



**DATE:** February 7, 2023

**TO:** Mayor and City Council

**FROM:** Assistant City Manager

**SUBJECT:** Adopt a Resolution to Temporarily Suspend Applicable Local Planning and Zoning Requirements for Homeless Shelters Located on Specified Private Property, and Determining that the Common Sense CEQA Exemption Applies

## **RECOMMENDATION**

That the City Council adopts a resolution (Attachment II) temporarily suspending applicable local planning and zoning requirements for existing homeless shelters located on specified private property.

## **SUMMARY**

There is an ongoing homelessness crisis in Hayward and across the state. Hayward City Council has prioritized responding to this crisis through multiple policies and programs over the last several years, which have contributed to a reduction in homelessness in Hayward. However, continued efforts are required to maintain this response and continue to support the individuals and families at risk of and currently experiencing homelessness. This includes ensuring that existing shelter providers can continue to safely meet the demand for emergency shelter in Hayward. Existing shelters experienced increased demand for shelter services during the pandemic as health and safety precautions required reducing capacity and finding innovative ways to prevent the spread of COVID-19. Increased demand and continued health and safety precautions require more immediate efforts to support existing shelters as they serve individuals and families experiencing homelessness in Hayward.

As allowed by state law, Council used emergency shelter crisis declarations to increase the local shelter capacity on publicly owned land in 2018, 2019, and 2021. Under the shelter crisis declaration, provisions of any housing, health, habitability, planning and zoning procedures or laws are temporarily suspended for homeless shelters to the extent that strict compliance poses a hindrance to mitigating the shelter crisis. The law enables local jurisdictions to adopt interim health and safety standards that are consistent with ensuring minimal public health and safety standards. However, this State law only applies to shelters located on public property/facilities,

which limits the flexibility existing non-profit and faith-based emergency shelter providers in Hayward have for maintaining or expanding their capacity.

Staff recommends that Council adopt a resolution temporarily suspending applicable local planning and zoning requirements for existing homeless shelters operated on non-public property. The City Council has the authority to temporarily suspend these requirements under its police power pursuant to Article XI, Section 7 of the California Constitution and authority over municipal affairs pursuant to Article XI, Section 5 of the California Constitution and Section 200 of the City Charter. Suspension of the requirements would not occur in instances where the health and safety of residents or the surrounding community are at risk and interim municipal health and safety provisions and land use controls mirroring those previously used for earlier shelter crisis declarations will be applied to facilities ensuring minimum public health and safety standards.

## BACKGROUND

There is an ongoing local and state-wide homelessness crisis, leading to a continued need for emergency shelters and services for individuals and families experiencing homelessness. Every two years, the US Department of Housing and Urban Development (HUD) requires communities to conduct a Point-in-Time (PIT) Count of individuals, youth, and families experiencing homelessness and provide accompanying data. The PIT count provides a “snapshot” of homelessness (both sheltered and unsheltered) in the community and nationally. Alameda County held the most recent PIT Count on February 23, 2022, which was the first count since January 2019 due to the COVID-19 pandemic.

According to 2022 PIT Count data, there was a 22% increase in homelessness across Alameda County, with 9,747 total individuals experiencing homelessness in 2022 compared to 8,022 individuals in 2019. Unlike the Countywide trend, there was a 22% decrease in homelessness in Hayward, with 381 individuals experiencing homelessness in 2022 compared to 487 total individuals in 2019.<sup>1</sup> Over the past several years, Council has prioritized responding to the affordable housing and homelessness crisis in several ways:

- **October 2018:** Council adopted a resolution declaring a shelter crisis in Hayward in 2018. At the time, there were only 63 shelter beds in Hayward, with over 300 individuals experiencing unsheltered homelessness.<sup>2</sup> Council extended the shelter crisis

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<sup>1</sup> For a detailed discussion of the PIT Count findings and methodology, see the staff report from the June 28, 2022, Council meeting: <https://hayward.legistar.com/LegislationDetail.aspx?ID=5709698&GUID=55CE1563-86DB-4F2F-8D3E-F5ADBBB68E84&Options=&Search=>

<sup>2</sup> October 2, 2018, City Council Staff Report and Materials: <https://hayward.legistar.com/LegislationDetail.aspx?ID=3690554&GUID=A8DF0FBF-2F19-4648-8632-2BFE62A97107&Options=&Search=>

declaration in 2019 for implementation of the Housing Navigation Center and again in 2021 to allow construction of an emergency shelter for transitional-age youth.<sup>3,4</sup>

- **January 2020:** Council adopted the Strategic Roadmap. The Strategic Roadmap's Preserve, Protect, and Produce Housing for All priority area includes implementing a homelessness reduction strategic plan, as well as projects related to incentivizing housing production for all.<sup>5</sup>
- **March 2020:** Council adopted the Workplan to Incentivize Housing Production, which included a mid-term strategy of expanding locations where emergency shelters are allowed as a permitted use with a conditional or other discretionary use permit.<sup>6</sup>
- **July 2021:** Council adopted the Let's House Hayward! (LHH) Strategic Plan, which highlighted the need for additional emergency shelters in the City and included strategies for expanding housing-focused shelter capacity and developing crisis response services to protect the dignity and health of unsheltered individuals and families in Hayward.<sup>7</sup>
- **2023 Housing Element Activities:** The Housing Element is an Element of the Hayward 2040 General Plan and must be updated every eight years in accordance with State Law. In 2021, the City initiated the 2023-2031 Housing Element that contains statutorily required sections to identify housing needs with an emphasis on special needs groups; to identify constraints to housing; and, to develop a set of actions to minimize and remove those constraints to the extent feasible. The 2023-2031 Housing Element contains specific Goals, Programs, Policies, and Actions to support housing opportunities for special needs groups, which include individuals experiencing homelessness (Program H-13: Variety of Housing Types).

Measuring change in the homeless census based on a single count is imprecise and cannot be solely attributed nor credited to local actions. However, it is evident that the City of Hayward has taken several measured actions to address this crisis, including supporting the development of new programs and policies. Continued support of these programs and policies is necessary for preventing and responding to the homelessness and affordable housing crisis.

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<sup>3</sup> January 22, 2019, City Council Staff Report and Materials:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=3838800&GUID=89EC3945-8050-428A-881C-6180A91CBA9A&Options=&Search=>

<sup>4</sup> February 23, 2021, City Council Staff Report and Materials:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=4803667&GUID=7C811874-F8C6-4590-9385-736AD8D65638&Options=&Search=>

<sup>5</sup> April 26, 2022, City Council Staff Report and Materials:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=5565349&GUID=459912E5-E1C0-4580-BE80-3DFEFBC33C72&Options=&Search=>

<sup>6</sup> March 3, 2020, City Council Staff Report and Materials:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=4345462&GUID=5E3353DD-0839-4361-AED3-B7EB4102CBE3&Options=ID%7CText%7C&Search=Housing+Production>

<sup>7</sup> July 13, 2021, City Council Staff Report and Materials:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=5028014&GUID=E5369F11-C504-413E-B317-E2797DF45328&Options=&Search=>

## DISCUSSION

As discussed in local and regional plans to respond to and prevent homelessness, emergency shelters are a key component in the homelessness response system.<sup>8</sup> In Hayward, shelters operated by local non-profit and faith-based providers on privately owned property are vital in addressing the City's emergency shelter needs, as described in the LHH Strategic Plan's needs assessment.

There are currently only four year-round homeless shelters in Hayward, including the City's Navigation Center that was made possible through the Council's shelter crisis declaration. Existing shelter providers experienced increased demand for shelter services during the pandemic as health and safety precautions required reducing capacity and finding innovative ways to prevent the spread of COVID-19.

Increased demand for emergency shelter coupled with the need to ensure basic health and safety means that more immediate efforts are required to support existing emergency shelters. This includes providing additional flexibility to allow them to safely expand their capacity in line with Council's strategic goals and within continued constraints of COVID-19, as well as best practices learned during the pandemic.

