

CITY OF HAYWARD

Hayward City Hall
777 B Street
Hayward, CA 94541
www.Hayward-CA.gov



CITY OF
HAYWARD
HEART OF THE BAY

Agenda

Thursday, November 10, 2022

7:00 PM

Council Chambers & Remote Participation

Planning Commission

PLANNING COMMISSION MEETING

NOTICE: The Planning Commission will hold a hybrid meeting in the Council Chambers and virtually via Zoom.

How to watch the meeting from home:

1. Comcast TV Channel 15
2. Live stream <https://hayward.legistar.com/Calendar.aspx>
3. YouTube Live stream: <https://www.youtube.com/user/cityofhayward>

How to submit written Public Comment:

Send an email to cityclerk@hayward-ca.gov by 3:00 p.m. the day of the meeting. Please identify the Agenda Item Number in the subject line of your email. Emails will be compiled into one file, distributed to the Planning Commission and staff, and published on the City's Meeting & Agenda Center under Documents Received After Published Agenda. Written comments received after 3:00 p.m. that address an item on the agenda will still be included as part of the record.

How to provide live Public Comment during the Planning Commission Meeting:

Please click the link below to join the meeting:

<https://hayward.zoom.us/j/84022823568?pwd=d0ZqMGNHMnFnczNMTjZLV09kQUVuZz09>

Webinar ID: 840 2282 3568

Passcode: PC11/10@7p

Or Telephone:

Dial (for higher quality, dial a number based on your current location):

1 669 900 6833 or +1 646 931 3860 (Toll Free)

Webinar ID: 840 2282 3568

Passcode: 5764597777

A Guide to attend virtual meetings is provided at this link: <https://bit.ly/3jmaUxa>

CALL TO ORDER Pledge of Allegiance**ROLL CALL****PUBLIC COMMENTS**

The PUBLIC COMMENTS section provides an opportunity to address the Planning Commission on items not listed on the agenda. The Commission welcomes your comments and requests that speakers present their remarks in a respectful manner, within established time limits and focus on issues which directly affect the City or are within the jurisdiction of the City. As the Commission is prohibited by State law from discussing items not listed on the agenda, your item will be taken under consideration and may be referred to staff for further action.

ACTION ITEMS

The Commission will permit comment as each item is called for Public Hearing. Please submit a speaker card to the Secretary if you wish to speak on a public hearing item.

WORK SESSION

Work Session items are non-action items. Although the Council may discuss or direct staff to follow up on these items, no formal action will be taken. Any formal action will be placed on the agenda at a subsequent meeting in the action sections of the agenda.

- 1** [WS 22-035](#) Density Bonus Update: Review and Discuss Updates to the City's Density Bonus Ordinance for Compliance with State Density Bonus Laws

Attachments: [Attachment I Staff Report](#)
[Attachment II Summary of Proposed Density Bonus Modifications](#)
[Attachment III Recommendations Not Supported By Staff](#)
[Attachment IV Stakeholder Interview Comments](#)

APPROVAL OF MINUTES

- 2** [MIN 22-126](#) Minutes of the Planning Commission Meeting on October 27, 2022

Attachments: [Attachment I Draft Minutes of October 27, 2022](#)

COMMISSION REPORTS

Oral Report on Planning and Zoning Matters

Commissioners' Announcements, Referrals

ADJOURNMENT**NOVEMBER 24, 2022 -MEETING CANCELED-****NEXT MEETING, DECEMBER 8, 2022, 7:00PM****PLEASE TAKE NOTICE**

That if you file a lawsuit challenging any final decision on any public hearing item listed in this agenda, the issues in the lawsuit may be limited to the issues which were raised at the City's public hearing or presented in writing to the City Clerk at or before the public hearing.

PLEASE TAKE FURTHER NOTICE

That the City Council has adopted Resolution No. 87-181 C.S., which imposes the 90 day deadline set forth in Code of Civil Procedure section 1094.6 for filing of any lawsuit challenging final action on an agenda item which is subject to Code of Civil Procedure section 1094.5.

****Materials related to an item on this agenda submitted to the Planning Commission after distribution of the agenda packet are available for public inspection in the Permit Center, first floor at the above address. Copies of staff reports for agenda items are available from the Commission Secretary and on the City's website the Friday before the meeting.****

Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested persons must request the accommodation at least 48 hours in advance of the meeting by contacting the City Clerk at (510) 583-4400 or cityclerk@hayward-ca.gov.



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Hayward City Hall
777 B Street
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File #: WS 22-035

DATE: November 10, 2022

TO: Planning Commission

FROM: Jeremy Lochirco, Planning Manager

SUBJECT

Density Bonus Update: Review and Discuss Updates to the City's Density Bonus Ordinance for Compliance with State Density Bonus Laws

RECOMMENDATION

That the Planning Commission provide feedback and guidance on staff's recommended updates to the Density Bonus Ordinance, including the specific density bonus incentives and concessions contained within this staff report. Following this work session, staff will finalize the draft Ordinance, identify the amendments needed to Chapter 10 of the Hayward Municipal Code to reflect these updates, and complete the California Environmental Quality Act (CEQA) analysis before presenting to the Council for final consideration in December 2022.

