



DATE: Oct. 5, 2017

TO: Hayward Acting Housing Manager Omar Cortez (*via email to Yolanda Cruz at [yolanda.cruz@hayward-ca.gov](mailto:yolanda.cruz@hayward-ca.gov)*)

FROM: BIA|Bay Area East Bay Executive Director for Governmental Affairs Lisa Vorderbrueggen

RE: Comments and Input on Hayward Affordable Housing Ordinance Update

Dear Mr. Cortez,

BIA|Bay Area is a membership organization that consists of more than 400 residential developers and associated companies that entitle and construct homes for people of all income levels. A BIA representative and a number of its members attended the Hayward Housing Department stakeholders' meeting on Sept. 21, 2017, to hear about proposed changes to the city's affordable housing ordinance. We came away from the session with a number of concerns detailed below.

We are most troubled about the surprise proposed elimination of the by right fee option for the provision of affordable housing units. Not only is the by right fee option featured in Hayward's state-certified Housing Element, local revenue is more important than ever as local jurisdictions will need those dollars to compete for limited new state and county affordable housing funds. The state has a number of housing-related programs available for local affordable housing that will receive significant funding increases starting in 2018. In addition, Alameda County voters two years ago passed a \$580 million affordable housing measure. Most of these programs require a local match and with the elimination of redevelopment, Hayward will need a local revenue source to leverage these new dollars.

Local funds are also especially critical when it comes to assembling cash to build homes for the very poor. The city's own consultant noted at the stakeholder meeting that fees "are the only way you get extremely low income housing." It appears to be working. Hayward outperformed most other Alameda County cities in 2007-2014, providing 246 very low income units or 32 percent of its very-low RHNA need, the second highest number of units after Oakland among cities in Alameda County. Similarly, fees are the only viable option to fund transitional shelters for the homeless.

Rather than eliminate a policy that works, BIA encourages Hayward to expand the discussion and look to increase production of all types of housing units. "The single most important factor for an inclusionary zoning policy to achieve its goals is a significant and sustained level of market-rate development in the local market," wrote an expert in an article in the Urban Land Institute magazine in July 2016. A California Legislative Analyst wrote in March 2015, "Inclusionary housing programs rely on private housing development to fund construction of affordable housing. Because of this, barriers that constrain private housing development also limit the amount of affordable housing produced by inclusionary housing programs."

While retaining the by right fee provision, Hayward can encourage the construction of affordable units as part of new housing projects by increasing the certainty involved with the city's existing "Combination of Alternatives" compliance option and tie it to an updated density bonus ordinance. In order to facilitate new

partnerships between private developers and nonprofits to build housing for low income residents, the alternative compliance option should contain clear criteria for mandatory approval as well as expedited processing. The density bonus program should provide a sufficient number of meaningful concessions and incentives to serve as financial incentives for developers to partner with a nonprofit to build the affordable units onsite or provide the units themselves. As an added resource, one of the statewide housing bills adopted this year – Building Homes and Jobs Act by state Sen. Toni Atkins, D-San Diego – earmarks planning money in its first year to cities that Hayward could use to update its density bonus ordinance.

