



## **City of Palo Alto City Council Staff Report**

**(ID # 7972)**

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**Report Type: Consent Calendar**

**Meeting Date: 4/17/2017**

**Summary Title: SECOND READING: Housing Impact Fee Ordinance**

**Title: SECOND READING: Adoption of an Ordinance the Council of the City of Palo Alto to Update the City's Below Market Rate (BMR) Housing Program as Recommended by the Finance Committee: (1) Repealing Municipal Code Section 16.47 (Non-residential Projects) and 18.14 (Residential Projects) (FIRST READING: March 27, 2017 PASSED: 5-4 DuBois Filseth, Holman and Kou no); and an Ordinance of the Council of the City of Palo Alto Adding a new Section 16.65 (Citywide Affordable Housing In-lieu Fees for Residential, Nonresidential, and Mixed Use Developments). The Proposed Ordinances are Exempt From the California Environmental Quality Act (CEQA) per Sections 15378(b)(4), 15305 and 15601(b)(3) of the State CEQA Guidelines (FIRST READING: March 27, 2017 PASSED: 5-4 DuBois, Filseth, Holman and Kou no)**

**From: City Manager**

**Lead Department: Planning and Community Environment**

### **Recommendation**

Staff recommends that Council conduct a second reading and adopt the attached ordinances to amend the City's Below Market Housing Program and update the housing impact and in-lieu fees. (Attachments A and B).

### **Background**

On March 27, 2017 the City Council reviewed and adopted (on first reading) two draft ordinances updating the City's Below Market Rate (BMR) Housing Program, (Attachment A) and establishing housing impact fees and housing in-lieu fees for residential, nonresidential and mixed use developments (Attachment B).

The staff report from March 27<sup>th</sup> is available at:

<http://www.cityofpaloalto.org/civicax/filebank/documents/56493>.

The ordinance updating the City's BMR program (Attachment A) has been modified with the following addition:

Section 16.65.080(B)(3), "Notwithstanding Section 16.65.080 (A) (5), the City Council may accept fees in lieu of the alternatives in Paragraph 1 provided it makes a finding that special circumstances justify payment of fees over provision of ownership units, such as a finding that the fees generated would result in more affordable units than those required to be provided on site or that funds are needed to finance a pending affordable housing project."

The ordinance establishing housing impact fees and housing in-lieu fees (Attachment B) has been modified to incorporate the Council's amendment, which changed the Impact Fee proposed per Square Foot of Net New Residential Floor Area for Single-family Detached product types from \$50 to \$75 in the table on p. 5. In addition, the fees for Nonresidential use were changed from \$30 to \$20.37 per square foot for Hotels and from \$60 to \$35 per square foot for Office, Medical and Research and Development in the table on p. 6.

If approved, the attached ordinances would become effective in 60 days.

**Attachments:**

**Attachment A: Ordinance Updating BMR Program (DOCX)**

**Attachment B: Ordinance Establishing Affordable Housing Impact Fees and In-Lieu Fees (DOCX)**

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Ordinance No. \_\_\_\_\_

Ordinance of the City of Palo Alto Repealing Chapter 16.47 (Approval of Projects with Impacts on Housing) and Chapter 18.14 (Below Market Rate Housing Program) of the Palo Alto Municipal Code and Replacing Them with a New Chapter 16.65 (Citywide Affordable Housing Requirements)

The City Council of the City of Palo Alto hereby finds and declares as follows:

A. Under California Government Code Section 65580(d) all cities have a responsibility to use the powers vested in them to facilitate the improvement and development of housing and to make adequate provision for the housing needs of all economic segments of the community.

B. The provision of safe and stable housing for households at all income levels is essential for the public welfare of the city. Housing in Palo Alto has become steadily more expensive and housing costs have gone up faster than incomes. Federal and state government programs do not provide enough affordable housing to satisfy the needs of very low, low, or moderate income households. As a result, there is a severe shortage of adequate, affordable housing for extremely low, very low and moderate income households, as evidenced by the following findings in the City's 2015-2023 Housing Element:

1. Despite a high median income in Palo Alto, nearly 30 percent of all households overpaid for their housing (more than 30 percent of their income) in 2010;

2. It is estimated that 63 percent of extremely low income renter households and 75 percent of extremely low income owner households overpaid for housing in 2010. Of the estimated 1,520 low income households, 75 percent of renter households and 44 percent of homeowner households paid more than 30 percent of their income for housing.

3. Extremely low, very low and low income households in Palo Alto have almost no affordable housing options without substantial subsidies. For moderate income households, adequately sized and affordable rental housing options are very limited as well.

4. Homeownership is largely beyond the reach of most lower and moderate income households in Palo Alto and low and very low income households have difficulty finding rental properties in Palo Alto.

C. As stated in the City of Palo Alto's Housing Element, it is the City's policy to encourage, foster, and preserve diverse housing opportunities for very low, low, and moderate income households. The City can achieve its goals of providing more affordable housing and achieving an economically balanced community only if part of the new housing built in the City is affordable to households with limited incomes.

D. In order to meet the needs of moderate households, dwelling units will need to house a variety of household types, incomes, and age groups.

E. The affordable housing ordinance codified in this chapter will substantially advance the City's legitimate interest in providing additional housing affordable to all income levels and dispersed

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throughout the City by requiring construction of below-market rate housing and providing funds for housing affordable to very low, low, and moderate income households.

F. New market-rate housing creates a demand for affordable housing, because new residents of that housing purchase goods and utilize services in the community, increasing local employment and attracting employees, of whom a quantifiable number will have very low, low, or moderate incomes and cannot afford market-rate housing, as demonstrated in the Residential Impact Fee Nexus Study dated October 2015, prepared by Strategic Economics and Vernazza Wolfe Associates, Inc.

G. Because nonresidential projects also attracts employees, of whom a quantifiable number will have very low, low, or moderate incomes, new nonresidential projects similarly increase the demand for and exacerbate the shortage of housing available for people at these income levels, as demonstrated in the Commercial Linkage Fee Nexus Study dated November 2015, prepared by Strategic Economics and Vernazza Wolfe Associates, Inc.