SUMMARY

The City's existing Density Bonus Ordinance adopted in 2005 does not conform with current State law. The current State law, which is required to be implemented by local jurisdictions, offers more density, more incentives, and additional relaxed parking requirements to projects that qualify for the density bonus. The State's Density Bonus formula takes precedence; however, the City can change the formula to offer a higher density bonus and more incentives for certain projects, but under no circumstances can the City offer smaller density bonuses or fewer incentives than the State formula mandates or impose additional restrictions. Staff is proposing to update the City's Density Bonus Ordinance to reflect three main changes:

- Exceed the State's Density Bonus Maximum by 5% for all density bonus projects that provide on-site affordable units;
- Exceed the State's Density Bonus Maximum by 10% for projects that provide on-site affordable units and target special populations; and
- Increase the number of incentives/concessions for projects that exceed the minimum on-site affordable housing requirements under the City's Affordable Housing Ordinance (AHO) to encourage development of more affordable units.

These recommendations are based on previous feedback provided by the Council, Planning Commission, and the City's Homelessness Housing Task Force (HHTF). Staff is also seeking to streamline the review of Density Bonus applications and working on a policy for possible fee deferrals to offset upfront costs associated with affordable housing construction to help overall project feasibility. This work session is to obtain feedback from the Planning Commission on staff's recommended updates to the City's Density Bonus Ordinance, which would incentivize affordable housing production and housing for several target populations. Following this work session, staff will finalize the draft Ordinance and related CEQA analysis before returning to Council for final consideration in December 2022.

ATTACHMENTS

Attachment I Staff Report

Attachment II Summary of Existing and Proposed Density Bonus Modifications

Attachment III Recommendations Not Supported By Staff

Attachment IV Stakeholder Interview Comments



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Following this work session, staff will finalize the draft Ordinance and related CEQA analysis before returning to Council for final consideration in December 2022.

BACKGROUND

The City's existing Density Bonus Ordinance¹ adopted in 2005 does not conform with current State law. The current State law, which is required to be implemented by local jurisdictions, offers more density, more incentives, and additional relaxed parking requirements to projects that qualify for the density bonus. The State's Density Bonus formula takes precedence; however, the City can change the formula to offer a higher density bonus and more incentives for certain projects, but under no circumstances can the City offer smaller density bonuses or fewer incentives than the State formula mandates. As part of this project, the current Density Bonus Ordinance, contained in Chapter 10, Article 19 of the Hayward Municipal Code, will need to be repealed and replaced with a new Density Bonus Ordinance that, at minimum, complies with State guidelines and reflects the direction previously provided by Council that includes additional bonuses and concessions specific to Hayward. Additional details on State's density bonus laws and the feedback received from the Council, Planning Commission, and HHTF are included below.

Summary of State Density Bonus

The Density Bonus Law² is about creating a package of incentives intended to help make the development of affordable and other special needs housing economically feasible. The main incentives include permitting a density increase beyond the local limits, providing incentives or concessions that reduce development costs, and waiving development standards that prohibit development at the approved density. Cities are required to grant a density bonus, waivers, and other incentives and/or concessions to projects which contain one of the following:

- At least 5% of the housing units are restricted to very-low-income residents.
- At least 10% of the housing units are restricted to low-income residents.
- At least 10% of the housing units in a for-sale common interest development are restricted to moderate-income residents.
- 100% of the housing units (other than manager's units) are restricted to very-low, low, and moderate-income residents (with a maximum of 20% moderate-income).
- At least 10% of the housing units are for transitional foster youth, disabled veterans, or homeless persons, with rents restricted at the very-low-income level.
- At least 20% of the housing units are for low-income college students in housing dedicated for full-time students at accredited colleges.
- The project donates at least one acre of land to the city or county for very-low income units, and the land has the appropriate general plan designation, zoning, permits and approvals, and access to public facilities needed for such housing.
- The project is a senior citizen housing development (no affordable units required).

¹ Existing Hayward Density Bonus Ordinance:

https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART19DEB00R

² Meyers Nave Guide to California Density Bonus Law:

<https://www.meyersnave.com/wp-content/uploads/California-Density-Bonus-Law-2022.pdf>

- The project is a mobile home park, age-restricted to senior citizens (no affordable units required).

Projects that exceed the minimum requirements can get a higher density bonus and are eligible for additional incentives/concessions and waivers.

Joint City Council and Planning Commission Work Session. On February 1, 2022³, the Council and Planning Commission held a Joint Work Session to review and discuss the updates to the City's Density Bonus Ordinance for compliance with the State Density Bonus Laws and Residential Objective Standards. The Council and Planning Commission indicated support for:

1. Creating an ordinance that is flexible enough to accommodate future changes by citing State law instead of codifying the full state legislation;
2. Aligning the density bonus approval process with the standard entitlement process to streamline housing permitting;
3. Offering incentives above what State law offers;
4. Tailoring the Ordinance to meet Hayward's housing needs; and
5. Pre-defining approved incentives/concessions.

Based on the feedback from the Council and Planning Commission, staff has developed a draft Ordinance that reflects changes in State law as well as streamlines the review of Density Bonus applications.

Some of the priorities identified by the Council and Planning Commission will be useful when negotiating community benefits related to some land use entitlements (Planned Development rezonings or General Plan Amendments); however, in some cases, the priorities identified increase development costs instead of decreasing them and, therefore, are not relevant to the density bonus. Details about the development priorities which are not included in the discussion of the density bonus project are included in Attachment II.

Homelessness Housing Task Force. On June 29, 2022⁴, the HHTF held a work session to review several options proposed by staff related to updates to the City's Density Bonus Ordinance. In general, the HHTF supported incentives for certain target populations (senior housing, student housing, and family housing), supported incentives for universal design, and supported additional concessions/incentives to help make projects more feasible.

