

**CITY OF HAYWARD
CITY ATTORNEY'S OFFICE**

MEMORANDUM

DATE: May 15, 2018

TO: Miriam Lens, City Clerk

FROM: Michael Lawson, City Attorney
Joseph Brick, Assistant City Attorney

SUBJECT: Resolution No. 17-167


Please be advised that my office made a few minor corrections to City Council Resolution No. 17-167, adopted by the City Council on November 7, 2017. The corrections are necessary to conform the resolution to the motion as amended during the November 7, 2017 hearing. The Action Minutes of the November 7, 2017 meeting as well as the November 28, 2017 staff report relating to the adoption of Ordinance Amending Chapter 10, Article 17 correctly reflect the amended motion. However, it appears that the amendments were not reflected in Resolution No. 17-167. Specifically, Section 3, Number 4 did not include the correct deemed completion date, inflationary index, or the correct criteria for qualification for a half in-lieu fee. Resolution No. 17-167 has now been corrected to reflect the motion made.

This memorandum should be appended to the corrected Resolution No. 17-167, and corrected Resolution No. 17-167 should replace the current iteration of Resolution No. 17-167.

The corrections described above are administrative in nature and do not require further action by the City Council.

Respectfully submitted,

Michael S. Lawson, City Attorney

By: 
Joseph Brick, Assistant City Attorney

HAYWARD CITY COUNCIL

RESOLUTION NO. 17-167

Introduced by Council Member Mendall

RESOLUTION RESCINDING RESOLUTION 16-189 AND ESTABLISHING AFFORDABLE
HOUSING IN-LIEU FEES

WHEREAS, to assure that future housing development in the City of Hayward (the "City") contributes to the production of residential units in the City that are affordable to very low, low- and moderate-income households and mitigates its impact on the need for affordable housing in the City, the City Council has considered and introduced on this same date an ordinance to amend the Affordable Housing Ordinance (Chapter 10, Article 17 of the City's Municipal Code) (the "Affordable Housing Ordinance"); and

WHEREAS, the Affordable Housing Ordinance authorizes the imposition of Affordable Housing In-Lieu Fees on for-sale and rental residential developments to provide funds equal to the cost of providing affordable housing on-site and to mitigate the impact of market-rate housing development on the need for affordable housing, where applicants elect to pay Affordable Housing In-Lieu Fees rather than provide affordable units on- or off-site; and

WHEREAS, to ensure that the Affordable Housing In-Lieu Fees adopted by this Resolution do not exceed the cost of providing affordable housing on-site or the actual affordable housing impacts attributable to the development projects on which the fee is imposed, the City Council has received and considered a report from Keyser Marston Associates dated October 31, 2017 and entitled "Summary, Context Materials, and Recommendations: City of Hayward Affordable Housing Ordinance Update," which includes, among other information, an affordability gap analysis, a residential nexus analysis, a financial feasibility analysis, and an on-site compliance cost analysis (the "KMA Study"); and

WHEREAS, the KMA Study demonstrates that, to fully mitigate the burdens created by residential development on the need for extremely low, very low, low, median, and moderate-income housing, an affordable housing impact fee of \$28.90 to \$44.90 per square foot of new market rate residential development would be needed, and that the cost of on-site compliance is equivalent to approximately \$18 to \$22 per square foot of new market rate residential development; and

WHEREAS, the City Council now desires to rescind the Affordable Housing Impact Fees previously adopted under Resolution 16-189 and to adopt Affordable Housing In-Lieu Fees for residential developments as authorized by the Affordable Housing Ordinance; and

WHEREAS, the KMA Study found that the Affordable Housing In-Lieu Fees imposed by this Resolution are economically feasible and will not pose a constraint on the construction of housing in the City; and

WHEREAS, notice of the hearing on the proposed fee was published twice in the manner set forth in Government Code Section 6062a as required by Government Code Sections 66004 and 66018; and

WHEREAS, the City Council has reviewed the information contained in this Resolution and the accompanying staff report and attachments thereto at a meeting held on November 7, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HAYWARD THAT:

Section 1. The City Council finds as follows:

A. The foregoing recitals are true and correct and incorporated into this Resolution by this reference.

B. The purpose of the Affordable Housing In-Lieu Fee is to provide funds to the City to develop and construct affordable housing as would otherwise be provided on-site and to mitigate the burdens created by new residential and nonresidential development projects on the need for extremely low, very low, low, and moderate-income housing. An applicant for a residential development project may elect to provide affordable units on-site, to pay the Affordable Housing In-Lieu Fee, to provide affordable units off-site, or to provide affordable housing through other means.

C. In compliance with the Affordable Housing Ordinance, all affordable housing impact fees collected shall be deposited into the City's Affordable Housing Trust Fund to be used solely to increase and preserve the supply of housing affordable to households of extremely low, very low, low, median, and moderate incomes (including reasonable administrative costs).

