

**ORIGINAL****ORDINANCE NO. 2417****AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF REDWOOD CITY ADDING A NEW ARTICLE XVII (AFFORDABLE HOUSING IMPACT FEE) TO CHAPTER 18 OF THE REDWOOD CITY MUNICIPAL CODE**

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF REDWOOD CITY DOES ORDAIN AS FOLLOWS:**

**Section 1.** The City Council makes the following findings:

A. The provision of safe and stable housing for households at all income levels is essential for the public welfare of the city. Housing in Redwood City 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, lower, and moderate income households, as evidenced by the following findings in the City's 2015-2023 Housing Element:

1. Almost half of Redwood City's households are lower income (see Housing Element Figure H-5).

2. Households of any size earning less than the median income cannot afford the average home purchase price or the average rents in Redwood City.

3. More than 90 percent of Redwood City renter households and two-thirds of owner households earning under \$35,000 annually are overpaying for housing. Just over half the households earning between \$35,000 and \$75,000 per year are overpaying as well. In total, an estimated 22 percent of all households are paying between 30 and 49 percent of household income for housing. An additional 21 percent of households are paying more than 50 percent of household income for housing, yielding a total cost burden rate of 43 percent in Redwood City.

B. As provided in the Housing Element of the General Plan, the City wishes to be a leader in providing resources to facilitate the development of housing, and especially affordable housing, within its borders. Housing Element Goal H-2 is to promote, encourage, and assist in the development of housing that meets the needs of all socio-economic segments of the community. Housing Element Policies H-2.4 and H-2.5 call for the City to facilitate a variety of housing choices in Redwood City and to consider various avenues to ensure the provision or construction of affordable housing and other community benefits. To implement the goal and policies, Housing Element Program H-3 requires the City to participate in a countywide nexus study to consider affordable housing impact fees and commercial linkage fees. As part of the Partnership RWC community

benefits program, required by Housing Element Program H-14, the City will adopt fees to provide affordable housing.

C. New residents of market-rate 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.

D. New housing construction that does not include affordable units aggravates the existing shortage of affordable housing by absorbing the supply of available residential land.

E. Because nonresidential development also attracts employees, of whom a quantifiable number will have very low, low, or moderate incomes, new nonresidential developments similarly increase the demand for and exacerbate the shortage of housing available for people at these income levels while also reducing the supply of land potentially available for housing development.

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

**Section 2.** A new Article XVII (Affordable Housing Impact Fee) is hereby added to Chapter 18 of the Redwood City Municipal Code to read as follows:

## **Chapter 18**

### **Article XVII**

#### **Affordable Housing Impact Fee**

- Section 18.266. Short Title, Authority and Applicability
- Section 18.267. Purpose
- Section 18.268. Definitions
- Section 18.269. Housing Impact Fee
- Section 18.270. Exemptions from Payment of Housing Impact Fee
- Section 18.271. Alternatives to Payment of Housing Impact Fee
- Section 18.272. Standards for Development of Affordable Housing
- Section 18.273. Housing Fund
- Section 18.274. Administrative Relief
- Section 18.275. Enforcement

#### **Section 18.266. – Short Title, Authority, and Applicability:**

A. This Article shall be known and may be cited as the "Affordable Housing Ordinance."

B. The fees established pursuant to this Article are adopted under the authority of California Constitution Article XI, Section 7, which provides: "A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws," and in accordance with the findings set forth in the ordinance codified in this Article.

C. This Article shall apply to the extent permitted by the statutes and laws of the State of California.

Section 18.267. – Purpose:

A. The purpose of this Article is to: (1) enhance the public welfare by imposing a residential and nonresidential development project housing impact fee whereby developers of residential and nonresidential development projects will mitigate the impacts of their projects on the need for affordable housing by contributing to the supply of housing for households with very low, low, and moderate incomes; and (2) implement the Housing Element by creating a mechanism to provide benefits to the community from new development in the form of affordable housing, thereby helping to meet the needs of all socioeconomic elements of the community as provided in the Housing Element.

Section 18.268. – Definitions: The following words and terms as used in this Article shall have the meaning respectively ascribed thereto:

A. "Affordable housing fund" means a fund or account designated by the City to maintain and account for all monies received pursuant to this Article.

B. "Affordable ownership cost" means the sales price of a for-sale affordable unit resulting in projected average monthly housing payments, during the first calendar year of a household's occupancy, including interest, principal, mortgage insurance, property taxes, homeowners insurance, homeowners' association dues, if any, and a reasonable allowance for utilities, property maintenance, and repairs, not exceeding the sales prices specified by Section 50052.5 of the California Health and Safety Code and California Code of Regulations Title 25, Sections 6910-6924.

C. "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 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 San Mateo County Housing Authority, 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.