H. Construction of market-rate housing and nonresidential projects that do not include affordable units also aggravates the existing shortage of affordable housing by absorbing the supply of available land.

I. Based on the findings above, the City desires to further the public health, safety and welfare by requiring residential and nonresidential projects in the City to mitigate their impact on the need for affordable housing in the City.

J. This ordinance implements Housing Element Program H3.1.2. In particular, this ordinance:

1. Implements the inclusionary requirements, standards, and price limits contained in Programs H3.1.2(a) and (b);

2. Contains standards for determining the feasibility of on-site BMR units, contains BMR program priorities, and provides standards for alternatives, fractional units, and payment of in-lieu fees as contained in Programs H3.1.2(c), (d), and (e), and after consideration of the possible policy contained in Program H3.1.2(h);

3. Contains provisions for reviewing developer requests that the requirements in the ordinance constitute a taking, consistent with Program H3.1.2(f);

4. Permits smaller or duplex BMR units in new single family residential subdivisions after consideration of the possible policy contained in Program H3.1.2(g);

5. Evaluated and determined not to adopt the policy contained in Program H3.1.2(i); and

6. Completed a nexus study to identify the impact of market rate housing on the need for affordable housing, and developed policies for rental housing based on the results of the study, consistent with Program H3.1.2(j). The nexus study also ensured that commercial developments contribute to affordable housing through the payment of fees (Program H3.1.6).

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Based on the above, the City Council further finds that this ordinance is consistent with the Housing Element and that any minor modifications in specific procedures are intended to better implement the Housing Element's purpose to "encourage, foster, and preserve diverse housing opportunities for very low, low, and moderate income households."

NOW, THEREFORE, the City Council of the City of Palo Alto, California, hereby ordains as follows:

**SECTION 1:** Chapter 16.47 (Approval of Projects with Impacts on Housing) of the Palo Alto Municipal Code is hereby repealed.

**SECTION 2:** Chapter 18.14 (Below Market Rate Housing Program) of the Palo Alto Municipal Code is hereby repealed.

**SECTION 3:** New Chapter 16.65 (Citywide Affordable Housing Requirements) is hereby added to the Palo Alto Municipal Code to read in full as follows:

### **Chapter 16.65**

#### **CITYWIDE AFFORDABLE HOUSING REQUIREMENTS**

##### **Sections:**

- 16.65.010      Purpose**
- 16.65.020      Definitions**
- 16.65.025      Exemptions**
- 16.65.030      Basic Affordable Housing Requirements – Residential Ownership Projects**
- 16.65.040      Basic Affordable Housing Requirements – Mixed-Use, Nonresidential and Residential Rental Projects**
- 16.65.060      Housing Impact Fee and In-Lieu Fee**
- 16.65.070      Requirements for Residential Projects Containing Ownership and Rental Units and for Mixed Use Projects**
- 16.65.075      Provision of Affordable Units**
- 16.65.080      Alternative Means of Compliance**
- 16.65.090      Application and Review Procedures**
- 16.65.100      Affordable Housing Funds**
- 16.65.110      Administrative Relief**
- 16.65.120      Enforcement**

**16.65.010      Purpose.** The purposes of this chapter are to:

- A. Enhance the public welfare by establishing policies to provide affordable housing, meet the City's regional share of housing needs, and implement the goals and objectives of the comprehensive plan and housing element.
- B. Mitigate the impacts of residential rental and nonresidential projects on the need for affordable housing by imposing a housing impact fee whereby developers of residential rental and nonresidential projects will contribute to the supply of housing for households with very low, low, and moderate incomes.
- C. Increase funds available to support the preservation and production of new affordable housing in the City of Palo Alto.
- D. Ensure that developers of new nonresidential square footage provide funding to mitigate the impacts of new employment on the demand for affordable housing.
- E. Ensure that developers of new market-rate rental housing provide funding to mitigate the impacts of new residents on local employment and the resultant increased demand for affordable housing.
- F. To create incentives for developers to build new affordable units on- or off-site instead of paying impact fees or in lieu fees.
- G. To provide affordable housing that serves qualifying Palo Alto residents and those who work in the City.

**16.65.020      Definitions.** The definitions set forth in this section shall govern the application and interpretation of this chapter. Words and phrases not defined in this section shall be interpreted so as to give this chapter its most reasonable application.

- A. "Affordable housing agreement" means an agreement in conformance with Section 16.65.090(B) between the City and an applicant, governing how the applicant shall comply with this chapter.
- B. "Affordable housing guidelines" means the requirements for implementation and administration of this chapter adopted by the planning and community environment director in accordance with Section 16.65.090(D).
- C. "Affordable housing plan" means a plan containing all of the information specified in and submitted in conformance with Section 16.65.090(A) specifying the manner in which affordable units will be provided in conformance with this chapter and the affordable housing guidelines.
- D. "Affordable rent" means the total monthly housing expenses for a rental affordable unit not exceeding the rents specified by Section 50053 of the California Health and Safety Code and California Code of Regulations Title 25, Sections 6910-6924. As used in this Chapter, "affordable rent" shall include the total of monthly payments by the tenant for

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all of the following: (1) use and occupancy of the affordable unit and land and all facilities associated with the affordable unit, including but not limited to parking, bicycle storage, storage lockers, and use of all common areas; (2) any additional separately charged fees or service charges assessed by the owner, other than security deposits; (3) an allowance for utilities paid by the tenant as established by the City, including garbage collection, sewer, water, electricity, gas, and other heating, cooking, and refrigeration fuel, but not telephone service or cable TV; and (4) any other interest, taxes, fees or charges for use of the land or affordable unit or associated facilities and assessed by a public or private entity other than the owner, and paid by the tenant.