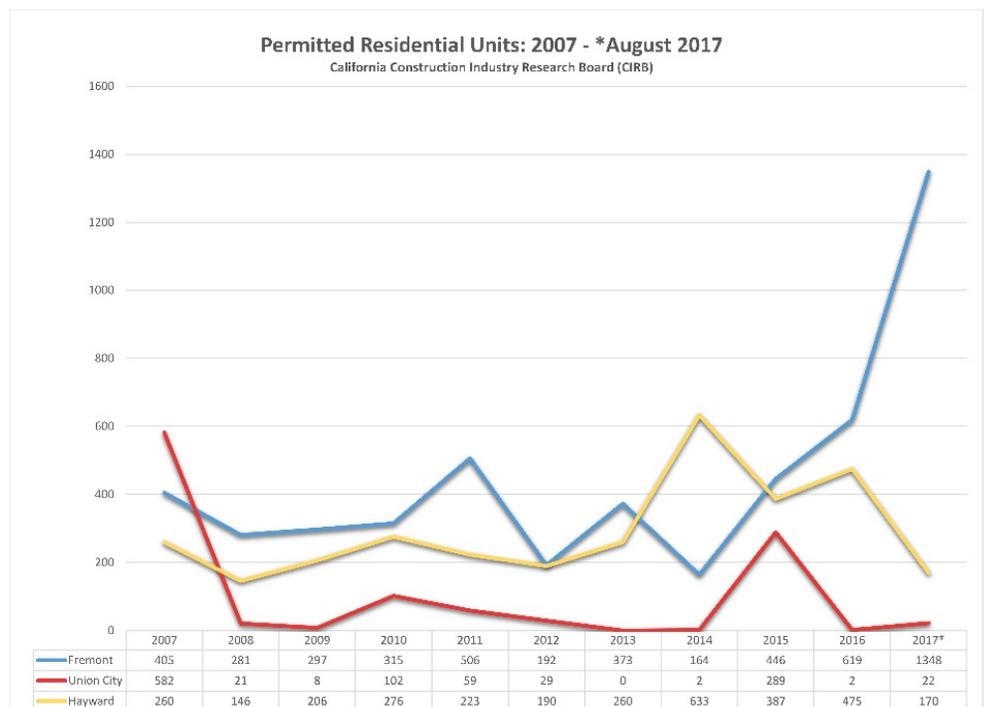
Among our other areas of concern:

**OUTREACH APPEARS PERFUNCTORY.** The slideshow presented at the stakeholders’ meeting strongly indicated that policy decisions had already been made, particularly on the key issue of the elimination of the by right fee option. For example, the consultants’ recommendations assume based on adoption of the very policy that is supposed to be under consideration. By definition, a stakeholders’ process is held to take input before decisions are made.

**THE CITY PROVIDED AN INSUFFICIENT TIME TO REVIEW THE NEXUS STUDY AND PROPOSED POLICIES.** No draft materials or draft policy recommendations were provided prior to the Sept. 21, 2017, stakeholder meeting. You provided BIA via email on Sept. 26, 2017, a copy of the consultants’ slide presentation and the nexus study. The deadline to submit comments to the city was a little more than a week later on Oct. 5, 2017. This is an insufficient amount of time to review a complex 66-page financial analysis.

**NEXUS STUDY DATA DOES NOT APPEAR TO HAVE BEEN GROUND-TRUTHED.** None of the market rate developers that attended the stakeholder meeting was consulted about the cost or other data used in the nexus study update or about the fundamental policy question on the fee option.

**WE ACKNOWLEDGE THAT THE CURRENT IN LIEU FEE CAN BE INCREASED.** But we question the consultants’ recommendation to immediately set the fees at rates comparable to Fremont and Union City. The markets in each of these communities is very different than Hayward. As you can see from the table on the right, Fremont is dramatically out-producing Hayward this year and Union City lags. In addition, Hayward’s housing production rate appears to be slowing compared with prior years. A steep and punitive fee increase will cost the city much needed new housing at all income levels.



Any fee hike should be phased in over a period of several years in order to allow developers to factor the added costs into their financing plans. In addition, projects currently in the development pipeline should be grandfathered under the current fee structure.

In summary, BIA|Bay Area and its members strongly oppose the elimination of the by right fee option and what the consultant described as the “disincentivizing” of the use of the fee option by hiking Hayward’s rates beyond what other jurisdictions charge. Rather than narrow the choices available to homebuilders and reduce the potential numbers of new homes in the city, we encourage Hayward to broaden its policy discussion and pursue options that will increase production of all housing types. This includes new partnerships between market-rate and nonprofit housing developers through density bonus incentives.

Sincerely,



Lisa A. Vorderbrueggen  
*BIA|Bay Area East Bay Executive Director for Government Affairs*  
1350 Treat Blvd., Ste. 140, Walnut Creek, CA 94597  
925-348-1956 (cell)  
[lvorderbrueggen@biabayarea.org](mailto:lvorderbrueggen@biabayarea.org)

CC:  
The Honorable Mayor Barbara Halliday  
Hayward Councilmembers Sara Lamnin, Francisco Zermeño, Marvin Peixoto, Al Mendall, Elisa Márquez and Mark Salinas  
Hayward City Manager Kelly McAdoo