D. "Affordable unit" means a dwelling unit which a developer proposes as an alternative to payment of the housing impact fee, as defined in this Article and which is required to be rented at an affordable rent or sold at an affordable ownership cost to very low, low or moderate income households.

E. "Building permit" includes full structural building permits as well as partial permits such as foundation-only permits.

F. "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 or nonresidential development project.

G. "Developer" means the person(s) or legal entity(ies), who also may be the property owner, who is seeking real property development permits or approvals from the City or developing a particular project in the City.

H. "For-sale unit" means a residential dwelling unit that may be sold individually in conformance with the Subdivision Map Act. For-sale units also include units that are converted from rental units to for-sale units.

I. "Housing impact fee" means the fee paid by developers of residential and nonresidential development projects to mitigate the impacts that such developments have on the demand for affordable housing in the City.

J. "Low income households" means households with incomes no greater than the maximum income for low income households, as published annually by the City for each household size, based on United States Department of Housing and Urban Development (HUD) and the California Department of Housing and Community Development (HCD) income limits for San Mateo County.

K. "Market rate unit" means a new dwelling unit in a residential development project that is not an affordable unit.

L. "Median income" means the median income applicable to San Mateo County, as published annually by the City for each household size, based on median income data for San Mateo County published by the United States Department of Housing and Urban Development (HUD) and the California Department of Housing and Community Development (HCD).

M. "Moderate income households" means households with incomes no greater than the maximum income for moderate income households, as published annually by the City for each household size, based on United States Department of Housing and Urban Development (HUD) and the California Department of Housing and Community Development (HCD) income limits for San Mateo County.

N. "Nonresidential development project" means an application for a planning permit or building permit that includes the new construction of gross square feet of nonresidential space or the conversion of a residential use to a nonresidential use.

O. "Planning permit" means any discretionary approval of a residential or nonresidential development project, including, without limitation, a general or specific plan adoption or amendment, rezoning, tentative map, parcel map, conditional use permit, variances, or design review.

P. "Rental unit" means a dwelling unit that is intended to be offered for rent or lease and that cannot be sold individually in conformance with the Subdivision Map Act.

Q. "Residential development project" means an application for a planning permit or building permit at one location to create one or more additional dwelling units, convert nonresidential uses to dwelling units, subdivide a parcel to create one or more separately transferable parcels intended for residential development, or implement a condominium conversion, including development constructed at one time and in phases. "One location" includes all adjacent parcels of land under common ownership or control, the property lines of which are contiguous at any point, or the property lines of which are separated only by a public or private street, road, or other public or private right-of-way, or separated only by the lands owned or controlled by the developer.

R. "Very low income households" means households with incomes no greater than the maximum income for very low income households, as published annually by the City for each household size, based on United States Department of Housing and Urban Development (HUD) and the California Department of Housing and Community Development (HCD) income limits for San Mateo County.

Section 18.269. – Housing Impact Fee:

A. A housing impact fee is hereby imposed on all developers of residential and nonresidential development projects. The amount of the housing impact fee shall be established from time to time by resolution of the City Council. Housing impact fees shall not exceed the cost of mitigating the impact of nonresidential and residential development projects on the need for affordable housing in the City.

B. Payment of the residential and nonresidential development project housing impact fees shall be due at the issuance of the building permit for the development. The fees shall be calculated based on the fee schedule in effect at the time the building permit is issued.

Section 18.270. – Exemptions from Payment of Housing Impact Fee:

A. The housing impact fee shall not apply to developers of residential development projects consisting of four or fewer dwelling units; the creation of four or fewer parcels, provided that no more than four dwelling units are allowed; or accessory dwellings created under Article 37 of the Redwood City Zoning Code.

B. The housing impact fee shall not apply to developers of nonresidential development projects adding 5,000 square feet or less of net new square footage.

C. The housing impact fee shall not apply to developers of residential or nonresidential development projects which fall within one or more of the following categories:

1. Residential or nonresidential development projects located on property owned by the state of California, the United States of America, or any of its agencies and used exclusively for governmental or educational purposes.

2. Any structure proposed to repair or replace a building that was damaged or destroyed by fire or other calamity, so long as the square footage and use of the building remains the same, and construction of the replacement building begins within one year of the damage's occurrence.

3. Residential or nonresidential development projects to the extent they have received a vested right to proceed without payment of housing impact fees pursuant to state law, including those that are the subject of development agreements currently in effect with the City, if such development agreements were approved prior to the effective date of this Article and where such agreements expressly preclude the city from requiring payment of the housing impact fee.

4. Residential or nonresidential development projects for which applications have been deemed complete prior to September 21, 2015.