- E. "Affordable sales price" means the maximum purchase price that will be affordable to the specified household at the specified income level, calculated in accordance with California Health and Safety Code Section 50052.5. The affordable sales price shall include a reasonable down payment, and monthly housing payments (including interest, principal, mortgage insurance, property taxes, homeowners insurance, homeowners association dues, property maintenance and repairs, and a reasonable allowance for utilities), all as determined by the City.
- F. "Affordable unit" means a dwelling unit affordable to very low, low, or moderate income households.
- G. "Applicant" or "developer" means a person, persons, or entity that applies for a residential or nonresidential project and also includes the owner or owners of the property if the applicant does not own the property on which development is proposed.
- H. "Area median income" or "AMI" means the annual median income for Santa Clara County, adjusted for household size, as published periodically in the California Code of Regulations, Title 25, Section 6932, or its successor provision, or as established by the City of Palo Alto in the event that such median income figures are no longer published periodically in the California Code of Regulations.
- I. "Building permit" includes full structural building permits as well as partial permits such as foundation-only permits.
- J. "Common ownership or control" refers to property owned or controlled by the same person, persons, or entity, or by separate entities in which any shareholder, partner, member, or family member of an investor of the entity owns ten percent (10%) or more of the interest in the property.
- K. "Commercial housing fund" means a fund or account designated by the City to maintain and account for all monies received from nonresidential project applicants pursuant to this chapter.
- L. "Decision-making body" means the City staff person or body authorized to approve or deny an application for a planning or building permit for a residential, mixed use or nonresidential project.

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- M. "Density bonus units" means dwelling units approved in a residential project pursuant to California Government Code Section 65915 that are in excess of the maximum allowable residential density otherwise permitted by the City of Palo Alto.
- N. "First approval" means the first of the following approvals to occur with respect to a residential project: planning permit or building permit.
- O. "Housing impact fee" or "housing fee" means the fee paid by developers of residential and nonresidential projects to mitigate the impacts that such developments have on the demand for affordable housing in the City.
- P. "Low income households" are those households whose income does not exceed the low income limits applicable to Santa Clara County as defined in California Health and Safety Code Section 50079.5 and published annually pursuant to Title 25 of the California Code of Regulations, Section 6932 (or its successor provision) by the California Department of Housing and Community Development, generally households with incomes between fifty percent (50%) and eighty percent (80%) of area median income.
- Q. "Market rate unit" means a new dwelling unit in a residential project that is not an affordable unit.
- R. "Mixed use project" means an application for a planning permit or building permit that includes the creation of one or more new dwelling units and the construction of net new gross square footage of non-residential space or the conversion of a residential use to a nonresidential use.
- S. "Moderate income households" are those households whose income does not exceed the moderate income limits applicable to Santa Clara County as defined in California Health and Safety Code Section 50093 and published annually pursuant to Title 25 of the California Code of Regulations, Section 6932 (or its successor provision) by the California Department of Housing and Community Development, generally households with incomes between eighty percent (80%) and one hundred twenty percent (120%) of area median income.
- T. "Nonresidential project" means an application for a planning permit or building permit that includes the new construction of net new gross square feet of nonresidential space, the conversion of a residential use to a nonresidential use, or the conversion of exempt space (as provided in Section 16.65.025) to non-exempt space.
- U. "Planning permit" means any discretionary approval of a residential project, including but not limited to a comprehensive or specific plan adoption or amendment, rezoning, tentative map, parcel map, conditional use permit, variances, or architectural review.
- V. "Residential housing fund" means a fund or account designated by the City to maintain and account for all monies received from residential project applicants pursuant to this chapter.

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- W. "Residential ownership project" means any residential project that includes the creation of one or more new dwelling units that may lawfully be sold individually. A residential ownership project also includes the conversion of a residential rental project to a residential ownership project.
- X. "Residential project" means any development for which a planning permit or building permit is required that includes the creation of one or more new dwelling units, conversion of nonresidential uses to dwelling units, or the conversion of a use from a residential rental project to a residential ownership project.
- Y. "Residential rental project" means any residential project on property under common ownership and control that creates one or more net new dwelling units that cannot be lawfully sold individually.
- Z. "Very low income households" are those households whose income does not exceed the very low income limits applicable to Santa Clara County as defined in California Health and Safety Code Section 50105 and published annually pursuant to Title 25 of the California Code of Regulations, Section 6932 (or its successor provision) by the California Department of Housing and Community Development, generally households with incomes less than fifty percent (50%) of area median income.

**16.65.025.** Exemptions. The following development projects are exempt from the provisions of this chapter:

- A. Residential projects consisting of the construction of one or two units, unless included in a mixed use project.
- B. Accessory dwelling units.
- C. Junior accessory dwelling units.
- D. Places of worship;
- E. Colleges and universities
- F. Commercial recreation;
- G. Hospitals and convalescent facilities;
- H. Private clubs, lodges, and fraternal organizations;
- I. Private education facilities;
- J. Public Facilities;
- K. Retail service, eating and drinking service, personal service, or automotive service when the total additional service related square footage is 1,500 square feet or less. This exemption shall apply only when the additional square footage of new development does not exceed 1,500 square feet.

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New development that is larger than 1,500 square feet shall pay a fee or otherwise comply with this Chapter for all square footage, including the first 1,500 square feet;

L. New gross square footage used for (1) an on-site cafeteria, recreational facility, or day care facility provided for employees or their children and not open to the public; or (2) a hazardous materials storage facility;

M. Projects that have established a vested right not to be subject to this chapter; and

N. Any nonresidential project otherwise determined to be exempt pursuant to City Council resolution.

If a development project is exempt from this Chapter at initial construction, but later converts to a use subject to this Chapter, the converted square footage will be deemed net new square footage or dwelling units, as applicable, subject to the requirements of this Chapter.

**16.65.030      Basic Affordable Housing Requirement – Residential Ownership Projects.** The provisions of this section shall apply to all residential ownership projects, including the residential ownership portion of any mixed use project containing three or more units, except for any residential ownership project exempt under Section 16.65.025.

