assumptions were consistent with current market conditions. Based on this analysis, the consultant proposed recommendations related to both the on-site affordable housing requirements and the rate of the affordable housing in-lieu fee as listed below.

On-site affordable housing recommendations:

- For-sale single-family homes and townhomes: Increase the inclusionary requirement to 12% of the total units setting affordability levels for half of the units at low-income and the other half at moderate income and maintain current requirements 7.5% of units for high density condominiums.
- Rental: Maintain existing affordable housing requirements for rental property due to infeasibility of developing most rental housing product types.

Affordable housing in-lieu fee recommendations:

- Rental: Maintain existing fee (\$21.64)
- Ownership:
 - Maintain existing fee (\$17.85) for high density condominiums (35 dwelling units per acre or greater)
 - Increase fee for lower density ownership projects from \$21.64 to \$26 per square foot.

Supporting analysis for these findings is included Hayward Affordable Housing Ordinance Study (Attachment II) prepared by the Consultant.

In addition to the recommendations provided by the Consultant, it is important to note that the TAC expressed a preference to maintain current compliance flexibility allowed under the AHO. Also, the TAC cautioned that increasing affordable housing requirements are ultimately paid by the market rate renter or purchaser thus increasing housing prices.

In addition to the recommendations that resulted from the feasibility study, staff recommends making modifications to the AHO to improve implementation by clarifying language, better aligning some of the requirements with the development process to streamline, and to conform requirements with existing affordable housing agreements and resale restrictions. A full list of proposed administrative changes are included in Attachment III.

Furthermore, staff seeks feedback from Council regarding timing for implementing changes to the AHO – should changes to the ordinance only apply to new applications not currently in the application process? Developers determine project feasibility prior to submitting applications for entitlement. Changing requirements during the entitlement application can impact project feasibility.

Lastly, to ensure that the AHO produces units that meet the diverse housing needs of Hayward community members, the AHO must both produce: 1) inclusionary units providing ownership opportunities for moderate- and low-income households (as proposed); and 2) generate fee revenue to subsidize the development of affordable housing for low, very low, and extremely low-income households. Furthermore, increases in construction costs combined with increasing interest rates will further challenge the development of market rate housing; therefore, there is concern that an aggressive increase in requirements under the AHO may further delay recovery from these market challenges.

BACKGROUND

The AHO was adopted in 2003 to address the need for affordable housing that is created by the development of market rate housing. On November 28, 2017, the Council adopted amendments to the AHO based on feedback from a variety of stakeholders, including the following major revisions:

- Extending applicability of the AHO from projects consisting of 20 units or more to projects that consist of 2 units or more;
- Increasing the affordable housing in-lieu fee from \$3-\$5 per habitable square foot to \$15-\$18, depending on project density, to encourage on-site inclusion of affordable housing;
- Increasing the on-site affordable housing requirement for ownership housing from 7.5% to 10% of the units targeting moderate income while retaining the lower requirement 7.5% of units for high density ownership projects due to concern over feasibility;
- Reducing the on-site rental housing requirement option from 7.5% to 6% of the units in order to require units for both low-and very-low-income households;
- Allowing a reduced fee for projects less than nine units in order not to disincentivize the development of small-scale infill projects; and
- Allowing the developer to choose their method of compliance, including the following options:
 - on-site affordable units
 - off-site affordable units
 - paying an affordable housing in-lieu fee
 - proposing alternate plans.

On March 3, 2022¹ and on March 10, 2022², the HHTF and Planning Commission respectively reviewed the outcomes and performance of the existing AHO and provided feedback to staff regarding the goals and target populations to be served by any future revisions to the AHO. The following goals were identified:

¹ March 3, 2022 HHTF Staff Report and Attachments
[CITY OF HAYWARD - File #: RPT 22-023 \(legistar.com\)](#)

² March 10, 2022 HHTF Staff Report and Attachments
[CITY OF HAYWARD - File #: WS 22-006 \(legistar.com\)](#)

- Help most vulnerable renters and home purchasers by maximizing the effectiveness of the AHO;
- Provide a mixture of housing opportunities to provide for diverse housing needs;
- Make Hayward one of the most affordable cities by building higher density mixed income housing as fast as possible with an emphasis on helping students and seniors;
- Provide down payment assistance; and
- Find a model that will create ownership housing that meets the needs of community members that are most at risk of displacement and being barred from homeownership.

