

ORDINANCE NO. 2018-444

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS
ADDING CHAPTER 3.49 TO THE LOS ALTOS MUNICIPAL CODE TO
ESTABLISH AFFORDABLE HOUSING IMPACT FEES FOR RESIDENTIAL
AND NON-RESIDENTIAL DEVELOPMENT AND ADOPTING CEQA
EXEMPTION FINDINGS**

WHEREAS, existing local, state and federal resources are insufficient to meet the City of Los Altos' needs for affordable housing; and

WHEREAS, expansion of the supply of affordable housing will require funding to bridge the gap between the costs of developing new affordable housing and the amount new moderate and lower income households can afford to pay; and

WHEREAS, the Mitigation Fee Act, codified at California Government Code sections 66000, *et seq.*, establishes the legal requirements for a jurisdiction to establish and implement a development impact fee program in conformance with constitutional standards; and

WHEREAS, many cities and counties have adopted and imposed affordable housing impact fees on new development to address new developments' impacts on the need for affordable housing; and

WHEREAS, the City Council desires to create an Affordable Housing Impact Fee to fund affordable housing projects within the City and the region; and

WHEREAS, the City's 2015-2023 Housing Element provides that the City will facilitate the development of new affordable housing units, by, among other things, implementing Housing Element Program No. 4.3.7 to consider, study and explore a commercial development affordable housing linkage fee; and

WHEREAS, on May 26, 2016, the City Council expanded the scope of Housing Element Program No. 4.3.7 to include evaluation of an affordable housing linkage fee to include residential development; and

WHEREAS, to establish a basis for an affordable housing impact fee program, the City joined a multi-jurisdictional study organized by the Silicon Valley Community Foundation; and

WHEREAS, the Silicon Valley Community Foundation effort resulted in three reports prepared by Keyser Marston Associates, dated December 2016: (1) Summary, Context Materials and Recommendations Affordable Housing Nexus Studies; (2) Residential Nexus Analysis; and (3) Non-Residential Nexus Analysis (collectively "Nexus Studies"); and

WHEREAS, the Nexus Studies demonstrate that new residential and non-residential developments and additions to structures containing these types of uses generate an increased demand for affordable housing and that these can be mitigated through the imposition of housing impact fees; and

WHEREAS, on March 16, 2017, the City's Planning Commission held a duly noticed public hearing on the program recommendations of the Nexus Study and made recommendations regarding the adoption of an affordable housing linkage fee; and

WHEREAS, the Nexus Studies and the Planning Commission's recommendations were presented for public review and comment at the City Council's regularly scheduled public meeting of May 9, 2017; and

WHEREAS, the City Council considered the Nexus Studies; and

WHEREAS, on May 22, 2018, the City Council held a duly noticed public hearing and considered the Affordable Housing Impact Fee, together with the Nexus Studies and all other information relevant to evaluation and adoption of such Fee; and

WHEREAS, this Ordinance is consistent with the Los Altos General Plan as a whole and implements the Los Altos General Plan's Adopted Housing Element Goal 4, Policy 4.3, Program 4.3.7 for the 2015-2023 by establishing an affordable housing impact fee to help fund the development of new affordable housing units.

NOW THEREFORE, the City Council of the City of Los Altos does hereby ordain as follows:

SECTION 1. AMENDMENT OF CODE: Title 3 of the Los Altos Municipal Code is hereby amended to include a new chapter as follows:

CHAPTER 3.49 – AFFORDABLE HOUSING IMPACT FEES

3.49.010 - Purpose.

This chapter requires the payment of housing impact fees for the impact of residential and non-residential development on the need for affordable housing in the City of Los Altos and to implement the Housing Element of the City's General Plan and California Government Code Section 65583(c), which expresses the state housing policy that requires cities to assist in the development of adequate housing to meet the needs of lower income households.

3.49.020 - Housing Mitigation Fund.

All housing impact fees shall be placed in the City's Housing Mitigation Fund and used to support the development of affordable housing within the City and the region.

3.49.030 - Applicability.

A. New Construction. Projects that include, single-family parcels, new market rate multiple-family dwelling ownership units, new market rate rental housing units non-residential construction shall be subject to the housing impact fees required in this chapter.