A. Unless an alternative is approved as described in Section 16.65.080, residential ownership projects shall provide the following:

- a. For projects on sites of less than five acres, fifteen percent (15%) of the dwelling units in the project shall be made available at affordable sales price to very low, low, and moderate income households;
- b. For projects on sites of five acres or more, twenty percent (20%) of the dwelling units in the project shall be made available at affordable sales price to very low, low, and moderate income households; and
- c. For projects that convert existing rental housing to condominiums, other residential ownership or nonresidential space or that remove existing rental housing, twenty-five percent (25%) of the dwelling units in the project shall be made available at affordable sales price to very low, low, and moderate income households.
- d. Calculations of the number of affordable units required by this Section shall be based on the number of dwelling units in the residential project, excluding any density bonus units. Projects shall not receive a credit for any existing dwelling units demolished as part of the project.

B. The affordable units shall be made available at the following affordable sales prices:

1. For projects subject to subsections 16.65.030(A)(1) and (2), at least two-thirds of the required affordable units must be made available at affordable sales price to households earning eighty percent (80%) to one-hundred percent (100%) of the area median income, and one-third may be made available at affordable

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sales prices to households earning between one-hundred percent (100%) and one-hundred twenty percent (120%) of the area median income.

2. For projects subject to subsection 16.65.030(A)(3), at least four-fifths of the required affordable units must be made available at affordable sales price to households earning eighty percent (80%) to one-hundred percent (100%) of the area median income, and one-fifth may be made available at affordable sales prices to households earning between one-hundred percent (100%) and one-hundred twenty percent (120%) of the area median income.
- C. When the affordable housing requirements described in this Section result in a fractional unit, an in-lieu payment as specified in Section 16.65.060 may be made for the fractional unit instead of providing an affordable unit, except that, if the project contains thirty (30) or more units, an additional affordable unit shall be provided for each fractional unit of 0.50 or more. The in-lieu fee for a fractional unit shall be calculated as described in the city's affordable housing guidelines.

### **16.65.040 Basic Requirement – Mixed Use, Nonresidential and Residential Rental Projects.**

Unless the mixed use, nonresidential or residential rental project is exempt under Section 16.65.025 or an alternative is approved as described in Section 16.65.080, all mixed use, nonresidential and residential rental projects shall pay housing impact fees as specified in Section 16.65.060 to mitigate the projects' impacts on the need for affordable housing; except that the residential ownership portion of a mixed use project containing three or more units shall comply with Section 16.65.030.

### **16.65.060 Housing Impact Fee and In-Lieu Fee.**

- A. **Fees.** The amount of any housing impact fees and in-lieu fees shall be established from time to time by ordinance or resolution of the City Council. Housing impact fees shall not exceed the cost of mitigating the impact of mixed-use, nonresidential and residential rental projects on the need for affordable housing in the City.
- B. **Fee Payment.** Housing impact fees and in-lieu fees, if required, shall be paid prior to issuance of any building permit for a development project subject to this chapter or at a time otherwise specified by City Council ordinance or resolution.

### **16.65.070 Requirements for Residential Projects Containing Ownership and Rental Units and for Mixed Use Projects**

- A. **Residential Projects Containing Ownership and Rental Units.** When a residential project includes both ownership and rental dwelling units, the provisions of this chapter that apply to ownership residential projects shall apply to that portion of the development that consists of ownership dwelling units, while the provisions of this chapter that apply to rental residential project shall apply to that portion of the development that consists of rental dwelling units.
- B. **Mixed Use Projects Containing Residential Units.** When a mixed use project contains three or more dwelling units, either residential rental or residential ownership, the

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provisions of this chapter that apply to residential ownership and residential rental projects shall apply to those portions of the development that consist of residential ownership or residential rental units, as applicable, while the provisions of this chapter that apply to non-residential projects shall apply to that portion of the development that consists of non-residential uses. When a mixed use project contains fewer than three dwelling units, impact fees shall apply to those units.

### **16.65.075 Provision of Affordable Units.**

#### **A. Standards for Affordable Units.**

1. Affordable units shall be comparable in exterior appearance and overall quality of construction to market-rate units in the same housing development. Interior finishes and amenities must equal those provided in the base model market-rate units.
2. The number of bedrooms and the size of the affordable units shall be comparable to the average number of bedrooms in the market-rate units, except that in a single-family detached development, the decision-making body may allow smaller affordable units or duplex affordable units, if permitted in the zoning district, when this furthers the provision of on-site affordable units. The affordable units shall be reasonably dispersed within the residential project, with unit locations comparable to those of the market-rate units, or, subject to the approval of the Planning and Community Environment director, may be clustered within the residential project when this furthers affordable housing opportunities.
3. The affordable units shall have the same amenities as the market rate units, including the same access to and enjoyment of common open space, parking, storage, and other facilities in the residential project.

#### **B. Timing of Construction. The affordable units shall be constructed in proportion to construction of the market-rate units. No building permit shall be issued for any market-rate unit unless a proportional number of building permits have been issued for affordable units, and no certificates of occupancy or final inspections shall be issued for any market-rate units unless a proportional number of certificates of occupancy or final inspections have been issued for affordable units. An alternative phasing plan may be approved as part of the approval of the affordable housing plan described in Section 16.65.090.**

#### **C. Continued Affordability.**

1. All affordable units provided under Section 16.65.030 or Section 16.65.080 shall be subject to a resale restriction, deed of trust, and/or regulatory agreement recorded against the property for execution by the city manager, in a form approved by the city attorney, to ensure the continued affordability of the affordable units.

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2. Notwithstanding Section 18.15.040, to be considered as affordable units under this chapter, all affordable units shall remain affordable to the targeted income group for 99 years, except in the case of affordable housing developments provided as an alternate means of compliance pursuant to Section 16.65.080, the City may authorize a 55 year affordability restriction if required to maintain eligibility for tax credit financing.
3. Any household that occupies an affordable unit must occupy that unit as its principal residence, unless otherwise approved in writing for rental to a third party for a limited period of time due to household hardship, as determined by the City.
4. No household may begin occupancy of an affordable unit until the household has been determined to be eligible to occupy that unit by the City or designee.

