



# STAFF REPORT

AGENDA NO:

MEETING DATE: March 18, 2019

**To: Honorable Mayor and City Council**

**Date: March 18, 2019**

**From: Kathleen Kane, City Attorney – (650) 558-7204  
Kevin Gardiner, Community Development Director – (650) 558-7253**

**Subject: Public Hearing and Introduction of an Ordinance Establishing Residential Impact Fees on New Residential Development to Support Workforce Housing**

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## **RECOMMENDATION**

Staff recommends that the City Council consider an ordinance establishing Residential Impact Fees for new residential developments to support workforce housing in the city.

In order to do so, the Council should:

- A. Receive the staff report and ask any questions of staff.
- B. Request that the City Clerk read the title of the proposed ordinance.
- C. By motion, waive further reading and introduce the ordinance.
- D. Conduct a public hearing.
- E. Following the public hearing, discuss the ordinance and determine whether to bring it back for second reading and adoption. If the Council is in favor of the ordinance, direct the City Clerk to publish a summary of the ordinance at least five days before its proposed adoption.

## **BACKGROUND**

Affordable housing impact fees are used to support and build new homes for lower-income residents. The fees can be charged to developers of new residential projects and used for land purchase, construction costs, or site rehabilitation related to providing workforce housing.

Jurisdictions may tailor the fees so they meet local needs. The fees can be adjusted for a wide variety of reasons, so long as they are not arbitrary or capricious, and so long as the fees for all projects remain below the legal maximum.

As part of the San Mateo County “21 Elements” multi-jurisdictional effort, a Residential Impact Fee Nexus Study was prepared for the City of Burlingame, together with a Commercial Linkage Fee Nexus Study. These studies describe and quantify how the development of homes, offices, and commercial space creates a need for housing, particularly for very low-, low- and moderate-income residents. The maximum impact fees that can be legally charged were calculated by estimating the number of new worker households associated with new development. A final analysis was then completed that considered factors like local conditions and the fees of neighboring jurisdictions to

determine a potential range of impact fees. These studies enable the City Council to consider the adoption of commercial linkage and/or residential impact fees that would be used to provide affordable housing.

On June 19, 2017, the City Council adopted an ordinance establishing commercial linkage fees for new commercial development in Burlingame. The adopted fees are \$7.00 per square foot for new retail development, \$12.00 per square foot for new hotel development, \$18.00 per square foot for office projects of 50,000 square feet or less, and \$25.00 per square foot for office greater than 50,000 square feet. For developers who utilize prevailing wages or area standard wages, the fees are \$5.00 per square foot for new retail development, \$10.00 per square foot for new hotel development, \$15.00 per square foot for office of 50,000 square feet or less, and \$20.00 per square foot for office greater than 50,000 square feet. Over time, these fees will provide a dedicated source of funding for programs supporting workforce housing in Burlingame.

On February 12, 2018, the City Council considered the establishment of residential impact fees that would apply to new residential development in Burlingame. The City Council directed staff to further study potential fee levels and structures, consider an on-site “in-lieu” option for providing affordable units within development projects, and obtain input from housing developers and other stakeholders.

Following direction from the City Council, staff engaged Seifel Consulting Inc. to prepare an analysis on options for residential impact fees. A key focus of the Seifel Consulting work program was to develop recommendations related to the potential adoption of new fees on residential development and the best strategies to incentivize the on-site provision of affordable housing within new development as part of the City’s housing program. Seifel Consulting subsequently prepared a memorandum reflecting findings of the analysis and input from the City Council (attached).

On November 14, 2018, the City Council held a special meeting to review the Seifel Consulting report and provide direction on establishing residential impact fees (November 14, 2018 City Council Meeting Minutes attached).

On February 11, 2019, the Planning Commission held a public hearing to review the residential impact fees analysis, proposed ordinance, and accompanying area standard wage resolution. The Commission provided a recommendation to the City Council to approve the ordinance and resolution as proposed (February 11, 2019 Planning Commission Meeting Minutes Excerpt attached).

On March 4, 2019, the City Council considered a draft ordinance establishing residential impact fees. Councilmembers suggested the following changes to the ordinance:

- Clarification that units provided through State Density Bonus provisions are not subject to residential impact fees;
- Clarification that impact fees may be utilized to support a variety of housing programs that benefit the workforce, including “flex support” to provide emergency assistance to workforce households experiencing unanticipated short-term income disruptions, as well as preservation of existing affordable rental housing stock;
- Clarification that if a project converts from rental to condominium ownership within ten years of

construction, the applicable fee differential shall be based on the fee structure in place *at the time of conversion to condominiums*, minus the fees originally submitted at the time of construction.

The ordinance is being introduced with these changes incorporated. Additional details are provided in the discussion below.

In addition, there was a request to include with the staff report a letter sent to the City Council from the San Mateo County Association of Realtors (SAMCAR) regarding residential impact fees. The letter, dated June 27, 2018, is included as an attachment.

## **DISCUSSION**

**Housing Need:** For years, housing development in Burlingame and San Mateo County has not kept up with the thousands of new jobs added, and the problem has gotten worse in recent years. Between 2010 and 2016, San Mateo County added 79,000 new jobs, but only 4,941 new homes of all types. The resulting jobs-housing gap ratio was 1 to 16. In other words, only one new housing unit was built for every 16 new jobs created. This jobs-housing gap drives up the cost of housing for homebuyers and renters alike, produces congestion and long commutes for workers, and forces friends and family members to move away because they can no longer afford to live in Burlingame or San Mateo County.

A significant number of new jobs pay wages that are not sufficient to cover local housing costs. This includes jobs generated by new development. The region's driving economic sectors are increasingly split between high-wage jobs in industries such as professional and technical services, and low-wage jobs in hospitality, childcare, retail, and others. Those in the low-wage workforce increasingly commute into the area from long distances, which results in increased traffic in the region and ultimately limits the pool of employees for local businesses. For a worker earning minimum wage, the cost of gas and bridge tolls together with long commute times make it difficult (if not infeasible) to justify employment in a low wage local job. