



**DATE:** October 29, 2018

**TO:** Council Economic Development Committee

**FROM:** Director of Development Services

**SUBJECT:** Conditions of Approval - Mixed Use and Affordable Housing Projects

### **RECOMMENDATION**

That the Council Economic Development Committee (CEDC) reviews and provides feedback on the draft standard conditions of approval related to the phasing of mixed-use projects and affordable housing.

### **SUMMARY**

The Development Services Department - Planning Division is currently evaluating and updating standard conditions of approval as part of ongoing process improvements related to the City's development review process. Several of these conditions refer to: the phasing and construction of commercial uses for mixed-use projects; the phasing and construction of open space and community benefits for planned developments; and the options available to applicants for compliance with the Affordable Housing Ordinance. Staff is requesting feedback and input from the CEDC prior to finalizing these conditions, which would be added to mixed-use, planned development and affordable housing projects.

### **BACKGROUND**

Earlier this year, Development Services staff began to evaluate the development review process and work collaboratively with other City staff to develop a set of standardized conditions of approval that apply to planning projects. The main objectives of this effort were to: 1) update the existing conditions with consistent language and format that is clear and concise; 2) revise the conditions to incorporate any timelines and project milestones to reflect adopted policies and to communicate City expectations; 3) evaluate the existing development review process and identify process improvements; and 4) expand inter-departmental communication.

As a part of stakeholder outreach, staff has developed several draft conditions (Attachment II) and is requesting feedback from the Council Economic Development Committee on those conditions that specifically relate to the phasing of commercial space as part of mixed-use projects and the provision of affordable housing for residential projects. Staff also forwarded these draft conditions of approval to members of the development community for input and will continue outreach efforts with project applicants for review and

feedback of all conditions prior to any formal action by the Planning Commission or City Council.

## **DISCUSSION**

Over the last three months, the Planning Division has conducted face-to-face interviews with staff from eight (8) different divisions to evaluate the development review process to standardize conditions of approval. While the initial goal was to meet or exceed the objectives listed above, Development Services staff identified new opportunities for improvement that could expedite and streamline the overall development review process, as well as update the conditions to reflect Council directives related to the construction and timing of commercial space as part of a phased, mixed-use project. Additionally, staff has reviewed the conditions related to the phasing and delivery of affordable housing units when included as part of a residential development.

While the majority of project conditions of approval are “standardized” and reflect adopted policies and regulations to mitigate public nuisances, minimize liability, and reduce environmental impacts, several conditions are overly broad and do not incorporate a timeline or provide a reasonable expectation for compliance. While staff believes there should be a clear nexus established for any standard requirement, the draft conditions offer some flexibility for project phasing.

For mixed-use projects or planned developments that are developed in a single phase or over multiple phases, staff is recommending that benchmarks be established within the conditions of approval to ensure that commercial space and/or community benefits are constructed in a timely manner, commensurate with the construction of the other buildings/uses in the project.

Specifically, for mixed-use developments which are not being phased, staff is recommending that the commercial/retail component of the project be under vertical construction before the issuance of a certificate of occupancy for the first residential unit and shall be completed prior to the issuance of a certificate of occupancy for the last residential unit. This would ensure that the commercial component of the project is completed at the same time the residential construction is completed.

For mixed-use projects that are constructed over multiple phases, staff recommends the conditions establish a minimum threshold to ensure that the at least 50% or more of the commercial space is included as part of the first phase of development with the remainder to be included as a part of, or prior to, the issuance of the building permit for the last phase of the development. While each project has different phasing schedules and delivery timelines, staff has also included some flexibility to consider an alternative phasing plan if approved by the Planning Commission or City Council. Additionally, staff has specified that other public and site improvements that are specifically tied to the commercial/retail use, including parking, lighting, etc. be completed prior to the issuance of the certificate of occupancy for the proposed commercial/retail use. This would ensure that not only is the commercial space provided in a timely manner but the ancillary development regulations that support that use are also provided in a timely manner (parking, lighting, etc.).

Staff is also recommending that Planned Development projects be obligated to a similar benchmark related to providing open space and community benefits. Specifically, staff recommends that each phase of development include a proportionate amount of common open space, facilities, and services so that regardless of whether the project is constructed over one phase or multiple phases, the amount of community benefit provided is consistent and somewhat self-contained in the event of default or failure to complete the total development according to phasing schedule. Staff is also recommending that the applicant provide the approved community benefits during the first phase of construction unless specifically deferred or amended by the City Council. The requirement for community benefits is intended to offset the exception to the development regulations that would normally be required and as such, staff believes the timing of such benefit during the initial stages of construction should be a consideration.

The adoption of the Affordable Housing Ordinance (AHO) and Affordable Housing In-Lieu Fees by the City Council in November 2017 established five options available to developers for compliance with the Ordinance. Specifically, the AHO provides applicants with the option to 1) pay the in-lieu fee; 2) provide affordable units on-site; 3) provide affordable units off-site; 4) provide an alternative plan that may include a combination of an in-lieu fee and providing units; or 5) provide affordable rental units within an ownership project. Since there are five options to comply with the AHO, including paying the affordable housing fee, staff cannot require the inclusion of affordable units as a condition of approval if the applicant chooses to pay the fee. The draft conditions (Attachment II) reflect the options available to developers and depending on the method of compliance selected, would be added to the project as a condition of approval.

To ensure that projects which propose inclusion of the affordable units do not change or modify their proposal, staff recommends memorializing the Affordable Housing Plan (AHP) as a condition of approval. As required by the AHO, projects that will provide affordable housing units are required to submit an AHP as part of the application. For phased residential projects that will include affordable units, the applicant would be required to indicate in the AHP when and where the affordable units would be provided. By including the AHP as an exhibit to the conditions of approval, it could be evaluated, reviewed and approved by the highest approving body (Planning Commission or City Council). Currently, while an AHP is submitted for review with the application, the terms are not memorialized until the applicant signs the Affordable Housing Agreement, which is not required until approval of a final map or issuance of the first building permit, whichever occurs first. If approved projects are sold, the obligation to provide the affordable units could be lost unless they are cited as a condition of approval. Staff believes that memorializing the Affordable Housing Plan in the conditions of approval by the highest approving body, will provide more certainty for the phasing, timing and construction of affordable housing units as proposed in the AHP.

## **STRATEGIC INITIATIVES**

This agenda item supports the Complete Communities Strategic Initiative. The purpose of the Complete Communities Strategic Initiative is to create and support structured services

and amenities to provide inclusive and equitable access for all with the goal of becoming a thriving and promising place to live, work and play. This item supports the following goal and objective:

Goal 1: Improve quality of life for residents, business owners, and community members in all Hayward neighborhoods.

Objective 2: Foster a sense of place and support neighborhood pride.

Objective 4: Create resilient and sustainable neighborhoods

Objective 5: Actively value diversity and promote inclusive activities

Goal 2: Provide a mix of housing stock for all Hayward residents and community members, including the expansion of affordable housing opportunities and resources.

Objective 2: Facilitate the development of diverse housing types that serve the needs of all populations

Objective 4: Increase supply of affordable, safe and resilient housing in Hayward

### **ECONOMIC IMPACT**

There are no identified economic impacts associated with the development of standard conditions of approval.

### **FISCAL IMPACT**

There may be a fiscal impact related to specific projects as a result of these modified conditions of approval but the development of standard conditions of approval will not have a fiscal impact.

### **NEXT STEPS**

If the CEDC supports the proposed conditions of approval related to the phasing of mixed-used development and the provision for affordable housing, staff will finalize the conditions of approval and include with all future mixed-use or residential developments, when applicable.

*Prepared by:* Jeremy Lochirco, Principal Planner

*Recommended by:* Laura Simpson, Development Services Director

*Approved by:*



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Kelly McAdoo, City Manager