**16.65.080      Alternative Means of Compliance.** The developer of a mixed use, residential or nonresidential project may request an alternate means of compliance, as described in this section, as a component of the affordable housing plan required by Section 16.65.090.

- A. **Provisions Applicable to All Alternatives.** The following provisions apply to all alternative means of compliance described in this Section 16.65.080.
1. The applicant shall bear the burden of presenting substantial evidence to support a finding of infeasibility under Section 16.65.080(B) and to support the feasibility of any proposed alternative. The applicant shall set forth in detail the factual and legal basis for any request under this section.
  2. Any request under this section shall be submitted to the Planning and Community Environment Director together with an economic analysis, if required, or other supporting documentation and shall be acted upon by the City Council.
  3. When the affordable housing alternative results in a fractional unit, fees shall be paid as specified in the affordable housing guidelines for any fractional units.
  4. All affordable units shall conform with the provisions of Section 16.65.075.
  5. The city council may approve or conditionally approve any alternative set forth in this section if it makes all of the following findings and any additional findings required for the selected alternative:
    - (a) The number of affordable units provided by the alternative equals or exceeds that provided by on-site units or by the payment of impact fees, as applicable to the project;
    - (b) The level of affordability provided by the alternative is the same or lower as provided by on-site units or by the payment of impact fees, as applicable to the project; and

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- (c) The alternative is consistent with the comprehensive plan and housing element and the provisions of this chapter.

**B. Residential Ownership Projects.**

1. If the provision of affordable ownership units under Section 16.65.030 is infeasible, an applicant for a residential ownership project may request, in order of priority, to: (a) provide on-site affordable rental units as provided in subsection C below; (b) provide off-site affordable units as provided in subsection D below; (c) dedicate land for affordable housing as provided in subsection D below; (d) rehabilitate and convert existing residences to affordable housing, or preserve existing affordable housing, as provided in subsection E below; or (e) pay the in-lieu fee adopted as described in Section 16.65.060. The applicant must demonstrate that each of the higher priority options is infeasible before the City will consider a lower priority option.
2. For the purposes of this section, "infeasible" means either that: (a) the affordable sales price would be less than the cost of constructing the affordable unit, including financing but excluding all other costs, including land, marketing, improvements, and profit; or (b) provision of the units would produce a confiscatory or unconstitutional result.
3. Notwithstanding Section 16.65.080(A)(5), the City Council may accept fees in lieu of the alternatives in Paragraph 1 provided it makes a finding that special circumstances justify payment of fees over provision of ownership units, such as a finding that the fees generated would result in more affordable units than those required to be provided on site or that funds are needed to finance a pending affordable housing project.

**C. Affordable Rental Units in a Residential Ownership Project or a Residential Rental Project.**

1. An applicant for a residential ownership project or a residential rental project may elect to make available dwelling units in the residential project at affordable rent rather than provide on-site for-sale affordable units or pay housing impact fees, as applicable. The city council may by ordinance or resolution specify the percentage and affordability level of rental affordable units that are equivalent to provision of on-site for-sale affordable units or payment of housing impact fees, as applicable.
2. To ensure compliance with the Costa-Hawkins Act (Chapter 2.7 of Title 5 of Part 4 of Division 3 of the Civil Code), the City may approve such a proposal only if the applicant agrees in a rent regulatory agreement with the City to limit rents in consideration for a direct financial contribution or a form of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.

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3. Any rent regulatory agreement for rental units in a residential ownership project shall include provisions for sale of the affordable units and relocation benefits for tenants of the affordable units if the owner of the residential ownership project later determines to offer the affordable units in the residential project for sale to moderate income households at an affordable sales price.

**D. Dedication of Land and Off-Site Construction of Affordable Units.**

1. The applicant may submit an affordable housing plan that proposes either to dedicate vacant land suitable for affordable housing or to construct affordable units on another site. Two or more applicants may also jointly propose the provision of vacant land suitable for affordable housing or the construction of off-site affordable units on a single site.
2. Construction of the off-site affordable units may not commence prior to the first approval of the residential project, and construction of the off-site units must occur concurrently with construction of the market-rate units in the residential project as described in Section 16.65.075.
3. The city council may approve or conditionally approve the dedication of land or off-site construction if it makes all of the following findings in addition to making the findings in subsection (A)(5) above:
  - (a) Financing or a viable financing plan, which may include public funding, is in place for the off-site affordable units; and
  - (b) The off-site location is suitable for the proposed affordable housing, consistent with any affordable housing guidelines and the Housing Element, and will not tend to cause residential segregation.
4. No building permit shall be issued for any units in the residential project until committed funding is available for the off-site units, or units to be constructed on land to be dedicated.
5. Off-site construction of affordable units does not qualify the residential project for a density bonus or other regulatory incentives allowed by Government Code Section 65915 unless the off-site development includes the dedication of land conforming to the provisions of Section 65915(g). No off-site alternative may be approved by the City if a density bonus or other regulatory incentive is requested for the site on which the affordable housing is to be built. Any off-site alternative must comply with the density, intensity and other development standards that are permitted under the zone for the site.

**E. Rehabilitation and Conversion of Existing Market-Rate Housing.**

1. The applicant may submit an affordable housing plan that proposes the rehabilitation and conversion of existing market-rate housing to affordable housing, or the preservation of existing affordable housing that is not deed restricted as affordable.

