



Contra
Costa
County

To: Board of Supervisors

From: John Kopchik, Director, Conservation & Development Department

Date: December 18, 2018

Subject: Amendments to Land Development Fee Schedule

RECOMMENDATION(S):

1. OPEN the public hearing, ACCEPT any written or oral public testimony, and CLOSE the public hearing;

2. DETERMINE for purposes of compliance with the California Environmental Quality Act (CEQA), that the adoption of Resolution No. 2018/615 is (1) not a project under CEQA pursuant to CEQA Guidelines Section 15378(b)(4) because it constitutes a governmental fiscal activity that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment; (2) statutorily exempt pursuant to CEQA Guidelines Section 15273(a)(1) (fees established by public agencies to meet operating expenses) and Section 15267 (financial assistance to low or moderate income housing); (3) not intended to apply to specifically identified affordable housing projects and as such it is speculative to evaluate any such future project now and any such future project will be subject to appropriate environmental review at such time as approvals for those affordable housing projects are considered; and/or (4) not intended to, nor does it provide, a determination under CEQA for future development-related projects by mere establishment of fees;

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY

☐ RECOMMENDATION OF BOARD

ADMINISTRATOR

COMMITTEE

Action of Board On: **12/18/2018** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor

Candace Andersen, District II
Supervisor

Diane Burgis, District III Supervisor

Karen Mitchoff, District IV
Supervisor

Federal D. Glover, District V
Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: December 18, 2018

David Twa, County Administrator and Clerk of the Board of Supervisors

By: Jami Napier, Deputy

Contact: Kristen Lackey (925)
674-7888

3. ADOPT Resolution No. 2018/615, which amends the Land Development Fee Schedule to adopt inclusionary housing in-lieu fees and adopt fees for the review processing of commercial cannabis permit proposals; and

RECOMMENDATION(S): (CONT'D)

4. DIRECT staff to file a CEQA Notice of Exemption with the County Clerk.

FISCAL IMPACT:

There is no impact to the General Fund. The revenue derived from the Inclusionary Housing Ordinance in-lieu fees are restricted to supporting the development of affordable housing in the unincorporated area. Revenue derived from the Cannabis Ordinance Processing Fee will cover staff costs for reviewing proposals for commercial cannabis permits.

BACKGROUND:

Inclusionary Housing Ordinance In-Lieu Fee

On October 8, 2018, the Board of Supervisors Internal Operations Committee discussed inclusionary housing in-lieu fees. These fees are authorized by the County's Inclusionary Housing Ordinance. A developer may pay these fees in lieu of providing affordable units in a new residential development. The Committee supported the reinstatement of the in-lieu fee for rental housing and directed staff to bring the item to the Board of Supervisors for further discussion.

On October 23, 2018, the Department of Conservation and Development staff presented a report to the Board of Supervisors regarding the reinstatement of the Ordinance's in-lieu fees as an amendment to the Land Development Fee Schedule. The Board directed staff to prepare for the Board's consideration a fee schedule amendment to reinstate the fees consistent with the formulas in Section 822.4404(b) of the Ordinance. Staff proposes that the revised inclusionary housing fees be made effective February 1, 2019, to provide current applicants notice of the changed fees. Below are the fee calculations:

S-IH1 FOR SALE HOUSING IN-LIEU FEE - \$6,600.06 per market rate unit. Fee equals 12% of total number of units in the development times \$0 plus 3% of total number of units in the development times \$220,002; i.e. $((0.12 \times \text{total units}) \times 0) + ((0.03 \times \text{total units}) \times 220,002)$.

S-IH2 RENTAL HOUSING IN-LIEU FEE - \$24,200.55 per market rate unit. Fee equals 12% of total number of units in the development times \$130,350 plus 3% of total number of units in the development times \$285,285; i.e., $[((0.12 \times \text{total units}) \times (\$2,376)) + ((0.03 \times \text{total units}) \times \$5,184)] \times (55 \text{ years})$.

The County's Inclusionary Housing Ordinance requires new residential developments to include a minimum number of dwelling units that are affordable to very low, lower, and moderate income households. For residential developments of five or more dwelling units, 15 percent of the dwelling units must be made affordable to households of certain levels of income: for rental residential developments, 12 percent of the units must be

affordable to lower income households and 3 percent to very-low income households; for for-sale residential developments, 12 percent of the units must be affordable to moderate income households and 3 percent to lower income households).

The Ordinance includes five alternatives for compliance with this requirement:

1. Provide the units on-site within the development (required if the development includes more than 125 dwelling units);
2. Provide the affordable units off-site;
3. Convey land to another developer for the construction of affordable housing;
4. Pay an in-lieu fee; or
5. Implement another alternative that is mutually agreed on by the County and developer.

