



**DATE:** September 27, 2016  
**TO:** Mayor and Council  
**FROM:** Director of Library and Community Services  
**SUBJECT:** 2016 Update of Affordable Housing Impact Fees

### **RECOMMENDATION**

That Council approves the attached resolution authorizing the 2016 update of the Affordable Housing Impact Fees, as set forth in the City of Hayward Affordable Housing Ordinance (AHO) approved by Council in 2015, with the updated Impact Fees becoming effective January 1, 2017.

### **SUMMARY**

In 2013, the City retained David Paul Rosen and Associates (DRA)<sup>1</sup> to prepare a Residential Nexus Analysis and a Financial Feasibility Analysis (both referred to as the “Nexus Study”). The Nexus Study evaluated the impact of new market-rate housing development on the need for affordable housing in the City and provided the basis for establishing affordable housing impact fees.

Informed by the findings and recommendations of Nexus Study, early in 2015, the City Council adopted an Affordable Housing Ordinance (the “AHO”)<sup>2</sup> which requires that residential developers of projects with twenty (20) units or more mitigate the impact of new residential development on the need for affordable housing. Council separately adopted Affordable Housing Impact Fees (the “Fees”) as required by the AHO.

The AHO stipulates that the Fees be updated annually. Both the staff recommended Fee update and the methodology utilized for such update described in this report are consistent with the findings and recommendations of the Nexus Study. The recommended update is also consistent with California Housing Element Law which requires that communities make adequate provision for the housing needs of all the economic segments of the community

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<sup>1</sup> The corresponding staff report may be found at: [Report 5 - Appropriation of Housing Authority Funds - Laserfiche WebLink](#). Agenda Item # 5

<sup>2</sup> The corresponding staff report may be found at: [Report 11 - Affordable Housing Ordinance and Impact Fees - Laserfiche WebLink](#). Agenda Item # 11

while ensuring that their policies do not constitute a (governmental) constraint to the development and/or maintenance of housing.

## **BACKGROUND**

On June 3, 2003, to help mitigate the effects of the housing affordability crisis that had worsened during the preceding decades, the Council adopted an Inclusionary Housing Ordinance (the "IHO-2003").<sup>3</sup>

In 2010, due to the downturn in residential construction caused by the Great Recession, as well as a 2009 Court of Appeal decision (*Palmer/Sixth Street Properties v. City of Los Angeles*)<sup>4</sup> that no longer permits inclusionary requirements in most rental projects, the City adopted a Relief Ordinance<sup>5</sup> that substantially reduced the IHO-2003 requirements in for-sale projects and exempted rental housing developments from all IHO-2003 requirements.

On January 27, 2015, Council adopted the Affordable Housing Ordinance (the "AHO") currently in effect. The 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. Council separately adopted Affordable Housing Impact Fees (the "Fees") that work in conjunction with the AHO.

Below are the main provisions of the AHO with respect to the Fees:

1. Permits developers to pay Fees "by right" rather than providing units on site, at the developers' option.
2. Provides that the Fees be calculated on a per-square-foot basis rather than on a per-unit basis.
3. 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.
4. 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.
5. Removed IHO-2003 requirements and in its place adopted Fees for rental housing – unless, to comply with the *Palmer* decision and the Costa Hawkins Act, the developer

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<sup>3</sup> The corresponding staff report may be found at: **April 2003 - Laserfiche WebLink** Agenda Item #5

<sup>4</sup> 175 Cal.App.4th 1396 (2009) 96 Cal.Rptr.3d 875: PALMER/SIXTH STREET PROPERTIES, L.P., et al., Plaintiffs and Respondents, v. CITY OF LOS ANGELES, Defendant and Appellant. No. B206102. Court of Appeals of California, Second District, Division Four. July 22, 2009.

<sup>5</sup> The corresponding staff report may be found at: **Inclusionary Housing Interim Relief Ordinance - Laserfiche WebLink**. Agenda Item # 16.

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.

6. Provides that the Fees for rental housing be adjusted based on the change in local market rents.
7. Sets aside 10% of the Fees for administration of the AHO.
8. Allows the use of the Fees for the acquisition and rehabilitation of existing housing for affordable housing purposes.