Additionally, members of the HHTF and the Planning Commission requested that the feasibility analysis include:

- A comparison of other local jurisdictions' affordable housing requirements;
- Outreach to the development community; and
- Consider the changes in economic variables that impact development.

On September 28, 2022³ and December 8, 2022⁴, the Consultant presented the preliminary findings from the feasibility study to the HHTF and Planning Commission respectively.

Feedback from the bodies included:

- Maintain the existing rental inclusionary requirement;
- Maintain relatively lower inclusionary requirements for high-density ownership housing products;
- Increase inclusionary requirements for single-family homes and townhomes while still accommodating potential short-term changes in development conditions;
- General preference that projects provide on-site inclusionary units rather than pay in-lieu fees;
- Concerns about maintaining development feasibility as conditions change;
- Concerns about the infeasibility of higher density market-rate rental housing; and
- Potential uses of the in-lieu fee revenue

Based on this feedback the Consultant has conducted further analysis and sensitivity testing to ensure that the City is maximizing the production of affordable housing under the City's AHO while ensuring continued feasibility of housing development in Hayward.

State Law and Inclusionary Housing

Effective January 1, 2018, AB 1505 reaffirmed the authority of local governments to include rental units within inclusionary ordinance requirements, as well as added a limited California Department of Housing and Community Development (HCD) review of inclusionary ordinances, under certain circumstances. One of the key provisions includes requiring local jurisdictions to conduct economic feasibility studies to demonstrate that an inclusionary

³ September 28, 2022 HHTF Staff Report and Attachments
[CITY OF HAYWARD - File #: WS 22-031 \(legistar.com\)](#)

⁴ December 8, 2022 Planning Commission Staff Report and Attachments
[CITY OF HAYWARD - File #: WS 22-038 \(legistar.com\)](#)

ordinance does not unduly constrain the production of housing. Due to potential scrutiny by HCD and the City's intention to increase the supply of affordable housing, staff recommends that any increase to the City's affordable housing requirements adhere to the findings in the feasibility study to minimize the potential that modifications to the AHO requirements will unduly constrain or halt the production of housing.

Hayward Housing Need

The City's displacement study, prepared by HR&A Advisors, draws a picture of low-income households, particularly renters and Black and Hispanic households, who are experiencing intense economic pressure and housing need in Hayward. Study findings demonstrate that those pressures have intensified in the last decade and have already resulted in a loss of low-income Hayward residents. Those who are still living in Hayward are struggling with cost burden, especially Black and Hispanic households, as housing supply does not align with household income. **Figure 1** below illustrates the housing supply gap and a need to develop housing with rents below \$1,250 per month, which equates to very-low-income housing.

Figure 1. Hayward Housing Supply Gap (2019)



Housing Element and Regional Housing Needs Allocation Compliance

Local jurisdictions report progress annually on meeting their Regional Housing Needs Allocation (RHNA) goals. **Table 1** demonstrates progress made toward meeting Hayward's RHNA goals for the period between 2015-2023 as of the last report year (2021) and estimates potential compliance by including approved projects and projects pending approval. Permits to construct the units must be issued in order to count toward the City's RHNA goals. The City has already exceeded its goal for above moderate income units.

Table 1. 2023 RHNA Goal Progress in the City of Hayward

Income Category	Unit Goal	Reported 2021		Approved		Pending Approval		Estimated Compliance		Estimated Deficiency	
		Units	% of Goal	Units	% of Goal	Units	% of Goal	Units	% of Goal	Units	% of Goal
Very low	851	168	20%	293	34%	26	3%	487	57%	364	43%
Low	480	174	36%	226	47%	4	1%	404	84%	76	16%
Moderate	608	128	21%	60	10%	0	0%	188	31%	420	69%

*The City has achieved the Above Market Rate housing goals for the 2015-2023 RHNA cycle.

