

## **EXHIBIT A**

### **Chapter 25.82 RESIDENTIAL IMPACT FEES**

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#### **25.82.010 Purpose.**

The purpose of this chapter is to:

(a) Encourage the development and availability of housing affordable to a broad range of households with varying income levels within the city as mandated by State law, including California Government Code Section 65580 and related provisions.

(b) Offset the demand for affordable housing that is created by new development and mitigate environmental and other impacts that accompany new residential development by protecting the economic diversity of the City's housing stock; reducing traffic, transit and related air quality impacts; promoting jobs/housing balance; and reducing the demands placed on transportation infrastructure in the region.

(c) Promote the City's policy to provide an adequate number of affordable housing units to the city's housing stock in proportion to the existing or projected need in the community, as identified by the Housing Element.

(d) Support the Housing Element goal of providing housing opportunities for those who work in Burlingame.

(e) Support the Housing Element goal of achieving increased affordability of housing.

(f) Support the Housing Element policy of developing of a variety of housing types that are affordable to very low and extremely low income households.

(g) Support the Housing Element goal of preserving residential character by encouraging maintenance, improvement and rehabilitation of the City's neighborhoods and housing stock.

#### **25.82.020 Definitions.**

As used in this chapter, the following terms shall have the following meanings:

(a) "Administrator" means the Community Development Director of the City or other person designated by the City Manager.

(b) "Affordable housing fund" means a separate fund or account designated by the City to maintain and account for all monies received pursuant to this Chapter.

(c) "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, as they may be amended from time to time.

(d) "Affordable rent" means the total monthly housing expenses for an affordable rental 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 they may be amended from time to time. 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 rental unit and land and all facilities associated with the rental 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 N; 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 unit" means a dwelling unit which a builder proposes as an alternative to payment of the residential impact fee, as defined in this Chapter and which is required to be rented at a rate affordable to very low, low or moderate income households, or sold at an affordable ownership cost to very low, low or moderate income households.

(f) "Builder" (may also be referred to as developer) means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which seeks City approvals for all or part of a residential development project.

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

(h) "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 development project.

(i) "First approval" means the first discretionary approval to occur with respect to a residential development project, or, for residential development projects not requiring a discretionary approval, the issuance of a building permit.

(j) "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.

(k) "Low income households" means households with incomes no greater than the maximum income for low income households, as published annually by the County of San Mateo 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, unless stated otherwise in this chapter.

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

(m) "Median income" means the median income applicable to San Mateo County, as published annually by the County of San Mateo 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), unless stated otherwise in this chapter.

(n) "Moderate income households" means households with incomes no greater than the maximum income for moderate income households, as published annually by the County of San Mateo 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, unless stated otherwise in this chapter.

(o) "Planning permit" means any discretionary approval of a development 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.

(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 as well as 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 builder.

(r) "Residential floor area" means all horizontal areas of the several floors of such buildings measured from the exterior faces or 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.

(s) "Very low income households" means households with incomes no greater than the maximum income for very low income households, as published annually by the County of San Mateo 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, unless stated otherwise in this chapter.

#### **25.82.030 Residential Impact Fees.**

(a) Initial fees shall be imposed on new residential development projects as follows:

	Impact Fee – Per Square Foot	
	Base	With Prevailing / Area Wage
Rental Multifamily – 11 units and above		
Up to 50 du/ac	\$17.00 / sq ft	\$14.00 / sq ft
51-70 du/ac	\$20.00 / sq ft	\$17.00 / sq ft
71 du/ac and above	\$30.00 / sq ft	\$25.00 / sq ft
For Sale Multifamily (Condominiums) – 7 units and above		
	\$35.00 / sq ft	\$30.00 / sq ft

(b) Fees shall be based on the calculation of the residential floor area as defined in this chapter, and shall include a credit for existing uses. The Council may amend these fees through the public hearing process for the City's Master Fee Schedule. Residential impact fees shall not exceed the cost of mitigating the impact of the residential development projects on the need for affordable housing in the city.

(c) Rental projects that convert to condominiums within 10 years of completion of construction would be subject to the fee differential between rental and for sale units as a condition of conversion.