**DISCUSSION**

The Council resolution adopting the Fees established that the Fees would be calculated based on the square footage of the developments’ livable spaces. The following are the Fees approved by Council at the time of adoption of the AHO and currently in effect:

**Table A: Current Fees**

Type of Housing and Timing of Fees	Detached Housing Units		Attached Housing Units	
	At Building Permit	At C. of O.	At Building Permit	At C. of O.
For-sale	\$ 4.00	\$ 4.40	\$ 3.24	\$ 3.56
Rental	N/A			

The Fee resolution further provides that the Fees will be adjusted annually based on the percentage change (increase or decrease) in the three-year trailing median home prices or local rents, as applicable. Staff has updated the Fees utilizing this methodology. The following is the data utilized for the calculation and the resulting Fees for for-sale housing:

**Table B: Update of Fees for For-Sale Housing**

Condos and Townhomes				
	05/13	05/14	05/15	05/16
Median Sales Price (in thousands) *	\$ 237	\$ 300	\$ 359	\$ 403
Percent Increase in Median Sales Price from Prior Year		27%	20%	12%
Adjustment Factor for Fee Increase				20%
Current Fee at Building Permit				\$ 3.24
Current Fee Plus Trailing Increase if Paid at Building Permit				\$ 3.87
Current Fee Plus Trailing Increase if Paid at C. of O.				\$ 4.26
Single-Family Homes				
	05/13	05/14	05/15	05/16
Median Sales Price (in thousands) *	\$ 377	\$ 465	\$ 478	\$ 572
Percent Increase in Median Sales Price from Prior Year		23%	3%	20%

Adjustment Factor for Fee Increase		15%
Current Fee at Building Permit		\$ 4.00
Current Fee Plus Trailing Increase if Paid at Building Permit		\$ 4.61
Current Fee Plus Trailing Increase if Paid at C. of O.		\$ 5.07

Source: zillow.com – accessed August 24, 2016

Table C, below, shows the data utilized for the calculation and the resulting Fees for rental housing.

**Table C: Update of Fees for Rental Housing**

Rental Housing				
	07/13	07/14	07/15	07/16
Average Rents	\$1,568	\$1,689	\$2,072	\$2,217
Percent Increase in Average Rents from Prior Year		8%	23%	7%
Adjustment Factor for Fee Increase				12%
Current Fee at Building Permit				\$ 3.24
Current Fee Plus Trailing Increase if Paid at Building Permit				\$ 3.63
Current Fee Plus Trailing Increase if Paid at C. of O.				\$ 3.99

Source: www.rentjungle.com - accessed August 24, 2016

Table D contains a summary of the Fees recommended for Council adoption.

**Table D: Recommended 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	\$ 5.07	\$ 3.87	\$ 4.26
Rental	N/A		\$ 3.63	\$ 3.99

Table E, below, shows the total and per-unit cost increase the proposed Fee increases would represent for a fifty (50)-unit residential project application in Hayward of typical livable space-size (at 1,400, 1,600, and 1,800 sq. ft.).

**Table E: Total and Per Unit Increases due to Fee Increases (on a Typical Project)**

Unit Type	Current Fee (on 50 Units)	Recommended Fee (on 50 units)	Total Additional Cost	Total Per Unit Add. Cost
<b>1400 Sq. Ft.</b>				
Single Family-Attached	\$226,800.00	\$ 272,300.00	\$ 45,500.00	\$ 910.00
Single Family-Detached	\$280,000.00	\$ 322,000.00	\$ 42,000.00	\$ 840.00
Rental Units	\$226,800.00	\$ 254,100.00	\$ 27,300.00	\$ 546.00

<b>1600 Sq. Ft.</b>				
Single Family-Attached	\$259,200.00	\$ 311,200.00	\$ 52,000.00	\$ 1,040.00
Single Family-Detached	\$320,000.00	\$ 368,000.00	\$ 48,000.00	\$ 960.00
Rental Units	\$259,200.00	\$ 290,400.00	\$ 31,200.00	\$ 624.00
<b>1800 Sq. Ft.</b>				
Single Family-Attached	\$291,600.00	\$ 350,100.00	\$ 58,500.00	\$ 1,170.00
Single Family-Detached	\$360,000.00	\$ 414,000.00	\$ 54,000.00	\$ 1,080.00
Rental Units	\$291,600.00	\$ 326,700.00	\$ 35,100.00	\$ 702.00

Although difficult to compare, both the existing Fees (in table A) and the proposed fees (in table D) are still lower than the fees of area jurisdictions.

Table F (Attachment III) shows a summary comparison of the affordable housing requirements in Alameda County jurisdictions that currently have an inclusionary/ affordable housing ordinance. As Table F illustrates, some jurisdictions such as Albany, San Leandro, and Berkeley calculate the fees based on the difference between the market sales price and the affordable price times the number of affordable units owed. The percentage to calculate the units owed in those jurisdictions is 15%. This yields significantly higher fees than the fees in Hayward.

Most jurisdictions listed in Table F require per-unit-owed fees that range between \$2,783 and \$180,000. In Dublin and Fremont, developers are required to pay fees and also provide a certain percentage of affordable units on site. However, in Fremont, developers may choose to pay fees only, in which case they have to pay fees higher than those they would pay if they were both paying fees and providing units. Like Hayward, Fremont also calculates the fees on a per sq. ft. basis. Fremont's fees start at \$17.50 per sq. ft. and go up to \$27 per sq. ft.