5. Other uses that may be specified by resolution of the City Council.

Section 18.271. – Alternatives to Payment of Housing Impact Fee:

A. As an alternative to compliance with the basic provisions included in Section 18.269 of this Article, developers of residential or nonresidential development projects may propose to mitigate the affordable housing impacts of such development through the construction of affordable units on site or through an alternative mitigation program proposed by the developer and the community development director, such as the provision of off-site affordable units, donation of land for the construction of affordable units, or purchase of existing units for conversion to affordable units.

1. The City Council may adopt by resolution the percentage of affordable units needed to mitigate the impact of residential or nonresidential development projects on the need for affordable housing.

2. Any affordable rental or for-sale units proposed as an alternative to the payment of the housing impact fee shall be subject to the requirements described in Section 18.272 of this Article.

3. If a developer proposes to provide affordable rental units, then, to ensure compliance with the Costa-Hawkins Rental Housing Act (Chapter 2.7 of Title 5 of Part 4 of Division 3 of the Civil Code), the City may only approve such a proposal if, as required by Civil Code Sections 1954.52(b) and 1954.53(a)(2), the developer agrees in a contract with the City to limit rents in accordance with Section 18.272 of this Article in

consideration for a direct financial contribution from the City or a form of assistance specified in the State's Density Bonus Law (Chapter 4.3, commencing with Section 65915, of Division 1 of Title 7 of the Government Code). The developer may request that the City waive the affordable housing impact fee as a direct financial contribution to the rental residential development project.

B. If the developer seeks an alternative to the payment of the housing impact fee pursuant to subsection A of this Section, then the application for the first approval of a residential or nonresidential development project for which the alternative is sought shall include an "affordable housing plan" that describes how the alternative will comply with the provisions of this Article. No affordable housing plan is required if the developer proposes only to pay the housing impact fee.

1. Residential or nonresidential development projects requesting an alternative to payment of the housing impact fee require that an affordable housing plan be submitted in conformance with this Article prior to the application being deemed complete.

2. The affordable housing plan shall be processed concurrently with all other permits required for the residential or nonresidential development project. Before approving the affordable housing plan, the decision-making body shall find that the affordable housing plan conforms to this Article. A condition shall be attached to the first approval of any residential or nonresidential development project to require recordation of an affordable housing agreement, as described in this subsection, prior to the approval of any final or parcel map or building permit for the residential or nonresidential development project.

3. The approved affordable housing plan may be amended prior to issuance of any building permit for the residential or nonresidential development project. A request for a minor modification of an approved affordable housing plan may be granted by the community development 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.

4. If required to ensure compliance with the approved affordable housing plan, affordable housing agreements acceptable to the community development director or designee shall be recorded against the residential or nonresidential development project prior to approval of any final or parcel map, or issuance of any building permit, whichever occurs first. 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 mechanisms, including the financing of ongoing administrative and monitoring costs, consistent with the approved affordable housing plan, as determined by the city manager or designee.

C. The decision-making body may approve or conditionally approve an affordable housing plan that proposes on-site construction of affordable units if the decision-making body determines, based on substantial evidence, that:

1. The proposed affordable units comply with the standards in Section 18.272, including without limitation compliance with Section 18.272(B) requiring that the affordable units be made available for occupancy concurrently with the market-rate units; and
2. The affordable units will mitigate the impact of the project on the need for affordable housing.

D. If a developer proposes off-site affordable housing units or any other alternative in the affordable housing plan, the decision-making body may approve such a proposal if it is able to make the findings set forth in subsection C of this Section and the proposal meets all of the following conditions:

1. Financing or a viable financing plan, which may include public funding sources, is in place for the proposed affordable housing units; and
2. The proposed location is suitable for the proposed affordable housing, is consistent with the Housing Element, general plan, and zoning, and will not tend to cause residential segregation.

Section 18.272. – Standards for Development of Affordable Housing:

A. All affordable units provided pursuant to Section 18.271 shall be comparable to the overall quality of construction to market-rate units in the same housing development as follows:

1. The exterior appearance of the affordable units shall be compatible with that of market-rate units.
2. Interior finishes and amenities may not differ from those provided in the base model market rate units.
3. The number of bedrooms in the affordable units shall be comparable to the average number of bedrooms in the market-rate units, and the affordable units shall be reasonably dispersed within the residential development, with unit locations comparable to those of the market-rate units, subject to review and approval by the community development director.
4. 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 development, provided at an affordable rent as defined in Section 18.267 or at affordable ownership cost as defined in Section 18.267.



B. All affordable units provided pursuant to Section 18.271 shall be made available for occupancy concurrently with the market-rate units. For the purposes of this subsection, "concurrently" means that the City may not issue building permits for more than fifty percent (50%) of the market-rate units until it has issued building permits for all of the affordable units, and the City may not approve any final inspections or certificates of occupancy for more than fifty percent (50%) of the market-rate units until it has issued final inspections or certificates of occupancy for all of the affordable units.