In response to HHTF feedback, staff refined the recommendations and streamlined the proposed Ordinance to allow applicants more flexibility in obtaining these incentives and help administration of the density bonus program be more efficient for staff. Additional analysis of these components is detailed in the Discussion section below.

³ February 1, 2022, Joint Session Staff Report and Attachments

<https://hayward.legistar.com/LegislationDetail.aspx?ID=5397460&GUID=B175606F-4591-4D2E-B41A-328BD292B038&Options=&Search=>

⁴ June 29, 2022, Homelessness Housing Task Force and Attachments

<https://hayward.legistar.com/MeetingDetail.aspx?ID=984031&GUID=DE1B9C86-30F8-45F0-AF24-276EF93176B6&Options=info|&Search=>

City Council Work Session. On October 18, 2022⁵, the Council held a work session to review staff's recommended updates to the Density Bonus Ordinance, as detailed below. Council expressed overall support for proposed updates but highlighted their concern for granting any additional concessions that further reduce parking requirements beyond what the State already allows. In response to Council feedback, staff reviewed the options available to limit parking, but due to the existing State Density Bonus law, the City's ability to require additional parking for projects that qualify for a Density Bonus is limited. Staff is, however, continuing to evaluate the parking requirement for all residential projects as part of the Residential Design Study Update, which does include a parking analysis. The findings of that analysis will be presented to the Commission and Council for review and feedback at a future meeting yet to be scheduled.

In addition, the Council also expressed a desire to include teachers or school faculty as a target population to assist those individuals with additional housing options. Although City staff is not proposing to provide specific incentives for teachers or school faculty as part of this Density Bonus project, new State legislation (AB2295), effective January 2024, will make it easier for school districts to build affordable housing for their teachers and staff. Specifically, AB2295 will allow staff housing to be built on any property owned by a school district without requiring the district to request zoning changes from city or county officials if the housing development satisfies certain conditions, including other local objective zoning standards, objective subdivision standards, and objective design review standards. The legislation deems a housing development that meets these requirements consistent, compliant, and in conformity with local development standards, zoning codes or maps, and the general plan. In addition, the legislation exempts a housing development project subject to these provisions from various requirements regarding the disposal of surplus land. Currently most of the school district property in the City of Hayward is zoned for residential uses and could accommodate new housing units. Until such time as new faculty or teacher housing is built on school district property, staff will continue to promote all other affordable housing available to teachers and school faculty.

Outreach to Housing Developers. Revisions to the Density Bonus will only be effective if the proposed changes are useful to developers. In response to the Council and Planning Commission's direction, staff conducted outreach to twenty housing developers, including affordable/non-profit, and market-rate housing developers, which consisted of a survey with the following seven questions emailed to the developers on May 6, 2022, with interviews scheduled from May 9, 2022, to May 18, 2022:

- What cost savings concessions would incentivize more affordable units, deeper affordability, or some of the other City Priorities listed below?
- Would you like to have more concessions than is currently allowable under State Density Bonus Law?
- Do you have any experience in other cities using expedited entitlement process - explain how that process works compared to our normal process?

⁵ October 18, 2022, City Council Work Session and Attachments

<https://hayward.legistar.com/MeetingDetail.aspx?ID=999763&GUID=DEF02F36-948B-42C3-A6D3-BDC6F5E6BA08&Options=info!&Search=>

- Would it be beneficial to have a density bonus that exceeds 50% for mixed-income projects?
- Do you have any examples of fee waiver, reduction, or deferral programs that have been implemented in other cities?
- Would a Density Bonus encourage you to set aside 20% of the units for students?
- Would increase incentives improve your ability/desire to provide on childcare facility? If so, what would that look like?

Of the twenty housing developers, three affordable/non-profit housing developers and three market-rate developers responded to staff's survey and were interviewed. Depending on the type of developer (market-rate, affordable, non-profit), the challenges and suggestions for development of housing vary. A summary of the feedback received from those interviews is included as Attachment IV.

DISCUSSION

Based on the feedback from the Council, Planning Commission, and HHTF, staff is proposing four main changes to the City's Density Bonus Ordinance to provide cost saving incentives that could increase the percentage of on-site affordable housing and/or deepen the level of affordability served. Staff believes the proposed density bonus increase, coupled with the additional incentives/concessions to encourage the development of on-site affordable units and streamlining the review of applications, will help incentivize construction of housing in Hayward with a focus on the inclusion of on-site affordable units for development projects. A comparison of the State's existing Density Bonus regulations and the proposed Hayward regulations are detailed below and summarized in tables included as Attachment II.

Additional Density Bonus For On-Site Affordable Units

As part of the update to the City's Density Bonus Ordinance, staff is recommending a 5% density bonus increase over the maximum density bonus for projects that meet the State's criteria and provides on-site affordable units. While applicants currently have the option to pay an inclusionary in-lieu fee or provide on-site affordable units in order to meet the City's Affordable Housing Ordinance, staff recommends a higher density bonus be provided for applicants who choose to provide units on-site at levels necessary to achieve the maximum density bonus. Not only will this option support the construction of additional housing to assist the City to meet its Regional Housing Needs Assessment (RHNA) requirement, but will also create additional affordable units throughout the City, which is essential given the ongoing housing crisis throughout the State.