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2. The market-rate units to be converted to affordable units shall be located in a residential project that is not subject to any existing affordability covenants except covenants restricting other units in the development.
  3. The affordable housing plan shall include a plan for long-term financial sustainability of the market-rate units to be converted to affordable units, which incorporate, among other things, provisions to accommodate increases in homeowners' association fees, special assessments and maintenance costs.
  4. Any existing tenants in the market-rate units to be converted to affordable units shall be eligible to remain in the units; or the applicant shall provide relocation assistance pursuant to Cal. Gov't Code §§ 7260 et seq.
  5. The city council may approve or conditionally approve the proposal if it makes all of the following findings in addition to making the findings in subsection (A)(5) above:
    - (a) The proposal includes substantial rehabilitation of the existing housing equal to at least 25 percent of the after-rehabilitation value of the property, inclusive of land value, and the units shall be in decent, safe and sanitary condition and in compliance with all codes;
    - (b) Financing or a viable financing plan is in place for the units to be converted to affordable units; and
    - (c) The off-site location is suitable for the proposed affordable housing, consistent with any affordable housing guidelines and the Housing Element, and will not tend to cause residential segregation.
  6. No building permit shall be issued for any units in the residential project until regulatory agreements approved by the city have been recorded for the existing units to be converted to affordable housing.
- F. **Mixed Use Projects.** An applicant for a mixed use development may submit an affordable housing plan that proposes to mitigate the affordable housing impacts of the non-residential and residential rental portions of the development through any of the options listed above or through on-site provision of affordable units conforming with applicable provisions of Section 16.65.075. In addition to making the findings in subsection (A)(3) above, the city council may approve or conditionally approve such an alternative if it determines, based on substantial evidence, that such alternative will provide equal or greater public benefit than would payment of the housing impact fee.
- G. **Nonresidential Projects.** An applicant for a nonresidential development may submit an affordable housing plan that proposes to mitigate the affordable housing impacts of the development through any of the options listed above or through on-site provision of affordable units conforming with applicable provisions of Section 16.65.075. In addition to making the findings in subsection (A)(5) above, the city council may approve or conditionally approve such an alternative if it determines, based on substantial

## Not Yet Adopted

evidence, that such alternative will provide equal or greater public benefit than would payment of the housing impact fee.

### **16.65.090      Application and Review Procedures.**

#### **A.      Affordable Housing Plan.**

1. All residential ownership projects and any mixed use, residential rental or nonresidential project proposing to provide affordable units under the provisions of Section 16.65.080 shall submit an affordable housing plan concurrently with the application for the first approval of the project. The city shall provide an application form specifying the contents of the affordable housing plan. If an affordable housing plan is required, no application for a first approval the project may be deemed complete until a complete affordable housing plan is submitted. The cost of reviewing any proposed alternative, including but not limited to the cost to the City of hiring a consultant to review the application, shall be borne by the applicant.
2. No affordable housing plan is required for a mixed use, residential rental project or a nonresidential project if the applicant proposes to pay housing impact fees, or if the project is exempt under Section 16.65.025.
3. Any affordable housing plan shall be processed concurrently with all other permits required for the development project. Before approving the affordable housing plan, the decision-making body shall find that the affordable housing plan conforms to this chapter. A condition shall be attached to require recordation of an affordable housing agreement, as described in subsection B of this section below, prior to the approval of any final or parcel map or building permit for the development project.
4. The approved affordable housing plan may be amended prior to issuance of any building permit for the development project. A request for a minor modification of an approved affordable housing plan may be granted by the Planning and Community Environment Director if the modification is substantially in compliance with the original affordable housing plan and conditions of approval. Other modifications to the affordable housing plan shall be processed in the same manner as the original plan.

#### **B.      Affordable Housing Agreement.**

1. Affordable housing agreements acceptable to the city manager or designee and approved as to form by the city attorney shall be recorded against the residential or nonresidential project prior to approval of any final or parcel map, or issuance of any building permit, whichever occurs first, unless the project is required only to pay impact fees.
2. The affordable housing agreement shall specify the number, type, location, size, and phasing of all affordable units, provisions for income certification and screening of potential purchasers or renters of units, and resale control

## Not Yet Adopted

mechanisms, including the financing of ongoing administrative and monitoring costs, consistent with the approved affordable housing plan and any affordable housing guidelines, as determined by the city manager or designee.

- C. The City Council, by resolution, may establish fees for the ongoing administration and monitoring of the affordable units, which fees may be updated periodically, as required.
- D. The Planning and Community Environment Director may adopt affordable housing guidelines to implement this chapter, and may update those guidelines periodically as required.

**16.65.100      Affordable Housing Funds.**

- A. All housing impact fees or other funds collected under this chapter shall be deposited into the City's Commercial and Residential Housing Funds.
- B. The monies in the Commercial and Residential Housing Funds and all earnings from investment of the moneys in the Funds shall be expended exclusively to provide housing affordable to very low income, lower income, and moderate income households in the City, consistent with the goals and policies contained in the City's Housing Element and for administration and compliance monitoring of the affordable housing program.

**16.65.110      Administrative Relief.**

- A. As part of an application for the first approval of a residential or nonresidential project, a developer may request that the requirements of this chapter be waived or modified by the city council, based upon a showing that applying the requirements of this chapter would result in an unconstitutional taking of property or would result in any other unconstitutional result.
- B. The request for a waiver or modification shall set forth in detail the factual and legal basis for the claim.
- C. Any request for a waiver or modification shall be reviewed and considered at the same time as the project application or any affordable housing plan.
- D. The waiver or modification may be approved only to the extent necessary to avoid an unconstitutional result, based upon legal advice provided by or at the behest of the City Attorney, after adoption of written findings, based on legal analysis and substantial evidence. If a waiver or modification is granted, any change in the project shall invalidate the waiver or modification, and a new application shall be required for a waiver or modification under this section.

**16.65.120      Enforcement.**

- A. Penalties. Persons employed in the following designated employee positions are authorized to exercise the authority provided in the California Penal Code Section 836.5

**Not Yet Adopted**

and are authorized to issue citation for violations of this chapter: development services director, director of planning and community environment and their designees.

- B. The city attorney shall be authorized to enforce the provisions of this chapter and all affordable housing agreements, regulatory agreements, and all other covenants or restrictions placed on affordable units, by civil action and any other proceeding or method permitted by law.
- C. Failure of any official or agency to fulfill the requirements of this chapter shall not excuse any developer or owner from the requirements of this chapter. No permit, license, map, or other approval or entitlement for a residential project shall be issued, including without limitation a final inspection or certificate of occupancy, until all applicable requirements of this chapter have been satisfied.
- D. The remedies provided for in this section shall be cumulative and not exclusive and shall not preclude the city from any other remedy or relief to which it otherwise would be entitled under law or equity.