The proposed fees are well below the maximum fees found by the Nexus Study to be supportable by the market. The maximum per sq. ft. supportable fees calculated by DRA were \$40.98 and \$46.67 for single-family detached and attached developments, respectively, and \$47.89 for rental housing projects.

In sum, staff has found that: a) the current and proposed fees are markedly lower than those of area jurisdictions; b) the proposed fees are substantially lower than the maximum supportable Nexus Study fees; c) minor cost increases to development projects as a result of the Fee increases are unlikely to significantly alter residential development decisions in Hayward; and, d) the Affordable Housing Impact Fees were established with an annual adjustment mechanism in order to provide housing affordability for all Hayward residents apace with new market-rate housing development. For these reasons, staff is recommending that Council adopt the modest fee increases outlined in this report.

Alternately, Council may choose to adopt fees higher or lower than those recommended by staff, or to retain the current Fees (see table A, above). Council may also choose to consider other fee alternatives to mitigate the effect of new market-rate housing construction on the local affordable housing needs.

## *FUTURE CONSIDERATIONS*

*Requiring Developers of For-sale Developments to Provide Affordable Units.* As explained in the background section, to be consistent with the *Palmer* decision and the Costa Hawkins Act, the City cannot require developers of rental housing to provide affordable units unless they receive funding or regulatory assistance of some type and enter into an agreement with the City. For for-sale housing, however, the developers have an array of options. The following are the options for for-sale housing developers to meet the AHO requirements:

- a. Pay the Fees; or
- b. Include on-site for-sale affordable units equal to a minimum of 7.5% of the attached dwelling units and 10% of the detached dwelling units; or
- c. Construct for-sale affordable units not physically contiguous to the development (off-site), if approved by Council; or
- d. Propose additional alternatives that would mitigate the affordable housing impact of a proposed project if approved by Council; or
- e. Provide rental affordable units if consistent with the Costa Hawkins Act.

The developers' decision to provide the affordable units or to pay the Fees is a financial decision. Currently, the low magnitude of Hayward's Fees provides residential developers with the incentive to pay the Fees rather than providing the units. If Council desires to revisit the AHO requirements for for-sale developments so developers must provide the required units rather than pay the fees, the AHO would have to be amended. For this to happen, an economic feasibility study would likely need to be undertaken to make sure that the program requirements help the City meet the City's affordable housing goals without rendering market rate residential projects infeasible (or only marginally feasible), thus discouraging residential development in the City. At the moment, however, staff is only requesting Council to adopt the recommended fees.

*Non-residential (Housing Linkage) Fees.* Due to the dissolution of Redevelopment and the substantial decreases of federal funding for affordable housing, local governments are evaluating different financing programs to address the housing affordability crisis. One program in particular is being considered or adopted by some area jurisdictions: non-residential (commercial) fees, also called Housing Linkage Fees (the "Linkage Fees"). Linkage Fees are a form of impact fee assessed on new commercial developments based on the need for workforce housing generated by new and expanding businesses. Revenues generated by the Linkage Fees are then used to help fund the development of affordable housing.

To take advantage of a relatively affordable, regional effort of several Alameda County and Santa Clara County jurisdictions, the City recently obtained a non-residential nexus study that was prepared by Keyser Marston Associates Inc. (KMA). Due to the high incomes that

working families need to afford housing in the area, the maximum supportable non-residential fees are very high for all the commercial prototypes analyzed. The City’s Economic Development (ED) staff evaluated the results of the study, and concluded that the adoption of additional development fees at this time is not advisable because market demand for most commercial development in Hayward is not yet strong enough.

ED staff also concluded that relevant information necessary to evaluate the adoption of additional impact fees is not available at this time. In order to adopt additional fees (including Linkage Fees), the City would first need to determine what the impact of the new fees in the overall fee commercial development fee load in the City would be and how the resulting new fee load compares to that of other jurisdictions. This is important to ensure that the adoption of new fees would not place the City at a comparative disadvantage. For the same reason, ED staff also recommends that the City wait and see whether Fremont, Union City, and San Leandro, who also participated in the study, will adopt any Linkage Fees. It is staff’s understanding that the legislative bodies of these jurisdictions will discuss the joint study as early as October 2016 (Union City) and January 2017 (San Leandro).

**ECONOMIC IMPACT**

Social and economic research indicates that homelessness and the rising cost of housing can have significant adverse impacts on the overall health of individuals and families, and also can result in significant costs to the community. The costs to the community include the costs of providing emergency housing, mental health crisis services, emergency medical care, criminal justice, and judicial system involvement, among many other impacts. Creating and preserving affordable housing helps to mitigate these impacts and make positive impacts on individuals, families, and communities. Social research indicates that access to affordable housing can improve education outcomes, increase health and wellbeing, boost economic activity, and can lower social service costs for the state and local governments, among other benefits. The IHO-2003, the Relief Ordinance, the AHO, and the funds collected through these ordinances have helped and will continue to help the City achieve these and other socio-economic benefits.