Additional Density Bonus for Special Target Populations

Staff is also recommending an additional density bonus for projects that both meet the State's criteria for a maximum density bonus and target special needs populations. The State Density Bonus Law currently incentivizes the development of senior housing, student housing, and housing for foster youth, disabled veterans, and people experiencing homelessness by allowing a 20 to 35 percent increase in density and, in some cases, without any affordable housing targets. Based on the feedback from the Council, Planning Commission, and HHTF, there is interest in creating additional density bonus for housing that accommodates certain

target populations, including those people with disabilities, affordable student housing, senior housing, mixed-income rental projects that provide more than 20% of the rental units for 3+ bedrooms, and projects that incorporate universal design principals. The feedback received is also consistent with the findings of the Displacement Study⁶, which identified a need for additional housing for certain populations, and Section 1.6, Special Needs Groups in Appendix B, Housing Needs Assessment of the Draft Housing Element⁷.

To further incentivize the construction of housing for these target populations, staff is recommending an additional 5% increase, in addition to the 5% baseline increase, for a 10% total density bonus increase for projects that serve these populations, which would be over and above the State's maximum. Staff does not recommend increasing the density bonus for market rate senior projects in order to encourage instead the development of affordable senior housing units. The recommended density bonus increases for Hayward is summarized in the table included in Attachment II.

Increase the Number of Incentives/Concessions for On-Site Affordable Units

In addition to the recommended increases in Density Bonus for projects that provide on-site affordable units, staff is also recommending projects receive an additional incentive or concession to help project feasibility. Per current State law, cities are required to provide one or more "incentives" or "concessions" to each project which qualifies for a density bonus (except for market rate senior projects with no affordable units, and land donated for very-low-income housing). A concession/incentive is defined as:

- A reduction of site development standards or a modification of zoning code or architectural design requirements, such as a reduction of minimum square footage requirements;
- Approval of mixed-use zoning; or
- Other regulatory incentives or concessions which result in identifiable and actual cost reductions.

The number of required incentives/concessions is based on the percentage of affordable units. The City is required to grant the incentives/concessions proposed by the developer unless it finds that the proposed concession or incentive does not result in identifiable and actual cost reductions, would cause a public health or safety problem, would cause an environmental problem, would harm historical property, or would be contrary to law.

In response to recommendations from the Council, Planning Commission, and HHTF, staff has revised the previous approach for pre-defined incentives to provide applicants with more flexibility and be less prescriptive, as shown in Attachment II. For projects that are 100% affordable or exceed the City's Affordable Housing Ordinance requirements by providing more on-site affordable units or units that provide deeper levels of affordability, staff is

⁶ Displacement Study:

<https://www.hayward-ca.gov/sites/default/files/documents/Hayward-Displacement-Study-w-Appendix.pdf#:~:text=The%20City%20of%20Hayward%20Displacement%20study%20provides%20a,analysis%2C%20the%20study%20compares%20Alameda%20County%20and%20Hayward.>

⁷ Draft 2023-2031 Housing Element - Appendix B, Housing Needs Assessment:

<https://haywardhousingandclimateupdate.com/wp-content/uploads/2022/08/Appendix-B-Housing-Needs-Assessment.pdf>

recommending that one additional incentive/concession be provided. Some of the types of requests that could be realized from the additional concession include, but are not limited to:

- A reduction or elimination of the EV charging space requirement;
- A request to not undergrounding utilities along a project frontage; and
- A reduction in the required ground floor commercial height for mixed-use projects.

Although the City Council expressed concern about concessions that reduce the amount of required open space area, the amount of required commercial space, and additional reductions in the amount of parking, staff notes that a developer who meets the law's requirements for affordable or senior units are entitled to the density bonus and other assistance as of right, subject to limited health and safety exceptions. Historically, many of the concessions that developers have requested in the City involve reduction in the amount of open space, reductions in the required setback areas, and reductions in the amount of parking provided.

Streamlined Density Bonus Process

To apply for a density bonus under the City's current Ordinance, an applicant must submit a Density Bonus Application, along with a description of what is being requested, why the project qualifies, an administrative fee as specified in the Master Fee Schedule, and several other required documents. All Density Bonus applications in the City are reviewed and approved by the Planning Commission by default. However, the application moves to the Council if the project involves another permit or entitlement requiring Council approval, such as a rezoning or General Plan Amendment. In the latter case, the Planning Commission makes a recommendation to the Council regarding project approval or denial and adoption of any applicable CEQA documents, including a recommendation on the density bonus request. Staff proposes that applications under this newly recommended ordinance would be considered by the lowest approving body, which in straightforward cases (such as an application for Site Plan Review for a project that meets all objective development standards) may be an administrative staff approval. Streamlining density bonus applications could save the developer and City time and money and it supports the goals identified in the two housing work plans adopted by Hayward by incentivizing housing production.

Fee Waivers (impact fees such as traffic and park fees). Council has already approved a waiver of park fees and traffic impact fees for 100% affordable housing projects and reduction of impact fees for the on-site affordable housing units provided as part of a mixed-income project. Developers would not need to request this concession, but staff would promote this incentive to incentivize on-site affordable housing.

Fee Deferral (utility, sewer, water, and infrastructure connections). Although utility fee deferral is not part of the actual Municipal Code update, staff is proposing, deferral of some utility connection fees would help off-set some upfront financial obligations that applicants are required to pay. Currently, utility connection fees are due prior to installation of the meter and are necessary for maintaining infrastructure. These fees could be deferred for the affordable units until issuance of certificate of occupancy and would be made a condition of project approval. Deferral of fees saves the developer the cost to finance the fees. Staff is currently

working with the Public Works Department to determine if this remains a viable option and to ensure that risk of non-payment is minimized. Staff envisions this would be accomplished by requiring the developer to sign an agreement that would be recorded to title of the property along with a lien or deed of trust. This would prevent sale of the property prior to payment of the connection fee due to the City.