**SECTION 4.** Severability. If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed and adopted this Ordinance, and each and all provisions hereof, irrespective of the fact that one or more provisions may be declared invalid.

**SECTION 5:** CEQA. This ordinance is exempt from the California Environmental Quality Act (CEQA) under State CEQA Guidelines Section which 15061(b)(3) providing an exemption for administrative actions that do not result in physical changes to the environment; Section 15378(b)(4) providing an exemption for government funding mechanisms which do not involve a commitment to any specific project and Section 15305 (Minor Alterations in Land Use Limitations), a categorical exemption that applies to code amendments that will not have any significant environmental effects.

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**Not Yet Adopted**

**SECTION 6:** Public Notice and Effective Date. This Ordinance shall take effect 31 days after its adoption by the City Council or concurrent with Ordinance \_\_\_\_, whichever occurs later.

**INTRODUCED:** March 27, 2017

**PASSED:**

**AYES:**

**NOES:**

**ABSENT:**

**ABSTENTIONS:**

**ATTEST:**

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City Clerk

APPROVED AS TO FORM:

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Senior Asst. City Attorney

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Mayor

APPROVED:

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City Manager

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Director of Planning and Community Environment

Not Yet Adopted

Ordinance No. \_\_\_\_\_

Ordinance of the Council of the City of Palo Alto Establishing Housing Impact Fees and Housing In-Lieu Fees for Residential, Nonresidential, and Mixed Use Developments

The Council of the City of Palo Alto ORDAINS as follows:

A. On November 10, 2014 the City Council of the City of Palo Alto adopted its 2015-2023 Housing Element which includes the policy of encouraging, fostering, and preserving diverse housing opportunities and which contemplates, among other things, an amendment of the City's below market rate program to promote this policy and to be consistent with case law related to inclusionary rental housing; and

B. To implement the affordable housing goals, policies and programs of the City's 2015-2023 Housing Element, the City Council has considered and introduced on this same date Ordinance No. 5408 repealing Chapters 18.14 and 16.47 of the Palo Alto Municipal Code and adding a new chapter 16.65, Citywide Affordable Housing Requirements (the "Affordable Housing Ordinance"), which provides, among other things, that the City Council shall establish, from time to time, housing impact fees that may be applicable to residential rental projects, mixed use projects, and nonresidential projects and housing in-lieu fees that may be applicable to residential ownership projects. The Affordable Housing Ordinance further provides that the City Council may specify the percentage and affordability level of rental affordable units that are equivalent to provision of on-site for-sale affordable units or payment of housing impact fees.

C. To ensure that future development projects mitigate their impact on the need for affordable housing in Palo Alto, and to ensure that any adopted housing impact fees or in-lieu fees do not exceed the actual affordable housing impacts attributable to the development projects to which the fees relate, the City Council has received and considered two reports from Strategic Economics and Vernazza Wolfe Associates dated October and November 2015 and entitled "Residential Impact Fee Nexus Study" and "Commercial Linkage Fee Nexus Study", respectively (collectively, the "Nexus Studies"), and the findings of the Nexus Studies are incorporated into this Ordinance by this reference.

D. The Nexus Studies use widely used, appropriate methodology to determine the maximum amount needed to fully mitigate the burdens created by residential, nonresidential and mixed-use development on the need for affordable housing and establish that there is a reasonable relationship between the need for affordable housing and impacts of development for which a fee is charged, and that there is also a reasonable relationship between the impact fee's use and the type of development for which the fee is charged.

E. To ensure that development projects remain economically feasible, the recommended housing impact fees and in-lieu fees as shown in the attached Exhibit A are

lower than the maximum amount needed to fully mitigate the burdens created by new development on the need for affordable housing as determined by the Nexus Studies.

F. The City Council now desires to adopt housing impact fees and in-lieu fees for certain residential, nonresidential, and mixed-use development projects as authorized by the Affordable Housing Ordinance, which fees do not exceed the justified fees needed to mitigate the actual affordable housing impacts attributable to the development projects to which the fees relate, as determined by the Nexus Studies; and further desires to specify the percentage and affordability level of rental affordable units that are equivalent to provision of on-site for-sale affordable units or payment of housing impact fees. The City Council further finds that the housing impact fees for retail, restaurant and other non-residential uses (excluding hotels, office, medical office and research and development uses) analyzed in the May 2002 Nexus Study and set forth in the 2016-17 Municipal Fee Schedule are sufficient to mitigate the actual affordable housing impacts attributable to the development projects to which the fees relate.

G. The housing in-lieu fees adopted by this ordinance provide an alternative method for calculating the in-lieu fees described by Program H3.1.2 of the City's 2015-2023 Housing Element which, as described in the record, will in most instances provide equivalent or greater total revenue to the Residential Housing Fund.

H. In compliance with the Affordable Housing Ordinance, all in-lieu fees and impact fees collected shall be deposited into the City's Commercial and Residential Housing Funds to be used only for those purposes included in the Affordable Housing Ordinance.

I. At least ten days prior to the date this ordinance is being heard, data was made available to the public indicating the amount of cost, or estimated cost, required to provide the service for which the fee or service charge is levied and the revenue sources anticipated to provide the service, including general fund revenues, in accordance with Government Code Section 66019.

J. At least fourteen days prior to the date this ordinance is being heard, notice was provided to any persons or organizations who had requested notice, in accordance with Government Code Sections 66004 and 66019.

K. Notice of the hearing on the proposed fees was published twice in the manner set forth in Government Code Section 6062a as required by Government Code Sections 66004 and 66018.

L. The City Council has reviewed the information contained in this Ordinance and the accompanying staff report and all written and oral testimony at a meeting held on March 27, 2017.