The AHO is one tool to help the City comply with its RHNA goals by: 1) providing on-site inclusionary units (mostly targeting moderate income households) and 2) providing fee revenue that the City can use to subsidize the development of affordable housing (targeting low, very low and extremely low income households). To maximize the number of affordable units produced under the AHO and to ensure that an increase to the requirements under the AHO do not unduly constrain development, the City contracted with the Consultant to conduct a feasibility study. The purpose of the report is to discuss the findings and recommendations of the feasibility study and proposed modifications of the AHO.

DISCUSSION

Development projects are feasible when revenues exceed project costs and there is an investment return. Housing is only built by the private sector when the projects are financially feasible. However, costs and revenues are dynamic. While many factors are beyond the City's control, adding additional costs or increasing costly requirements to a development can affect the feasibility. The following information summarizes some of the main findings of the feasibility analysis and recommendations.

Comparison of Local Jurisdictions

As part of the feasibility study, the Consultant conducted a survey of affordable housing requirements in comparable jurisdictions including Concord, El Cerrito, Fremont, Newark, Richmond, San Leandro, and Union City. Major findings include:

- Higher on-site affordable unit requirements do not always result in more affordable units. While Hayward had lower inclusionary housing requirements than other comparable jurisdictions, Hayward produced more inclusionary units than most of the other jurisdictions (Concord, El Cerrito, Newark, Richmond, San Leandro, and Union City);
- In-lieu fee revenue provides the major source of local funding for 100% affordable housing projects that provide low-, very low- and extremely low-income units; and
- On-site inclusionary housing requirements were helpful in producing moderate income housing in a limited number of cities including Hayward.

Feasibility Analysis

The Consultant conducted a feasibility analysis on six housing prototypes, which include single family homes, townhomes, small multifamily rental, stacked flats rental, five-story rental with wraparound parking, and five-story rental with podium parking. For the most part, the results of the analysis varied based on tenure.

For-sale single-family homes and townhomes: The feasibility analysis demonstrates that single family development and townhome development is feasible under current market conditions including the existing affordable housing requirements with some additional capacity for inclusionary requirements.

Rental Housing Development. For the most part, none of the rental housing prototypes analyzed are feasible with current affordable housing requirements except for small multifamily developments located in areas of the City that charge the highest rents. Higher-density rental products are infeasible even without affordable housing requirements. Overall, there is little capacity for inclusionary requirements in rental housing products. Additionally, removal of the requirements would have little effect on feasibility because the cost of the affordability requirements are relatively low compared to the overall development costs.

Feasibility Recommendations

Based on the survey of comparable jurisdictions, findings of the feasibility analysis, sensitivity analysis, and feedback from the TAC, the Consultant identified the following recommendations:

For-sale single-family homes and townhomes: Increase inclusionary requirement to 12% of project units changing the affordability targets to half moderate income and half low-income targeting. This level of affordable housing requirement accounts for submarket variations and future market changes that could affect the viability of developing single-family homes and townhomes in the future. Sensitivity testing included in the feasibility study shows that a higher required percentage of affordable housing would result in these projects becoming infeasible with the slightest negative change in development conditions.

High density ownership housing. Maintain the current lower inclusionary requirement of 7.5% for denser ownership projects, such as condominiums. This product type is infeasible under current market conditions; therefore, no change is recommended.

Rental housing. Maintain existing affordable housing requirements for rental housing. Higher density rental housing is infeasible under current market conditions; therefore, no change is recommended.

Affordable Housing In-lieu Fee. The Consultant conducted an analysis to determine a reasonable affordable housing in-lieu fee. This analysis calculates the difference between the construction costs and the value based on restricted rents or sales prices. In addition to this analysis, the Consultant took into consideration prototype feasibility and current fees in comparable jurisdictions. Based on the analysis, the Consultant proposes the following fees:

- Rental: Maintain existing fee (\$21.64)
- Ownership:
 - Maintain existing fee (\$17.85) for high density condominiums (35 dwelling units per acre or greater)
 - Increase fee for lower density ownership projects from \$21.64 to \$26 per square foot.