STRATEGIC ROADMAP

In January 2020, the Council adopted six Strategic Priorities as part of its three-year Strategic Roadmap. This agenda item supports the Strategic Priority of Preserve, Protect and Produce Housing for all. Specifically, this item relates to the implementation of the following:

- Project 4: Implement housing incentives and production work plan in accordance to state housing limits
- Project 4b: Amend Density Bonus Ordinance

NEXT STEPS

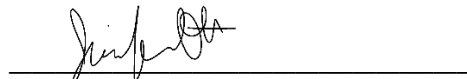
Following this work session, staff will finalize the draft Ordinance and complete the CEQA analysis before presenting to the Council for final consideration in December 2022. Following adoption, staff will work with our consultant team to create two informational documents to aid developers and staff in processing these applications. The documents will include a developer checklist and an informational handout which can be updated, as needed, in response to changes to State law.

Prepared by: Jeremy Lochirco, Planning Manager
 Christina Morales, Housing Division Manager
 Rozalynne Thompson, Senior Planner

Approved by:



Sara Buizer, Deputy Development Services Director



Jennifer Ott, Assistant City Manager/Development Services Director

SUMMARY OF PROPOSED DENSITY BONUS MODIFICATIONS

Existing State Density Bonus vs. Proposed Hayward Density Bonus

Increase overall density bonus and provide additional density bonus increase for projects with special targeting of certain populations. Special targeting includes:

- Mixed income rental projects that provide more than 20% of the rental units for large families (3+ bedrooms).
- Mixed income projects incorporating universal design principles
- Mixed income senior housing
- Mixed income college student housing
- Mixed income housing with unit set-asides for foster youth, disabled vets, or individuals experiencing homelessness

Target Population Served State Density Bonus	State Required Restricted Affordable Units	State maximum Density Increase	Proposed Hayward Maximum Density	Proposed Hayward Maximum Density Increase for Special Targeting
Very Low Income	15%	50%	55%	60%
Low Income	23%	50%	55%	60%
Moderate Income	44%	50%	55%	60%
Foster Youth/Disabled Vets/Unhoused people	10% restricted at very low Income	20%	25%	30% (15% restricted at very low income)
College Students	20% Low-Income Student	35%	40%	45% (25% restricted low-income students)
Market Rate Senior*	No Income Restriction	20%	n/a	n/a

*Senior projects that include affordable units would be eligible for increased density bonus based on income targeting.

Existing State Incentives/Concessions vs. Proposed Hayward Incentives/Concessions to Encourage Onsite Affordable Housing

Increase the number of Incentives available to encourage developers to exceed minimum requirement of on-site affordable housing. Incentives and concessions reduce development costs improving project feasibility.

No. of Incentives/Concessions Required by State	Proposed No. of Incentives/Concessions	Percentage of VLI Units	Percentage of LI Units	Percentage of MI Units
1	1*	5%	10%	10%
2	3	10%	17%	20%
3	4	15%	24%	30%
4	5	100% (LI/VLI) or 100% (MI 20% /LI 80%)		

*The first tier is not increased because compliance with the Affordable Housing Ordinance's on-site affordable housing requirement make the project eligible for one incentive/concession.

RECOMMENDATIONS THAT ARE NOT PART OF THE DENSITY BONUS UPDATE

Project Amenities

Recommendation: Consider Density Bonus for project that provide certain project amenities, such as public art, dog parks, open space, etc.

Staff Response: While the Council and Planning Commission suggested that providing amenities such as dog parks, public art, and recreation/open space could qualify a project to eligible for a density bonus, amenities such as these increase the cost of projects. One option to provide broader flexibility with the development standards and incentivize the incorporation on-site amenities could be to have applicants apply for Planned Development zoning (PD) and/or a General Plan Amendment. Most PD rezonings are applied for when the project is seeking additional flexibility on adopted development standards and these features could be considered as a public benefit when a PD application is submitted.

On-Site Affordable Units

Recommendation: Require affordable housing units to be provided on-site.

Staff Response: While the updated Density Bonus Ordinance will help support and incentivize the construction of on-site affordable units, the requirements to provide those affordable units on-site is currently under review as part of an update to the City's Affordable Housing Ordinance (AHO). Staff expects a draft of the updated AHO to be completed in early 2023.

Fee Assessment

Recommendation: Look at fees on a square footage basis rather than a per unit basis.

Staff Response: While the Density Bonus Ordinance does contain recommendations for fee waivers or deferrals, the assessment of impact fees or other permit fees are often tied to nexus studies, which will determine the appropriate amount of fees charged and is codified as part of the City's Master Fee Schedule. While many development-related fees are based on square footage or per unit basis, the Density Bonus update will not determine how impact fees are assessed.

Property Transfer Tax

Recommendation: Increase Property Transfer Tax

Staff Response: The intent to the Density Bonus Ordinance is to either increase revenue or decrease development costs tied to affordable housing or housing tied to special needs populations. Property transfer taxes are not directly or indirectly tied to the Density Bonus Ordinance update.

RECOMMENDATIONS THAT ARE NOT PART OF THE DENSITY BONUS UPDATE

Applicable Income Levels

Recommendation: Use Hayward income levels rather than area median income as a measure, since Hayward income is lower than Alameda County

Staff Response: The State Density Bonus laws dictate the income levels/limits to be used for affordable housing.

Speculative Investments

Recommendation: Prevent speculative investment

Staff Response: Staff is currently exploring options tied to the Strategic Roadmap to preserve, protect, and produce housing.

Parking

Recommendation: No parking reduction and concerns about equity implications of not giving low-income units as much parking.