D. There is a need in the City for housing affordable to households of extremely low, very low, low, and moderate incomes.

E. The KMA Study sets forth cost estimates that are reasonable for constructing affordable housing, and the fees expected to be generated by new development will not exceed these costs.

F. Based on the KMA Study, the proposed Affordable Housing In-Lieu Fees are economically feasible and will not pose a constraint on housing production.

G. Adoption of this Resolution is exempt from the California Environmental Quality Act because the adoption of this Resolution is not a project, in that it is a government funding mechanism which does not involve any commitment to any specific project. (CEQA Guidelines Section 15378(b) (4).)

Section 2. The City Council hereby rescinds and removes the Affordable Housing Impact Fee established by Resolution No. 16-189.

Section 3. The City Council hereby adopts the following Affordable Housing In-Lieu Fees:

1. Residential Development Projects – Ten Units or More

- a. High-Density Condominiums
(35 units per acre or more) \$15.00/Square Foot of Habitable Space*
- b. All Other Dwelling Unit Types \$18.18/Square Foot of Habitable Space*

*Notes:

Affordable housing in-lieu fees shall be paid either prior to issuance of a building permit or prior to approval of a final inspection or issuance of an occupancy permit. Fees paid at occupancy shall be increased by 10 percent to \$16.50/sq. ft. of habitable space for high density condominiums and to \$20/sq. ft. of habitable space for all other dwelling unit types.

"Habitable Space" means floor area within a dwelling unit designed, used, or intended to be used exclusively for living and sleeping purposes and exclusive of vent shafts, eaves, overhangs, atriums, covered entries and courts and any portion of a structure above ground used for parking, parking aisles, loading areas, or accessory uses.

2. Residential Development Projects - Two to Nine Units

Projects of two to nine units shall pay the following percentage of the fee calculated pursuant to Section 1 above:

<u>Number of Units in Project</u>	<u>Percentage of Calculated Fee</u>
2	50%
3	67%
4	75%
5	80%
6	83%
7	86%
8	88%
9	89%

3. Fractional Units. If an applicant provides on-site Affordable Units under Chapter 10, Article 17 of the Hayward Municipal Code and elects to pay Affordable Housing In-Lieu Fees for a fractional unit, the fractional in-lieu fee payment shall be calculated as follows:

Fractional Unit/Total Affordable Unit Requirement x Per Square Foot Fee x Total Habitable Square Footage in the Project

Example: 42-unit townhouse project totaling 85,000 habitable sq. ft. has on-site requirement of 10%, or 4.2 units. Developer elects to provide 4 affordable units and pay an in-lieu fee for the fractional unit. The payment is calculated as follows:

0.2/4.2 x \$18.18 x 85,000 sq. ft. = \$73,586

4. Applications for Residential Development Projects of Two or More Units Deemed Complete as of December 20, 2017

- a. Projects receiving all discretionary approvals by February 1, 2018: Affordable Housing Impact Fees in effect on December 20, 2017.
- b. Projects not receiving all discretionary approvals by February 1, 2018, provided that all discretionary approvals and building permit(s) are obtained within two (2) years of December 20, 2017: 50% of the Affordable Housing In-Lieu Fee calculated under either Section 1 or Section 2 above, as applicable depending on the size of the project.

Section 4. The City Council may review and amend the Affordable Housing In-Lieu Fee from time to time. Beginning January 1, 2019, for any annual period during which the City Council does not review the affordable housing impact fee, fee amounts shall be adjusted once by the City Manager or designee based on the percentage change in the Engineering New Record(ENR) Construction Cost Index applicable to the San Francisco Area.

Section 5. An Affordable Housing In-Lieu Fee as shown in Section 3 shall be paid by all developments subject to the fee.

Section 6. This Resolution shall go into full force and effect on February 1, 2018.

Section 7. Any judicial action or proceeding to attack, review, set aside, void or annul this Resolution shall be brought within the 90-day time period as established by Code of Civil Procedure Section 1094.6.

IN COUNCIL, HAYWARD, CALIFORNIA November 7, 2017

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS: Zermeno, Márquez, Mendall, Peixoto, Lamnin, Salinas

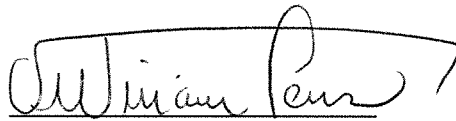
MAYOR: Halliday

NOES: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

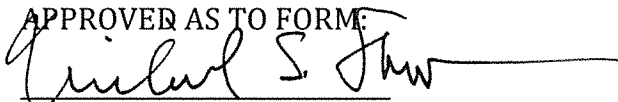
ABSENT: COUNCIL MEMBERS: None

ATTEST:



City Clerk of the City of Hayward

APPROVED AS TO FORM:



City Attorney of the City of Hayward