

Ordinance No. 5409
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		
Very Low Income		
Low Income	15%	
Moderate Income		15%
TOTAL	15%	15%

*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)).

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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 (60th) day after its passage and adoption.

INTRODUCED: March 27, 2017

PASSED: April 17, 2017

AYES: FILSETH, FINE, KNISS, SCHARFF, TANAKA, WOLBACH

NOES: DUBOIS, HOLMAN, KOU

ABSENT:

ABSTENTIONS:

ATTEST:

DocuSigned by:
Beth Minor
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City Clerk

DocuSigned by:
H. Caryn Seabury
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Mayor

APPROVED AS TO FORM:

DocuSigned by:
Albert Yang
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Senior Asst. City Attorney

APPROVED:
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J. K. for JZ
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City Manager

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293CE322E1294E6

Director of Planning and Community Environment

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[Signature]
229154BC80A8476

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.

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

Nonresidential Use	Housing Impact Fee per Square Foot of Nonresidential Floor Area
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.

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Certificate Pages: 5	
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	250 Hamilton Ave
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 Senior Deputy City Attorney
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Electronic Record and Signature Disclosure
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