Existing local planning and zoning requirements can create burdensome obstacles for the operation of shelters on private property. Existing State law has a model for allowing flexibility on publicly owned land. Specifically, California Government Code Section 8698, et seq., allows cities to declare a shelter crisis, which the City has previously leveraged. During the existence of a shelter crisis, provisions of any housing, health, habitability, planning and zoning, or safety standards, procedures, or laws are temporarily suspended for homeless shelters to the extent that strict compliance poses a hindrance to mitigating the shelter crisis. In lieu of the temporarily suspended regulations, local jurisdictions adopt interim health and safety standards that are consistent with ensuring minimal public health and safety standards. However, this State law only applies to shelters located on public property/facilities, which limits the flexibility existing non-profit and faith-based emergency shelter providers in Hayward have for maintaining or expanding their capacity.

To implement Council's policy direction to support existing emergency shelter operators as they continue to respond to the growing homelessness crisis and pandemic-related constraints, staff recommends Council adopt a resolution temporarily suspending applicable local planning and zoning requirements for shelters on private property. The City Council has the authority to temporarily suspend these requirements pursuant to its police power under Article XI, Section 7 of the California Constitution and authority over municipal affairs pursuant to Article XI, Section 5 of the California Constitution and Section 200 of the City Charter. Temporary suspension of these will not occur in instances where the health and safety of residents or the surrounding community are at risk. At the City Manager's discretion and with approval by the City Council, interim municipal health and safety provisions and land use controls mirroring

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<sup>8</sup> For more information on regional plans to respond to and prevent homelessness, visit <https://homelessness.acgov.org/reports.page> and <https://www.allhomeca.org/>

those previously used for earlier shelter crisis declarations will be applied to facilities ensuring minimum public health and safety standards.

This temporary suspension of regulations would allow existing shelters to continue to operate safely while City staff initiates Zoning Text Amendments outlined in the Housing Element. Specifically, Program H-13, Variety of Housing Types, covers these topics and contains Actions 13.1 through 13.7 to allow innovative and alternative housing options with wraparound services on land owned by the City, churches, and non-profits; to develop objective standards for such uses; and to expand the opportunities for group housing and housing for individuals with disabilities and those experiencing homelessness. Based on the Draft Housing Element timeframes, Zoning Text Amendments related to these housing types would be accomplished by January 2025.

Staff recommends that this temporary suspension remain in place until December 31, 2026, during which time staff will work with community stakeholders to develop permanent local regulations to meet Council's strategic goals as described in the Strategic Roadmap, Incentives to Housing Production Workplan, and LHH Strategic Plan.

Adoption of this resolution is subject to the "common sense" exemption contained in Section 15061 of the CEQA Guidelines, in that it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. However, construction of new individual shelters will still require CEQA review.

## **ECONOMIC IMPACT**

Temporarily suspending certain planning and zoning requirements can allow existing local shelters that operate on private land to continue serving individuals and families experiencing homelessness. This has a positive economic impact by helping to lower the unsheltered population in Hayward, reducing the economic strain on emergency and maintenance services. It can also have a positive economic impact on local businesses in the Downtown and other commercial areas of Hayward through continuing to provide services to the unsheltered population and reducing homelessness.

## **STRATEGIC ROADMAP**

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

- Project H2: Implement Let's House Hayward: the Homelessness Reduction Strategic Plan
- Project H4: Implement housing incentives and production work plan in accordance to state housing limits

## **FISCAL IMPACT**

This item is an administrative action with no fiscal impact to the City's General Fund.

## **PUBLIC CONTACT**

Each of the strategic documents referenced in the Background section of this report had extensive public contact, including focus groups, interviews, and public hearings. Staff will do additional public outreach over the next several months as part of the development of a permanent resolution to meet Council's strategic goals for increasing emergency shelter capacity for the City of Hayward.

## **NEXT STEPS**

This Resolution addresses urgent needs of existing emergency shelter providers to continue operating. Following the adoption of this emergency resolution and adoption of the 2023-2031 Housing Element, City staff will initiate Zoning Text Amendments as outlined in Program H-13 of the Housing Element. Program H-13 contains Actions 13.1 through 13.7, which do the following: allow innovative and alternative housing options with wraparound services on land owned by the City, churches, and non-profits; develop objective standards for such uses; and expand the opportunities for group housing and housing for individuals with disabilities and those experiencing homelessness.

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Approved by:



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Kelly McAdoo, City Manager