Administrative Recommendations

In addition to the recommendations that resulted from the feasibility study, staff recommends making modifications to the AHO to improve implementation by clarifying language, better aligning some of the requirements with the development process, and by conforming requirements with existing affordable housing agreements. A full list of proposed administrative changes is included in Attachment III. Most of the modifications are for clarification only and do not change the requirements. The following proposed modification are more notable:

1. **Affordable Housing Cost.** Modify the definition of affordable housing cost used to calculate the maximum sales price to be inclusive of housing costs not specifically referenced in the AHO to adapt to changes. For example, newer housing requires payment of a solar lease, which should be factored into the calculation of the maximum sales price.
2. **Marketing Plan.** Delay the requirements to provide a final marketing plan until near the end of the development process and prior to marketing, as a condition of the Affordable Housing Agreement (AHA). Marketing plans are currently required while the project is still in the application process before the marketing team has been assembled, timelines are still undetermined, and pricing and rents are still unknown. Requiring complete marketing plans early and recording them to title as part of the AHA creates unnecessary work modifying plans. Delaying the requirements and removing the plans from the AHA will reduce the administrative burden of compliance.
3. **Approval of Affordable Unit Phasing Plans.** Under the AHO, only the City Council can approve the Affordable Unit Phasing Plan. The purpose of the Affordable Unit Phasing Plan is to describe the timing of development of the number of affordable units proportionate to each proposed phase. Otherwise, the developer has to finish all the affordable units first or concurrently with the market rate units. When necessary, this plan gets memorialized in the AHA, which is recorded to title. Staff recommends revising to allow the decision-making body to approve the Affordable Unit Phasing Plan to streamline the development/approval process.
4. **Priority Preference.** The AHO gives priority preference to people who live or work in the City of Hayward. Existing affordable housing agreements also give preference to people displaced by City activity. Staff recommends conforming the AHO to the existing agreements to ensure these requirements are added to new development projects with affordable units to help rehouse households in the event City activity causes the displacement of otherwise eligible tenants.
5. **Maximum Affordable Resale Price.** The AHO requires the maximum affordable resale price be calculated based on the lesser of two different indices. Existing resale restriction documents only reference one of the two indices and therefore do not

evaluate which of the two is less. Staff recommends using only one index in the resale restriction formula to provide clearer requirements for owners of affordable units.

6. **Administrative Cost.** Staff proposes increasing the proportion of the affordable housing in-lieu fees that can be used to cover administrative costs from 10% to 15% if allowable under state law. The fees paid under the AHO are not covering the administrative cost to the City to administer the ordinance because fewer large projects paying fees.

Developers determine project feasibility prior to submitting applications for entitlement. Changing requirements during entitlement application can impact feasibility. Staff seeks feedback regarding when to apply the new requirements if supported by Council. Should changes to the ordinance only apply to new applications not currently in the application process? **Table 2** compares the level of risk to the various application stages.

Table 2. Level of Risk of Changing Requirements During Entitlement Process.

Apply to:	Level of Risk
New entitlement applications	Eliminates risk to developers that have already invested in the entitlement process by only imposing new requirements to new projects
Applications submitted but not deemed complete	Increases risk of infeasibility; however, applicants are still required to make modifications to project to comply with city requirements
Applications deemed complete but not approved prior to the effective date	Higher level of risk of infeasibility because project has finished all submittal requirements.

Senate Bill 330 limits the ability of the City to change fees after the preliminary application is submitted with exception to indexed increases in fees. Staff will evaluate the appropriate time for imposing increased fees if supported by Council.

Conclusion

Staff supports the proposed recommendations considering the current economic conditions. Increasing construction costs, increasing interest rates, and concerns about a recession are all factors that can impact the feasibility of housing development in Hayward, which would slow or possibly stop housing production. While market rate housing development primarily produces units affordable to households above moderate income, the lack of housing production impacts lower income households more as higher income households compete with lower income households for existing housing. Development of on-site inclusionary affordable housing and producing fee revenue to subsidize the development of 100% affordable housing is dependent on the development of market rate housing; therefore, proposed modifications to the City's AHO must maintain housing development feasibility while maximizing the production of affordable units.