#### **25.82.040 Fee payment.**

Any residential impact fee shall be paid in full prior to the issuance of the first building permit for the residential development project subject to the fee or at a time otherwise specified by Council

resolution. The fee shall be calculated based on the fee schedule in effect at the time the building permit is issued.

#### **25.82.050 State Density Bonus.**

For residential development projects that are granted a density bonus pursuant to California Government Code Section 65915, *et seq.* (the “State Density Bonus Law”), the residential impact fee shall apply to all market-rate units, including any additional market-rate units provided under the State Density Bonus Law. The required residential impact fee shall be reduced to the extent that any affordable units mitigate the market rate units’ impact on the need for affordable housing in the City. The Community Development Director may issue guidelines from time to time regarding the calculation of any fee reduction.

#### **25.82.060 Exemptions.**

(a) The following residential development projects are exempt from the provisions of this chapter:

- (1) Rental Multifamily projects with a total of ten (10) units or fewer.
- (2) For Sale Multifamily (Condominiums) with a total of six (6) units or fewer.
- (3) Projects that have established a vested right not to be subject to this chapter.

(4) Applications under review by the Planning Commission or Community Development Department that had been deemed complete at the time of adoption of the residential impact fees provided for in this Chapter.

(b) The City Council may elect to waive payment of the residential impact fee if it finds that: (1) the residential development project is dedicated to a public use owned and operated by other public agencies or a nonprofit public benefit corporation; and (2) the benefits to the community provided by such public use exceed those that would be provided by the payment of the residential impact fee. If the City Council elects to waive residential impact fees pursuant to this provision, the public use of the site shall be guaranteed by a recorded document in a form acceptable to the City Attorney.

(c) The City Council by resolution may adopt additional exemptions from time to time.

#### **25.82.70 Alternatives.**

(a) Alternatives available to projects requiring an impact fee. As an alternative to compliance with the impact fee requirements included in this Article, developers of residential 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. Any such conversion must include a guarantee of affordability for a period of 55 years.

(1) If a Rental Multifamily project provides ten percent (10%) of the units on site to be affordable to moderate income households (in this instance 80% - 120% AMI) for a period of 55 years, the impacts of residential development on the need for affordable housing shall be deemed mitigated.

(2) If a For Sale Multifamily (Townhome/Condominium) project provides ten percent (10%) of the units on site to be affordable to above-moderate income households (in this instance 120% - 150% AMI, with the price set at the 135% AMI level) for a period of 55 years, the impacts of residential development on the need for affordable housing shall be deemed mitigated.

(3) Any affordable rental or for-sale units proposed as an alternative to the payment of the residential impact fee shall be subject to the requirements described in Chapter 25.82.070.

(b) Approval of off-site affordable units. If a developer proposes off-site affordable units or any other alternative in the affordable housing plan required under Chapter 25.82.080 (Affordable housing plan and agreement), the review authority may approve such a proposal if it finds 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 cause residential segregation; and

(3) The proposed units will be maintained as affordable for a period of 55 years.

(c) Other alternatives. The City may consider 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, purchase of existing units for conversion to affordable units or alternatives to Section 25.82.090 (Standards for development).

(d) Agreement with City for financing. If the City enters into a financing agreement with the applicant, the parties may agree to alter the requirements of Section 25.82.090 (Standards for development).

(e) Significant number of affordable units. If an applicant exceeds the maximum percentage of affordable units set forth in the State Density Bonus law for low or very low income rental or moderate income ownership units, the City will consider an applicant's request to alter the requirements of Section 25.82.090 (Standards for development) in conjunction with

its review of the planning application for the project and may reject or accept the request in its sole discretion.

**25.82.80 Affordable housing plan and agreement.**

(a) If the builder seeks an alternative to the payment of the residential impact fee pursuant to Section 25.82.70 (Alternatives), the application for the first approval of a residential 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 Chapter. No affordable housing plan is required if the builder proposes only to pay the residential impact fee.

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

(2) The affordable housing plan shall be processed concurrently with all other permits required for the residential 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 the first approval of any residential 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 development project.

(3) The approved affordable housing plan may be amended prior to issuance of any building permit for the residential 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 development project prior to or concurrently with and as a condition of 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 Community Development Director or designee.

