

## APPENDIX A

Title 3 - REVENUE AND FINANCE  
Chapter 3.4962 AFFORDABLE HOUSING IMPACT FEES

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### Chapter ~~3.49~~ 3.62 AFFORDABLE HOUSING IMPACT FEES

#### 3.4962.010 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.

#### 3.4962.020 Affordable Housing Fund. ~~Housing mitigation fund.~~

All ~~housing~~ impact fees associated with the creation or retention of affordable housing shall be placed in the city's affordable housing ~~mitigation~~ fund and used to support the development and retention of affordable housing within the city ~~and the region~~.

#### 3.4962.030 Applicability.

- A. New Construction. Projects that include, single-family parcels, new market rate multiple-family dwelling ownership units, new market rate rental housing units and non-residential construction shall be subject to the affordable housing ~~impact~~ fees required in this chapter. Payment of the affordable 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 affordable 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 July 13, 2018; and
  - 2. Projects that have received final approval pursuant to this title by July 13, 2018, 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.

#### 3.4962.040 Affordable Housing ~~impact~~ fee.

- A. Adoption of Affordable Housing ~~Impact~~ Fees. Affordable Housing ~~Impact~~ Fees 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 provisions set forth in Chapter 3.60 of the Los Altos Municipal Code. ~~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 in accordance with the provisions set forth in Chapter 3.60 of the Los Altos Municipal Code. ~~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.~~

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### 3.4962.050 Affordable Housing impact fees for residential ownership development.

- A. Applicability. Affordable housing ~~impact~~ fees shall be imposed on all new residential ownership developments that result in a net increase of one 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 affordable 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 affordable 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 an Affordable 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. When off-site units or dedication of land is proposed as an alternative to on-site construction of affordable units, the developer shall demonstrate how the alternative will Affirmatively Further Fair Housing (AFFH).
  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 affordable housing ~~impact~~ fee.
  6. 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 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.~~
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### 3.4962.060 Affordable Housing impact Fees for multiple-family residential rental development.

- A. Applicability. Affordable housing ~~impact~~ fee shall be imposed on all new residential rental developments that result in a net increase of one 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 affordable 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 affordable 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 an Affordable 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. When off-site units or dedication of land is proposed as an alternative to on-site construction of affordable units, the developer shall demonstrate how the alternative will Affirmatively Further Fair Housing (AFFH).
  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 affordable housing ~~impact~~ fee.
  6. 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 fee.

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~~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.~~

### **3.4962.070 Affordable Housing ~~impact~~ Fees for non-residential development.**

- A. Applicability. A non-residential affordable housing ~~impact~~ fee and commercial linkage 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 ny net increase of square footage five hundred (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 affordable housing ~~impact~~ fee and commercial linkage 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 affordable housing ~~impact~~ fee: (Gross square feet non-residential floor area) minus (existing square feet floor area) multiplied by (per square foot fee) equals (total affordable housing ~~impact~~ fee).
- C. Exemptions to New Gross Floor Area. The following areas are exempt from the new gross floor area used in affordable housing ~~impact~~ fee and commercial linkage 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 twelve (12) months prior to the filing date of the development application.
- D. Alternatives in-Lieu of an Affordable 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~~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. When off-site units or dedication of land is proposed as an alternative to on-site construction of affordable units, the developer shall demonstrate how the alternative will Affirmatively Further Fair Housing (AFFH).
  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 affordable housing ~~impact~~ fee.
  6. 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 fee.

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~~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.~~

### **3.4962.080 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.

### **3.4962.090 Waiver.**

Notwithstanding any other provision of this chapter, the requirement to pay the affordable 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 affordable 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.

### **3.4962.100 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.

### **3.4962.110 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.