Payment of the housing impact fees shall be a condition of approval for all development projects subject to this chapter.

B. Pipeline Projects. The following development projects shall be exempt from payment of the housing impact fees required in this chapter:

1. Projects for which a development application pursuant to this title has been filed and deemed complete by (date ordinance is effective); and

2. Projects that have received final approval pursuant to this title by (date ordinance is effective), and which are subsequently the subject of a pending application for modifications to the approved plans or permit, except that any increase in floor area from the amount already approved shall be subject to the housing impact fees required by this chapter.

3.49.040 – Housing Impact Fee

A. Adoption of Housing Impact Fees. Housing impact fee amounts for each applicable use shall be established by City Council resolution, which may be amended from time to time by Council. The fee amounts shall be adjusted annually based on the Consumer Price Index for all urban consumers for the San Francisco-Oakland-San Jose area unless otherwise modified by council. Such fees shall not exceed the cost of mitigating the impact of developments on the need for housing for lower-income households in the city.

B. Timing of Payment. Housing impact fees shall be paid prior to issuance of the first building permit for the project. A developer may pay all or a portion of the fee owed at any time prior to issuance of the building permit, at the rate in effect at the time payment is made. For phased projects, the amount due shall be paid on a pro rata basis across the entire square footage of the approved development, and each portion shall be paid prior to the issuance of any building permit for each phase.

3.49.050 - Housing Impact Fees for Residential Ownership Development.

A. Applicability. A housing impact fee shall be imposed on all new residential ownership developments that result in a net increase of one (1) unit or more, excluding accessory dwelling units, regardless of zoning designation of the project site, unless the applicant elects to provide one of the alternatives listed in subsection (D).

B. Calculation of Fee. The amount of the fee, as further described in the fee resolution, is imposed on a per square foot basis for new gross habitable floor area commensurate with the building type (e.g., townhome or condominium). The following formula shall be used in calculating the required housing impact fee for new residential housing developments: (New gross habitable square foot area of all units) minus (existing gross habitable square foot area of all units) multiplied by (per square foot fee) equals (total housing impact fee).

C. Gross habitable Square Foot Area. Gross habitable square foot area means the total living area of each dwelling unit within a project measured to the outside of the exterior

walls and does not include areas outside of the dwelling units such as common areas, corridors, parking facilities, outside storage lockers and shared laundry facilities.

D. Alternatives in-Lieu of a Housing Impact Fee. As an alternative to paying the affordable housing impact fee for residential ownership developments, a developer may request to provide affordable ownership units on the project site, dedicate land for affordable housing, or provide affordable units off-site, as detailed in this section.

1. On-site units. A developer may request to mitigate the housing impacts through construction of affordable residential ownership units on the subject development site consistent with the requirements outlined in Chapter 14.28. However, payment of the in-lieu impact fee does not preclude a developer from meeting the inclusionary housing requirements specified in Chapter 14.28.

2. Off-site units or dedication of land. As an additional alternative, a developer may request to designate affordable units in an off-site location or dedicate land for the construction of affordable units within the Los Altos City Limits. The City priority shall be for a location that is accessible to public transit. Any off-site units shall be either new or renovated to near-new conditions. Such requests shall be granted in the sole discretion of the City Council if the City Council determines that the proposed alternative will mitigate the impact of the project on the need for affordable housing.

3. In calculating the number of required affordable units either on-site or off-site, any fraction of a whole unit shall be satisfied by either developing one additional affordable unit or by paying the remaining fee amount as further described in the fee resolution.

4. All affordable units developed either on-site or off-site shall be subject to the City's standard Affordable Housing Agreement and Deed Restriction.

5. The applicant must enter into an Affordable Housing Developer Agreement with the City to be recorded against the property prior to recordation of a final or parcel map or issuance of any building permit, acknowledging that the affordable units or land dedication are provided in consideration for a direct financial contribution from the City in the form of a waiver of the housing impact fee.

E. The City Council may approve this request if the proposed alternative forms of affordable housing opportunities in the City are equal to or greater than the payment of the housing impact fee.

3.49.060 - Housing Impact Fees for Multiple-Family Residential Rental Development.