Staff Response: While the State already allows projects that qualify for a Density Bonus application to have a reduced parking ratio by right, the update to the Density Bonus Ordinance is not proposing any additional limitations or restrictions on project specific parking requirements. Staff is currently working to develop Objective Standards and as part of that project, parking regulations will be studied.

Displacement

Recommendation: Make sure residents are not displaced

Staff Response: Recently adopted SB330 legislation requires any housing units demolished that were occupied by protected tenants be replaced and additionally, the city has adopted a tenant assistance ordinance to provide tenant relocation assistance in the event they are displaced due to no-fault eviction or temporarily displaced due to renovations.

Project Financing

Recommendation: Banks may not lend to market rate buyers purchasing in a building with subsidized units

Staff Response: The City does not have the authority to regulate financial institutions but there are existing federal programs and lending criteria that allow for financing approval for restricted units.

STAKEHOLDER INTERVIEW COMMENTS

Market-Rate Developers:Challenges:

- City's mixed use ordinance requirements are difficult to meet and, in some cases, has led a project/deal to fall through. Difficult to finance commercial component – specifically, commercial size requirement.
- Developer expressed that there isn't a lot of land that is available and buildable:
 - o For student housing, it's difficult to find sites due to CSU requirement (master lease and project site must be within 1 mile from university).
 - o Considered areas of "downtown" but turned away due to high environmental review/clean-up costs.
- Mixed-use projects are desirable but very difficult to finance due to the layering of funding and regulatory requirements from various funding sources/programs.

Suggestions:

- Reduce commercial size requirement(s) in mixed-use ordinance.
- Establish case manager in CMO to facilitate expedited review for projects. Example provided – SJ and LA.
 - o Example shared about SJ – Project successfully expedited and streamlined entitlement through a program like such and the city had environmental review completed for project site/area. Also, city waived affordable fees estimating at \$4M.

Affordable/Non-Profit Developers:Challenges:

- High impact fees – Affordable developers get specific impact fees waived but further waiving fees related to entitlement would be helpful and reduce overall development cost.
- Adapting to changing development requirements. Difficult for developers to adapt – logistics and budget.
- NIMBY-ism/community opposition.
- Public art requirement can pose challenges related to prevailing wages/D. Bacon.
- Open space and parking requirements are challenging – budget and project site size.

Suggestions:

- Reduce, waive, or defer payment of impact fees/city fees.
 - o Example shared about Fremont – City deferred fees for developer to pay fee after project closing via agreement between City and developer. Estimated fee that was deferred - \$2M.
- Be mindful of economy of scale – Although there are incentives for including deeper affordability and denser buildings, projects need to be financially feasible, and developer needs to have appropriate capacity to carry on project at large scale.
- Provide clear confirmation of requirements up front and the timing associate with the requirement.
- Waive open space and parking requirements.



CITY OF HAYWARD

Hayward City Hall
777 B Street
Hayward, CA 94541
www.Hayward-CA.gov

File #: MIN 22-126

DATE: November 10, 2022

TO: Planning Commission

FROM: Assistant City Manager / Development Services Director

SUBJECT

Minutes of the Planning Commission Meeting on October 27, 2022

RECOMMENDATION

That the Planning Commission approve the minutes of the Planning Commission meeting of October 27, 2022

SUMMARY

The Planning Commission held a meeting on October 27, 2022

ATTACHMENTS

Attachment I Draft Minutes of October 27, 2022



**PLANNING COMMISSION MEETING
COUNCIL CHAMBERS AND VIRTUAL (ZOOM)
PARTICIPATION
Thursday, October 27, 2022, 7:00 p.m.**

The Planning Commission meeting was called to order at 7:00 p.m. by Chair Oquenda. The Planning Commission held a hybrid meeting in the Council Chambers and virtually via Zoom.

PLEDGE OF ALLEGIANCE

ROLL CALL

Present:	COMMISSIONERS:	Ali-Sullivan, Goldstein, Lowe, Roche, Stevens
	CHAIRPERSON:	Oquenda
Absent:	COMMISSIONER:	Bonilla Jr.
	CHAIRPERSON:	None

Staff Members Present: Harvie, Lochirco, Kowalski, Madhukansh, Nguyen, Tabari, Vigilia

PUBLIC COMMENTS

There were none.

PUBLIC HEARING

1. Proposal to Operate a Cabaret with Live Entertainment and Dancing at the Dirty Bird Lounge at 926 "B" Street (Assessor Parcel No. 428-0056-062-00), Requiring Approval of Conditional Use Permit Application No. 202202177. Applicant: Aric Yeverino; Property Owners: Dinesh and Chandrika Shah

Associate Planner Kowalski provided a synopsis of the staff report and noted that staff received correspondences from the Hayward Chamber of Commerce and the Hayward Police Department (HPD) expressing their support of the project.

Project Applicant Yeverino commented that he was available to address any questions that the Planning Commission may have about the Dirty Bird's operations.

Commissioner Lowe indicated that in Attachment III Conditions of Approval, critical incidents had been defined, however, "extreme severity" had not been defined. She wondered if it was clear to the applicant what was meant by "extreme severity". Mr. Yeverino responded that it was his understanding that the determination of whether or not a critical incident was of "extreme severity" was at the discretion of the Police Chief. He noted that the city already had an ordinance in place which all bars and restaurants have to abide by. Mr. Yeverino shared that there was only one establishment that had gone to court over this, and that it was his understanding that if there were two critical incidents of "severity", then this would reflect on his establishment doing something wrong.