While high density rental housing development is currently infeasible, staff supports

maintaining current requirements because:

1. The cost of the affordable housing requirements is nominal compared to the development costs and reducing the requirements will not improve feasibility; and
2. When market conditions change, it is important that there are requirements in place to support the development of affordable housing.

Lastly, to ensure that the AHO produces units that meets the diverse housing needs of Hayward community members, the AHO must both produce:

1. Inclusionary units providing ownership opportunities for moderate and low income households (as proposed); and
2. Generate fee revenue to subsidize the development of affordable housing for low, very low and extremely low-income households.

ECONOMIC IMPACT

Social research indicates that access to affordable housing can improve education outcomes, increase health and wellbeing, boost economic activity, and lower the costs for state and local governments to provide emergency housing, mental health crisis services, emergency medical care, and other services to assist the homeless or families and individuals with a housing crisis. The rent for affordable housing is relative to income levels versus market prices which reduces rent burden. This increases available income to pay for other basic needs or save for other financial goals such as furthering education or homeownership. Stabilizing housing costs can be the first step to creating opportunities for personal economic advancement.

FISCAL IMPACT

There is no fiscal impact to the General Fund associated with this item.

STRATEGIC ROADMAP

This agenda item supports the Strategic Priority of Preserve, Protect, & Produce Housing. Specifically, this item relates to the implementation of the following project:

Project 5, Part 5.b: Evaluate the Affordable Housing Ordinance and hold a work session to discuss potential revisions.

PUBLIC CONTACT

Staff engaged different community stakeholders through both the displacement study and the Let's House Hayward! Strategic Plan process. Through the displacement study, HR&A Advisors interviewed local developers and service providers to gain a more qualitative understanding of displacement trends and housing needs. Through the Let's House Hayward! planning process, staff and the consultant Homebase held virtual forums and interviews with individuals with lived experience of homelessness, homeless services providers, members of the business community, City staff, and other Hayward residents. Feedback ranged widely and is still being integrated, but initial findings demonstrate that community members broadly favored efforts

to prevent displacement and to increase affordable housing development for the City's most vulnerable residents.

Outreach to Developers: The Consultant facilitated a TAC. The purpose was to provide feedback on market conditions, housing needs, development prototypes, and analysis assumptions/results. Members include market rate and affordable housing developers with recent projects in Hayward. The TAC reviewed the preliminary recommendations on November 15, 2022, and had the following comments:

- Maintain flexible AHO compliance options because feasibility related to AHO compliance is project specific;
- Fees and on-site affordable housing requirements increase rents and prices for non-restricted units which gets passed on to the end user;
- The current requirements strike a good balance for the developer, market rate buyer and the affordable buyer;
- Some developers indicated they prefer providing on-site units when feasible but wished the city would loosen requirements regarding implementation;
- There was concern that the sensitivity testing was too conservative with constructions cost increasing on average between 5% and 10% and interest rates rising; and
- Would like the AHO to allow affordable housing developers to use Low-income Housing Tax Credit rent and income limits.

Community Outreach: Staff gathered input from community members at two fair housing workshops and a Housing Fair. There were approximately 18 respondents who indicated the following priorities.

- Ownership housing
- Prioritize middle-income households (\$171,350 annual income for 4-person household)
- Prioritize extremely low-income households (\$42,850 annual income for 4-person household)
- Prioritize mixed income housing within new developments
- Prioritize rental housing

While there was limited response, the responses indicated that there is a wide span of housing priorities indicating that proposed housing policy should meet these diverse needs. The AHO provides several tools to address those various housing needs and some tools have been more effective than others at creating units that serve those specific target populations.

NEXT STEPS

The following are the next steps for the project.

- Introduce Modifications to the AHO for City Council Approval (March 2023)
- Adoption of Modification of the AHO (April 2023)

Prepared by: Christina Morales, Housing Division Manager

Recommended by: Dustin Clausen, Assistant City Manager

Approved by:

A handwritten signature in black ink, appearing to read 'K. McAdoo', with a long horizontal stroke extending to the right.

Kelly McAdoo, City Manager