NOW, THEREFORE, the Council of the City of Palo Alto does ORDAIN as follows:

SECTION 1. The foregoing recitals are true and correct and incorporated by this reference.

SECTION 2. The City Council hereby repeals the housing impact and housing in lieu fees contained in the 2016-2017 Municipal Fee Schedule as adopted by City Council Ordinance 5386.

SECTION 3. The City Council hereby amends the Municipal Fee Schedule by adopting housing impact fees and in-lieu fees for residential ownership development projects, for residential rental development projects, residences in mixed-use projects, and nonresidential development, as shown on Exhibit "A", attached hereto and incorporated by this reference.

SECTION 4. The City Council may review housing impact and in-lieu fees from time to time. For any annual period during which the City Council does not review the housing impact and in-lieu fees, fee amounts shall be adjusted in accordance with Chapter 16.64.

SECTION 5. As provided in Section 16.65.080(C)(1) of the Affordable Housing Ordinance, the City Council hereby determines that the following percentages of rental affordable units that are equivalent to provision of on-site for-sale affordable units or payment of housing impact fees:

Required Affordable Rental Units (Where rental alternative requested under 16.65.080(C))		
	Rental Alternative to For-Sale Units (Sites Less than 5 Acres)*	Rental Residential (no condo map)
Income Category		
<b>Very Low Income</b>		
<b>Low Income</b>	<b>15%</b>	
<b>Moderate Income</b>		<b>15%</b>
<b>TOTAL</b>	<b>15%</b>	<b>15%</b>

\*Rental alternative equivalents for projects over 5 acres will be subject to Council approval on a case by case basis.

SECTION 6. The City has determined that the housing mitigation fees should be adopted and administered consistent with the requirements applicable to fees for public facilities in California Government Code Section 66000 *et seq.*, commonly referred to as the Mitigation Fee Act, without determining that it is required to do so.

SECTION 7. Adoption of this ordinance is exempt from the California Environmental Quality Act because the proposed fee increase 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 8. Severability. If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed and adopted this Ordinance, and each and all provisions hereof, irrespective of the fact that one or more provisions may be declared invalid.

SECTION 9. This Ordinance shall be effective upon the sixtieth (60<sup>th</sup>) day after its passage and adoption.

INTRODUCED: March 27, 2017

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

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City Clerk

APPROVED AS TO FORM:

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Senior Asst. City Attorney

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Mayor

APPROVED:

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City Manager

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Director of Planning and Community Environment

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Director of Administrative Services

**EXHIBIT A**

**Housing Impact Fees and In-Lieu Fees**

**Residential Projects:**

"Residential Floor Area" for Single-Family Detached and Attached Homes includes all horizontal areas of the several floors of such buildings measured from the exterior faces of exterior walls or from the center line of party walls separating two (2) buildings, minus the horizontal areas of such buildings used exclusively for parking. Basements shall be included in this measurement when they include livable area.

"Residential Floor Area" for Apartments and Condominiums includes all horizontal areas of the several floors of such buildings measured from the exterior faces of exterior walls or from the center line of party walls separating two (2) buildings, minus the horizontal areas of such buildings used exclusively for covered porches, patios, or other outdoor space, amenities and common space, parking, elevators, stairwells or stairs between floors, hallways, and between-unit circulation.

"Net New Residential Floor Area" for Rental Projects (Apartments) means the Residential Floor Area for the net new units.

<b>Residential Ownership Projects and Residential Ownership Units in Mixed Use Projects *</b>  (For fractional units & where in-lieu fee approved under 16.65.080(B))	<b>In-Lieu Fee per Square Foot of Residential Floor Area</b>
Single-Family Detached Home	\$75
Single-Family Attached Home	\$50
Condominiums	\$50
<b>Residential Rental Projects and Residential Rental Units in Mixed Use Projects*</b>	<b>Impact Fee per Square Foot of Net New Residential Floor Area</b>
Apartments	\$20

\*The residential ownership portion of a mixed use project containing three or more units shall comply with Section 16.65.030 unless an alternative means of compliance is authorized under Section 16.65.080(F). The residential rental portion of a mixed use project containing three or more units shall comply with Section 16.65.040 unless an alternative means of compliance is authorized under Section 16.65.080(F). The residential component of mixed use projects containing fewer than three dwelling units shall be subject to the housing impact fees shown in this table.

Residential projects may be exempt from payment of housing impact and housing in-lieu fees as provided in Section 16.65.025.

### **Nonresidential Projects and Nonresidential Square Footage in Mixed-Use Projects**

“Nonresidential Floor Area” includes all horizontal areas of the several floors of such buildings measured from the exterior faces of exterior walls or from the center line of party walls separating two (2) buildings, minus the horizontal areas of such buildings used exclusively for parking.

If no non-residential use existed on the site within one year prior to the issuance of a building permit for the project, the Housing Impact Fee is calculated by multiplying the Nonresidential Floor Area contained in the project by the relevant Housing Impact Fee.

Where another non-residential use existed on the site within one year prior to the issuance of a building permit for the project, the Housing Impact Fee is calculated by:

1. Multiplying the Nonresidential Floor Area contained in the project by the relevant Housing Impact Fee;
2. Multiplying the Nonresidential Floor Area of the former use by the relevant Housing Impact Fee shown in this table; and
3. Subtracting the amount calculated in Step 2 from the amount calculated in Step 1.

<b>Nonresidential Use</b>	<b>Housing Impact Fee per Square Foot of Nonresidential Floor Area</b>
Hotel	\$20.37
Retail, Restaurants and Other Non-Residential* Uses	\$20.37**
Office, Medical Office and Research and Development	\$35

\*Hotels and Office, medical office and research and development uses are not included in “other non-residential uses.”

\*\*This rate is carried over from the 2016-17 Municipal Fee Schedule as analyzed in the May 2002 Nexus Study and adjusted for inflation.

Nonresidential projects may be exempt from payment of housing impact fees as provided in Section 16.65.025.