(b) After approval of the application, applicant shall enter into a regulatory agreement with the City. The terms of this agreement shall be approved as to form by the City Attorney's Office, and reviewed and revised as appropriate by the reviewing City official. This agreement shall be on a form provided by the City, and shall include the following terms:

(1) The affordability of very low, lower, and moderate income housing shall be assured in a manner consistent with this chapter.

(2) An equity sharing agreement pursuant to Government Code Section 65915(c)(2).

(3) The location, dwelling unit sizes, rental cost, and number of bedrooms of the affordable units.

(4) A description of any bonuses and incentives, if any, provided by the City.

(5) Any other terms as required to ensure implementation and compliance with this section, and as applicable sections of State Density Bonus law.

#### **25.82.090 Standards for development.**

(a) All affordable units provided pursuant to Chapter 25.82.070 shall meet the following standards:

(1) The required affordable dwelling units shall be constructed concurrently with market-rate units unless both the final decision-making authority of the City and developer agree within the affordable housing agreement to an alternative schedule for development.

(2) The exterior design and construction of the affordable dwelling units shall be consistent with the exterior design and construction of the total project development, and be consistent with any affordable residential development standards that may be prepared by the City.

(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 development, provided at an affordable rent as defined in Chapter 25.82.020 or at affordable ownership cost as defined in Chapter 25.82.020. Developers are strictly prohibited from discriminating against tenants or owners of affordable units in granting access to and full enjoyment of any community amenities available to other tenants or owners outside of their individual units.

(4) A regulatory agreement, as described in Section 25.82.080 (Affordable housing plan and agreement), shall be made a condition of the discretionary permits for all developments pursuant to this chapter. The regulatory agreement shall be recorded as a restriction on the development.

#### **25.82.100 Affordable housing fund.**

(a) Special Revenue Fund. A fund for the deposit of fees established under this chapter shall be established and may also receive monies for housing from other sources.

(b) Purpose and Limitations. Monies deposited in the fund shall be used to increase and improve the supply of housing affordable to moderate-, low-, very low-, and extremely low-income households. Such purpose includes the purchase of affordability



covenants or similar initiatives whose purpose is to preserve existing affordable housing that may otherwise be lost due to market conditions. Monies may also be used to cover reasonable administrative or related expenses associated with the administration of this chapter.

(c) Administration. The fund shall be administered by the Administrator, who may develop procedures to implement the purposes of the fund consistent with the requirements of this chapter and subject to any adopted budget of the City and generally applicable accounting and procurement processes.

(d) Expenditures. Fund monies shall be used in accordance with the City's Housing Element, or subsequent plans adopted by the City Council to maintain or increase the quantity, quality, and variety of affordable housing units or assist other governmental entities, private organizations or individuals to do so. Permissible uses include, but are not limited to, land acquisition, debt service, parcel assemblage, gap financing, housing rehabilitation, grants, unit acquisition, new construction, and other pursuits associated with providing affordable housing. The fund may be used for the benefit of both rental and owner-occupied housing.

#### **25.82.110 Administrative Relief/Appeal.**

(a) The builder of a project subject to this chapter may request that the requirements of this chapter be waived or modified by the City Council, based upon the absence of any reasonable relationship or nexus between the impacts of the development and either the amount of the fee charged or the type of facilities to be financed.

(b) The application shall be made in writing and filed with the Community Development Director not later than:

(1) Twenty (20) days prior to the public hearing before the Planning Commission on the development project application under this title, or

(2) If no hearing before the Planning Commission is required by this title, at the time of the filing of the application for a development permit.

(3) The application shall state in detail the factual basis for the claim of waiver, reduction, or adjustment.

(c) The City Council shall consider the application at a public hearing held within sixty (60) days after the filing of the fee adjustment application. If a reduction, adjustment or waiver is granted, any change in use within the development project shall invalidate the waiver, adjustment or reduction of the fee. The decision of the City Council is final.

#### **25.82.120 Enforcement.**

(a) Payment of the residential linkage fee is the obligation of the builder of a residential 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 chapter and all below market rate 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 builder or owner from the requirements of this chapter. No permit, license, map, or other approval or entitlement for a commercial development 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 chapter 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.