A. Applicability. A housing impact fee shall be imposed on all new residential rental developments that result in a net increase of one (1) unit or more, excluding accessory dwelling units, regardless of zoning designation of the project site, unless the applicant elects to provide one of the alternatives listed in subsection (D). For purposes of this section, new

market-rate rental housing developments shall include developments that have recorded a condominium map but the developer intends to initially rent the units.

B. Calculation of Fee. The amount of the fee, as further described in the fee resolution, is imposed on a per square foot basis for new gross habitable floor area commensurate with the building type (e.g., townhome or condominium). The following formula below shall be used in calculating the required housing impact fee for new residential rental housing developments: (New gross habitable square foot area of all units) minus (existing gross habitable square foot area of all units) multiplied by (per square foot fee) equals (total housing impact fee).

C. Gross habitable Square Foot Area. Gross habitable square foot area means the total living area of each dwelling unit within a project measured to the outside of the exterior walls and does not include areas outside of the dwelling units such as common areas, corridors, parking facilities, outside storage lockers and shared laundry facilities.

D. Alternatives in-Lieu of a Housing Impact Fee. As an alternative to paying the affordable housing impact fee for residential rental developments, a developer may request to provide affordable units on the project site, dedicate land for affordable housing, or provide affordable units off-site, as detailed in this section.

1. On-site units. A developer may request to mitigate the housing impacts through construction of affordable residential rental units on the subject development site consistent with the requirements outlined in Chapter 14.28. However, payment of the in-lieu impact fee does not preclude a developer from meeting the inclusionary housing requirements specified in Chapter 14.28.

2. Off-site units or dedication of land. As an additional alternative, a developer may request to designate affordable units in an off-site location or to dedicate land for the construction of affordable units within the Los Altos City Limits. The City priority shall be for a location that is accessible to public transit. Any off-site units shall be either new or renovated to near-new conditions. Such requests shall be granted in the sole discretion of the City Council if the City Council determines that the proposed alternative will mitigate the impact of the project on the need for affordable housing.

3. In calculating the number of required affordable rental units either on-site or off-site, any fraction of a whole unit shall be satisfied by either developing one additional affordable unit or by paying the remaining fee amount as further described in the fee resolution.

4. All affordable units developed either on-site or off-site shall be subject to the City's standard Affordable Housing Agreement and Deed Restriction.

5. The applicant must enter into an Affordable Housing Developer Agreement with the City to be recorded against the property prior to recordation of a final or parcel map or issuance of any building permit, acknowledging that the affordable

units or land dedication are provided in consideration for a direct financial contribution from the City in the form of a waiver of the housing impact fee.

E. The City Council may approve this request if the proposed alternative forms of affordable housing opportunities in the City are equal to or greater than the payment of the housing impact fee.

3.49.070 - Housing Impact Fees for Non-residential Development.

A. Applicability. A non-residential housing impact fee shall be imposed on all new construction of commercial, office, retail and hotel/motel development projects, as defined by Chapter 14.02.070 of the Zoning Code, that result in a net increase of 500 square feet or greater of new floor area, regardless of zoning designation of the project site, unless the applicant elects to provide one of the alternatives listed in subsection (D).

B. Calculation of Fee. The amount of the housing impact fee, as further described in the fee resolution, is imposed on a per square foot basis for new gross floor area. The following formula below shall be used in calculating the amount of the housing impact fee: (Gross square feet non-residential floor area) minus (existing square feet floor area) multiplied by (per square foot fee) equals (total housing impact fee).

C. Exemptions to New Gross Floor Area. The following areas are exempt from the new gross floor area used in housing impact fee calculations for non-residential developments:

1. Any incidental and accessory storage, structures or appurtenances, such as sheds, trash enclosures, ground-mounted equipment enclosures, garden features, trellises or shade structures;
2. Architectural design features not utilized for occupancy or storage; and
3. Existing floor area square footage of structures that were vacated or demolished no more than 12 months prior to the filing date of the development application.