In 2009, the California Supreme Court in *Palmer/Sixth Street Properties, L.P. v City of Los Angeles* invalidated the in-lieu fee for rental developments imposed by the City of Los Angeles through its inclusionary housing ordinance. In response to the *Palmer* decision, Contra Costa County (and numerous other jurisdictions) changed its inclusionary housing in-lieu fee for new rental developments to \$0.

In 2017, the legislature responded to the *Palmer* decision by enacting AB 1505, which authorizes cities and counties to impose an in-lieu fee as an alternative to compliance with on-site affordable housing requirements for rental developments. AB1505 went into effect January 1, 2018.

The in-lieu fees for Contra Costa County are calculated using the formulas in the Ordinance (shown above), and are based on the difference between the average rent price, or sales price, and what households in the target income group can afford to pay for housing. (See Attachments A for Cost Analysis).

The in-lieu fee for rental units is significantly higher than the fee for for-sale units primarily because the affordability targets for rental developments (12% lower income, 3% very low income) are much lower than those for for-sale units (12% moderate income, 3% lower income).

A brief survey of other local jurisdictions revealed a wide range of approaches and amounts of in-lieu fees. Most jurisdictions set a flat amount per unit though some calculate in-lieu fees based on square footage of development. Some jurisdictions have tiered in-lieu fees based on unit size or location within the jurisdiction. For example, Walnut Creek has established in-lieu fees for both rental and for-sale developments at \$18 per square foot of development. Oakland has established three different zones and in-lieu fees range from \$1,000 per unit to \$22,000 per rental unit and \$23,000 per for-sale unit depending on the zone in which the development is located. Berkeley and Emeryville established in-lieu fees of \$34,000 or \$37,962 per unit depending on whether the in-lieu fee is paid when the final map is filed or when the certificate of occupancy is issued. Pleasanton recently raised its in-lieu fees to over \$43,000 per unit for rental and ownership developments. Concord's current in-lieu fees are \$0 for rental developments

and \$5,053 per unit for for-sale development.

DCD's planning division currently has eleven applications for for-sale developments: six have not submitted a compliance plan, two are including the units on-site, and three are paying the in-lieu fee. There are six applications for rental developments: four have more than 125 units, and all required affordable units are included within the developments. The other developments are for 13 and 16 units and have not submitted compliance plans yet. DCD staff notified all developers who have submitted applications that are subject to the Ordinance that the in-lieu fees will increase in February 2019 so that they have ample notice to secure current fees prior to the fee increase.

Cannabis Ordinance Request for Proposals Processing Fees

In accordance with the County Cannabis Ordinance (Chapter 88-28 of the County Ordinance Code), the Board has approved a preliminary selection process for specific commercial cannabis land use permit applications. The process includes prospective applicants responding to a Request for Proposal by submitting a Letter of Intent followed by a Proposal. Both the Letter of Intent and the Proposal will be reviewed by the Department of Conservation and Development, and the Proposal will be evaluated and scored. The Department will then provide the scoring results to the Board for final selection of potential applications.

The proposed new fees are necessary to cover the staff cost for review of the Letters of Intent and for review and scoring of the Proposals. The Department proposes to add the following fees to the Land Development Fee Schedule:

S-060N Cannabis Letter of Intent Review \$500 Fee

S-060P Cannabis Proposal Review \$2,500 Fee

The proposed fees are calculated based on estimated staff review time of 3 hours for the Letters of Intent and 13 hours for review and scoring of the Proposals and the fully-burdened hourly rate of Department staff that will process the Letters of Intent and Proposals. (See Attachments A for Cost Analysis). The proposed fees will be effective immediately upon the Board's adoption of Resolution No. 2018/615.

CONSEQUENCE OF NEGATIVE ACTION:

The Land Development Fee Schedule would not include fees applicable to certain residential developments in order to meet their obligation under the Inclusionary Housing Ordinance, or fees to recover staff costs associated with review of commercial cannabis permit proposals.

CLERK'S ADDENDUM

Speaker: Ashley Bargaquast Closed the public hearing, adopted Resolution No. 2018/615 which amends the Land Development Fee Schedule to adopt inclusionary housing in-lieu fees and adopt fees for the review processing of commercial cannabis permit proposals.

ATTACHMENTS

Resolution No. 2018/615

Exhibit A to Resolution No. 2018/615: Land Development Fee Schedule Final 12.18.18

Attachment A to the Board Order: Cost Analysis Plan