C. All affordable units provided pursuant to Section 18.271 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.

1. All affordable units shall remain affordable to the targeted income group for 30 to 55 years.

2. 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.

3. No household may begin occupancy of an affordable unit until the household has been determined to be eligible to occupy that unit by the community development director or designee. The community development director may from time to time adopt guidelines for determining household income and affordable housing cost, determining buyer eligibility, monitoring, and relevant administrative provisions.

4. Officials, employees, or consultants of the City and members of City boards and commissions shall comply with all applicable laws, regulations, and policies relating to conflicts of interest as to their eligibility to develop, construct, sell, rent, lease, occupy, or purchase an affordable unit.

Section 18.273. – Housing Fund:

A. There is hereby established in the City of Redwood City an "Affordable Housing Fund." All affordable housing impact fees or other funds collected under this Article shall be deposited into the City's Affordable Housing Fund.

B. The monies in the Affordable Housing Fund and all earnings from investment of the moneys in the Fund shall be expended exclusively to provide housing affordable to extremely low income, 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 the purposes for which the fees were collected, and for administration and compliance monitoring of the affordable housing program.

C. The City Council may, from time to time, adopt guidelines for expenditure of monies in the affordable housing fund.

Section 18.274. – Administrative Relief:

A. As part of an application for the first approval of a residential or nonresidential development project, a developer may request that the requirements of this Article be waived or modified by the decision-making body, based upon a showing that applying the requirements of this Article would result in an unconstitutional taking of property or would result in any other unconstitutional result, or because there is no reasonable relationship between the impact of the development and the need for affordable housing.

1. Any request for a waiver or modification shall be submitted concurrently with the project application. The developer shall set forth in detail the factual and legal basis for the claim, including all supporting technical documentation.

2. Any request for a waiver or modification based on this Section shall be reviewed and considered at the same time as the project application. The City Council may from time to time establish by resolution a processing fee for review of any request for a waiver or modification.

B. 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 the 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 pursuant to this Section.

Section 18.275. – Enforcement:

A. Payment of the housing impact fee is the obligation of the developer for a residential or nonresidential development project. 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 or development approval.

B. The city attorney shall be authorized to enforce the provisions of this Article 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 Article shall not excuse any developer or owner from the requirements of this Article. No permit, license, map, or other approval or entitlement for a residential development shall be issued, including without limitation a final inspection or certificate of occupancy, until all applicable requirements of this Article 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 3.** Adoption of this ordinance is found to be categorically exempt from the California Environmental Quality Act because the adoption of this resolution 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)), and because it can be seen with certainty that there is no possibility that the fees may have a significant effect on the environment, in that this ordinance contains no provisions modifying the physical design, development, or construction of residences or nonresidential structures (CEQA Guidelines Section 15061(b)(3)).

**Section 4.** If any section, subsection, sentence, clause or phrase of the ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it should have adopted the ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

**Section 5.** The City Clerk shall publish this ordinance in accordance with applicable law

**Section 6.** Effective date. This ordinance shall take effect thirty (30) days from the date of its passage. Before expiration of fifteen (15) days after its passage, this ordinance shall be published in the Daily News, a newspaper of general circulation published and printed in the County of San Mateo and circulated in the City of Redwood City.

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ORDINANCE NO. 2417

At a Joint City Council/Successor Agency Board/Public Financing Authority Meeting thereof held on the 7<sup>TH</sup> day of December, 2015 by the following votes:

AYES, and in favor of the passage and adoption of the foregoing ordinance:

Council Members: Aguirre , Bain, Howard, Pierce, Seybert and Mayor Gee

NOES: None

RECUSED: None

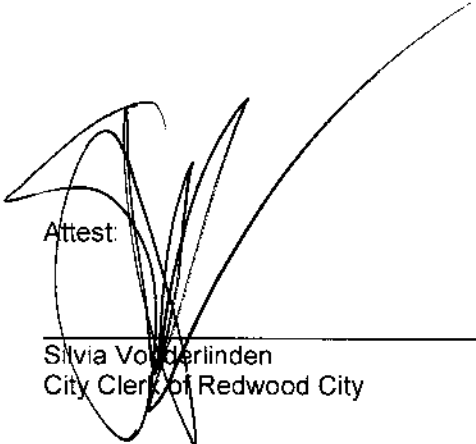
ABSENT: Foust



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Jeffrey Gee  
Mayor of the City of Redwood City

Attest:



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Silvia Von Berlienden  
City Clerk of Redwood City

I hereby approve the foregoing Ordinance this 11<sup>TH</sup> day of December, 2015



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Jeffrey Gee  
Mayor of the City of Redwood City