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Commissioner Lowe asked for clarification on the number of security guards that would be on premises and at what times. Mr. Yeverino responded that his establishment already had ten security guards present Friday and Saturday nights from 8:00 p.m. to after 1:30 a.m. to ensure seamless operations.

Commissioner Lowe asked if a deposit of \$3,000 was the typical rate for private events and whether the deposit combined with the signing of a contract were sufficient safeguards to prevent questionable activity. Mr. Yeverino stated that \$3,000 would strictly be the deposit fee with liability falling on the organizer of a private event. He elaborated that his establishment does not work with outside promoters, underscoring that his goal was not to bring an influx of people for money in a night. He stated that larger crowds tend to be rougher, which may result in incidents which have greater costs. Mr. Yeverino commented that the downstairs space was planned for uses such as weddings or corporate parties. He added that per the conditions, fashion parties would not be permitted as other bars in the City use this event type for lingerie nights, and this was not his intention.

Mr. Yeverino confirmed for Commissioner Lowe that private parties would not be permitted to provide their own security and that the outdoor patio would close at 12:30 a.m. nightly with entertainment concluding around 1:15 a.m.

Commissioner Roche asked if law enforcement would need a warrant to obtain surveillance footage from the establishment. Mr. Yeverino responded that if any issues arose, whether inside the establishment or outside and unrelated to the Dirty Bird, his establishment would cooperate with HPD in providing the footage. He shared that his establishment had high quality surveillance cameras and his security staff scanned identification cards, both of which could assist HPD in locating an offender of an egregious crime.

Commissioner Roche commented that in the layout of the basement floor plan, it appeared the areas were broken up into cozier sections and asked how the crowd would be situated for an event like a comedy show. Mr. Yeverino stated that the basement would not have built-in booths, but moveable furniture to accommodate orientation towards a performer. He stated that the space would not be used for massive concerts due to acoustics and height requirements needed for live musical performances.

Commissioner Roche stated per the CUP, no persons under the age of twenty-one would be permitted in the basement and asked if this restriction would apply to wedding parties as well. Mr. Yeverino shared that his venue was recently used for a wedding event that was hosted on the upper patio during the daytime and stressed that minors should not be in the establishment after 8 p.m., and that he believed the basement should be restricted to individuals over the age of twenty-one since it was intended to serve as an upscale lounge for adults.



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Mr. Yeverino noted for Commissioner Roche that the Turf Club was open until 1:30 a.m. and that its outdoor venue had the infrastructure to hold mini concerts, adding that the Funky Monkey was another establishment open until 1:30 a.m., however they were experiencing some issues with the cabaret license due to critical incidents that had occurred at this location.

Commissioner Roche requested that the applicant speak to his responsibility in regulating activities around the perimeter of the establishment. Mr. Yeverino shared that patrons were not permitted to go back and forth in entering and exiting the rear parking lot, that he was going through the permitting process to erect a gate outside of the back entrance to the building, and that HPD was good at patrolling the area on Friday and Saturday nights.

Associate Planner Kowalski noted that per Sgt. Carpenter, in the event of a critical incident, HPD would request that the applicant provide surveillance video footage and shared that Mr. Yeverino had been cooperative thus far. In the event the applicant did not cooperate during an investigation, HPD would then need to get a court-approved warrant to obtain surveillance footage.

Mr. Yeverino confirmed for Commissioner Ali-Sullivan that the basement was currently empty and used for storage, and that they were in the process to pull a demolition permit to prepare it for construction of the new basement lounge.

Commissioner Ali-Sullivan asked how the application for a cabaret license will change the establishment's security apparatus. Mr. Yeverino responded that the security plan would remain the same, as his establishment already uses ten security guards on weekends. He shared that the conditions described in the security plan being considered were already in effect at his establishment, that the establishment would include more security once the basement lounge commences operations, and that the activity in the basement would not be different than existing activities.

Commissioner Ali-Sullivan asked the applicant what type of events were anticipated in being conducted with the cabaret license. Mr. Yeverino responded that the cabaret license would open his establishment to hosting events such as comedy shows, cultural events like Mariachi, and that he would be mindful and respectful with event types. He shared that current regulations do not allow his establishment to charge a cover fee and that this was one of the underlying reasons why live music was not widely played in the Bay Area as it was cost-prohibitive for businesses. Mr. Yeverino has hired blues artist, Shane Hall, to play at his venue before, but such renowned artists charge \$600-\$800 per night and this was immensely expensive as he could not currently charge a cover fee. Under the conditional use permit and cabaret license, if approved, he would be able to charge a cover charge to help offset the cost of bringing live acts.



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Commissioner Ali-Sullivan asked staff if there were concerns with the operations, what mechanisms did the city have to revoke the cabaret license and wondered if the revocation would be a cumbersome or lengthy process. Associate Planner Kowalski stated that there were provisions built into the conditional use permit that give a broad ability to revoke the permit as needed. Mr. Kowalski added that revocation of a use permit would be the last resort, as the city would make a concerted effort to work with the applicant to address any issues that had arisen.

Planning Manager Lochirco added that once a conditional use permit is established and revocation is being sought, due process is afforded to the applicant through a public hearing that would be required to come before the Planning Commission for consideration of revocation. Other things could be considered if problems emerge, such as the applicant could work collaboratively with HPD to change operational hours. Mr. Lochirco stated that revocation of a use permit was atypical, and the preference was to work with the operator to ensure that the conditions of approval are adhered to. He shared that another option would be to modify the cabaret portion of the activities being allowed and this could be done through the cabaret license that HPD has the authority to issue and modify.