From the date of its adoption until its amendment (in other words, until the adoption of the Relief Ordinance) which allowed developers to pay the Fees by right, the IHO facilitated the creation of 359 affordable housing units (311 rental and 48 ownership units) that have benefitted an equal number of very low to moderate-income households. The rental homes have also become of part of the local community’s long-term affordable housing assets. The following is a list of the developments that contain those affordable homes:

**Table G: Affordable Rental and Ownership Units Facilitated by the IHO**

<b>Rental Housing</b>	
Property Name	No. of Units
Walker Landing	78
C & Grand Senior Housing	60
South Hayward BART	151
Weinreb Place (@B & Grand)	22

Subtotal	311
<b>Ownership Housing</b>	
Crossings at Eden Shores	40
Garden Walk	8
Subtotal	48
<b>Grand Total</b>	<b>359</b>

Since the adoption of the Relief Ordinance which allows developers to pay the fees by right, all residential developers subject to the affordable requirements have chosen to pay the fees. To this date, the balance of the fees is approximately \$2.8 million. These funds have been received for the most part during the last eighteen months and have been deposited in the City's Affordable Housing Trust (Fund # 285).

The fees must be used to create new affordable homes that benefit very low-, low-, and moderate-income workers. The use of the fees for a specific project is subject to Council approval. Staff has scheduled a work session with Council for October 25, 2016, for a discussion of the potential and proposed uses of the different fund balances currently available for affordable housing, including the Affordable Housing Trust fund balance.

**FISCAL IMPACT**

To the extent that they are used to assist the development of new affordable homes, the additional fees will result in a positive fiscal impact for the City because, in order to be financially feasible, those development projects will need to attract additional funding from State, Federal, or private funding sources. However, without the local funding, developers are not able to attract that additional funding as the financial contribution is deemed to demonstrate the local support for the project. In other words, without the local support in the form of some financial assistance, the affordable projects are less likely to compete for funding from other funding sources. Therefore, the additional fees would be advantageous to leverage other funding and attract significant investment of other non-local dollars in Hayward. As an example, the South Hayward BART Affordable Project, which was facilitated by the IHO and received close to \$7 million in funds from the City, leveraged an additional \$45 million of non-local funds, including equity from a private investor of almost \$20.1 million and \$21.1 million from State Prop 1C funding.

Additionally, the Alameda County Department of Housing and Community Development has made it very clear that to benefit from the General Obligation (G.O.) bond (if approved by the voters on November 8, 2016), municipal jurisdictions, including Hayward, will have to contribute with a local funding match. The fees could potentially be a source for the bond funding match.

In addition to the above benefits, 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.



## **SUSTAINABILITY FEATURES**

Another major criterion for affordable developments to become competitive for funding is the inclusion of energy-efficient and sustainable features that exceed the applicable standards as is the case with the Low Income Housing Tax Credit Program. This requirement is intended to guarantee that affordable developments are financially viable for the long term. Energy savings are essential to achieve that long-term viability – besides guaranteeing that the housing expenses of tenants are low or minimal. For these reasons, affordable housing is virtually synonymous with sustainable, energy-efficient housing.

All the affordable homes facilitated by the City and recently-approved by Council including Weinreb Place, aka B & Grand Senior Housing, the South Hayward BART Affordable Housing development, and several other Eden Housing, Inc.-owned properties undergoing substantial rehabilitation (through a resyndication or refinance) have exceeded the applicable code standards in the area of energy efficiency. In sum, the fees must be utilized for the creation of new housing affordable to income-eligible households, and such use will be consistent with the City Council priority of Green.

## **PUBLIC NOTICE**

The City has provided notice as required by Government Code Sections 66018 and 66019, publishing two newspaper notices, making the basis for the fees available ten (10) days before the meeting, and providing notice to those who have requested notice fourteen (14) days in advance. Staff has also provided notice to market-rate and affordable housing developers and other interested parties of the proposed Fee update via phone calls and emails.

## **NEXT STEPS**

Should Council authorize the attached resolution and Fee update, the new fees will become effective January 1, 2017. Staff is recommending delaying the effective date of the new fees to allow developers that obtain permits through the rest of 2016 to pay the current Fees. Alternately, Council may choose to make the fees effective as soon as 60 days after adoption of the attached resolution.

*Prepared by: Omar Cortez, Housing Development Specialist*

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

Approved by:



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Kelly McAdoo, City Manager