D. Alternatives in-Lieu of a Housing Impact Fee. As an alternative to paying the affordable housing impact fee, a developer may request the following:

1. On-site units. A developer may request to mitigate the housing impacts through construction of affordable residential units on the subject development site. If applicable, the number of affordable units shall be those indicated at Chapter 14.28.
2. Off-site units or dedication of land. As an additional alternative, a developer may request to designate affordable units in an off-site location or to dedicate land for the construction of affordable units within the Los Altos City Limits. The City priority shall be for a location that is accessible to public transit. Any off-site units shall be either new or renovated to near-new conditions. Such requests shall be

granted in the sole discretion of the City Council if the City Council determines that the proposed alternative will mitigate the impact of the project on the need for affordable housing.

3. In calculating the number of required affordable units either on-site or off-site, any fraction of a whole unit shall be satisfied by either developing one additional affordable unit or by paying the remaining fee amount as further described in the fee resolution.

4. All affordable units developed either on-site or off-site shall be subject to the City's standard Affordable Housing Agreement and Deed Restriction.

5. The applicant must enter into an Affordable Housing Developer Agreement with the City to be recorded against the property prior to recordation of a final or parcel map or issuance of any building permit, acknowledging that the affordable units or land dedication are provided in consideration for a direct financial contribution from the City in the form of a waiver of the housing impact fee.

E. The City Council may approve this request if the proposed alternative forms of affordable housing opportunities in the City are equal to or greater than the payment of the affordable housing impact fee.

3.49.080 - Exception to Municipal Code Section 14.28

Those projects that pay an affordable housing impact fee in compliance with this Chapter shall not be required to comply with the affordable housing requirements (inclusionary units) found at Section 14.28.030 of the Municipal Code.

3.49.090 - Waiver.

Notwithstanding any other provision of this chapter, the requirement to pay the housing impact fee may be waived, adjusted or reduced by the City Council if an applicant shows, based on substantial evidence, that there is no reasonable relationship between the impact of the proposed development and the requirement to pay the housing impact fee, or that applying the requirements of this chapter would take property in violation of the United States Constitution or California Constitution or would result in any other unconstitutional result.

3.49.100 - Enforcement.

The provisions of this chapter shall apply to all agents, successors and assigns of an applicant proposing or constructing a development governed by this chapter. The City may institute any appropriate legal actions or proceedings necessary to ensure compliance herewith, including but not limited to, actions to revoke, deny or suspend any permit, including a development approval, building permit or certificate of occupancy. The City shall be entitled to costs and expenses for enforcement of the provisions of this chapter, or any agreement pursuant thereto, as awarded by the court, including reasonable attorneys' fees.

3.49.110 - Severability.

If any portion of this chapter is held to be invalid, unconstitutional, or unenforceable by a court of competent jurisdiction, that decision will not affect the validity of the remaining portions of this zoning code. The City Council declares that this chapter and each portion would have been adopted without regard to whether any portion of this chapter would be later declared invalid, unconstitutional, or unenforceable.

SECTION 2. CONSTITUTIONALITY. If any section, subsection, sentence, clause or phrase of this code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

SECTION 3. CEQA - EXEMPTION. The City Council finds and determines the adoption of this Ordinance is (1) not a Project under the California Environmental Quality Act (CEQA) and is therefore exempt pursuant to Title 14 of the California Code of Regulations, Section 15378(b)(4) because it constitutes a governmental fiscal activity that does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment; (2) statutorily exempt pursuant to CEQA Guidelines 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, moreover, they will be subject to appropriate environmental review at such time as approvals for those affordable housing project are considered; and/or (4) not intended to, nor does it, provide CEQA clearance for future development-related projects by mere establishment or payment of the fees. Each of the foregoing provides a separate and independent basis for CEQA compliance and, when viewed collectively, provides an overall basis for CEQA compliance.

SECTION 4. PUBLICATION. This ordinance shall be published as provided in Government Code section 36933.

SECTION 5. EFFECTIVE DATE. This ordinance shall be effective upon the commencement of the thirty-first day following the adoption date.

The foregoing ordinance was duly and properly introduced at a regular meeting of the City Council of the City of Los Altos held on May 22, 2018 and was thereafter, at a regular meeting held on June 12, 2018 passed and adopted by the following vote:

AYES: MORDO, PEPPER AND PROCHNOW

NOES: BRUINS AND LEE ENG

ABSENT: NONE

ABSTAIN: NONE



Jean Mordo, MAYOR

Attest:


Jon Maginot, CMC, CITY CLERK

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