Senior City Attorney Vigilia stated that the cabaret ordinance has a built-in process for revocation and hearings, where the cabaret license holder is entitled to a hearing, underscoring that this process was set out in the Hayward Municipal Code.

Commissioner Goldstein commented that the applicant had a history of running similar successful operations throughout the East Bay, requesting that he share this with the Commission. Mr. Yeverino stated that the Dirty Bird was founded in 2009 and the establishment moved to its newer location on B Street in 2016, he had opened a cocktail bar in Oakland and a wine bar in Alameda, opened Yoga Sociale adjacent to the Dirty Bird one year ago, and was looking forward to opening other establishments in Hayward in the future.

Mr. Yeverino noted for Commissioner Goldstein that his bar in Oakland had its cabaret use grandfathered in and that his establishment in Alameda featured live bands frequently because the City of Alameda's regulations governing live entertainment were more permissive.

In response to Commissioner's Goldstein's question about adding acoustic dampening in the basement, Mr. Yeverino affirmed that he would do this as there would be increased echo in the basement, however he noted that music would not be emanating from the basement that would be bothersome to the general public on the street.

Commissioner Goldstein commented that as was noted by HPD, there would be no significant traffic or parking concerns with the addition of the cabaret entertainment at the establishment.



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Chair Oquenda opened the public hearing at 7:40 p.m.

Ms. Carol Rivera, Hayward resident, stated that in regards to community building and fostering relationships, the reputation of the Dirty Bird precedes itself. She added that the project applicant was supportive of the community and participated in a fundraiser benefiting vulnerable populations in the city, that he contracts with HUSD to provide yoga classes to families at Yoga Sociale, shared that the applicant was passionate and had a vision to expand the Hayward community, and aimed to create healing spaces in the city.

Ms. Sabrina Aranda, a Hayward resident, participated via Zoom, spoke in support of the new plans to expand the Dirty Bird as the establishment had brought life to the downtown. She stated that the business has proven to be a safe and inviting establishment, it supports opportunities for adults of all ages to socialize, and could be used for events such as fundraisers for education, campaign parties for future politicians, and celebrations such as birthdays and retirement parties. Ms. Aranda stated that the expansion will support additional recreational opportunities for night life in the downtown area.

Chair Oquenda closed the public hearing at 7:43 p.m.

Commissioner Stevens made a motion to approve the staff recommendation, the motion was seconded by Commissioner Goldstein.

Commissioner Ali-Sullivan stated that he was initially curious about what a cabaret license involved and what the operations of the Dirty Bird would look like, but it seemed a well-thought-out and graduated approach. He supported the increased hours of operation and the addition of food earlier in the day. He highlighted that the project would add life and vibrancy to Downtown Hayward, was inclined to support the project, and thanked the applicant for supporting the growth of businesses in the downtown.

Commissioner Roche stated that the Dirty Bird was already a popular destination for mixed age groups and that the proposal would add to the establishment's offerings in the downtown. She felt that the project met Downtown Specific Plan goals and will serve as a catalyst for other potential businesses to support the downtown.

Commissioner Lowe stated that terms should be spelled out in the proposal, and that the words "extreme severity" should be defined in the document. She expressed her support of the project, noting that it would bring another good lunch venue in the downtown, emphasized that it was great that the applicant was committed to working with HPD, and committed to ensuring patrons are restricted to twenty-one years and older after 8 p.m. Commissioner Lowe expressed that the project would bring vitality and diverse entertainment options and businesses which was lacking in the downtown.



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Chair Oquenda agreed with the comments expressed by his fellow commissioners, acknowledged that he has been to the Dirty Bird and enjoyed the atmosphere, looked forward to seeing a comedy show at the venue, and concluded that he looked forward to the expansion of the business.

The motion passed with the following roll call vote:

AYES:	Commissioners Ali-Sullivan, Goldstein, Lowe, Roche, Stevens Chair Oquenda
NOES:	None
ABSENT:	Commissioner Bonilla Jr.
ABSTAIN:	None

APPROVAL OF MINUTES

2. Minutes of the Planning Commission Meeting on September 22, 2022

Commissioner Roche made a motion to approve the staff recommendation, Commissioner Goldstein seconded the motion.

The motion passed with the following roll call vote:

AYES:	Commissioners Goldstein, Lowe, Roche, Stevens Chair Oquenda
NOES:	None
ABSENT:	Commissioner Bonilla Jr.
ABSTAIN:	Commissioner Ali-Sullivan

COMMISSION REPORTS

Oral Report on Planning and Zoning Matters

Hayward Residential Design Study Update (Previously Named Residential Objective Standards and Zoning Consistency Update)

Planning Manager Lochirco shared that staff had notified Planning Commissioners about the residential design study that staff had been working on and shared that follow-up discussions were planned for January 2023.

Oral Report on Planning and Zoning Matters

Planning Manager Lochirco stated that the Planning Commission meeting on November 10,



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2022 would include an update on the Density Bonus project, that there would be no meeting on November 24, 2022 due to the Thanksgiving Holiday, noted that the election of officers would occur in January, and wished everyone a safe and happy Halloween.

Commissioners' Announcements, Referrals

Commissioners' Announcements, Referrals

Commissioner Roche announced that a Trunk or Treat event would be held on Saturday, October 29, 2022, in the Heritage Plaza.

ADJOURNMENT

Chair Oquenda adjourned the meeting at 7:53 pm

APPROVED:

Brigitte Lowe, Secretary
Planning Commission

ATTEST:

Avinta Madhukansh-Singh
Interim Planning Commission Secretary
Office of the City Clerk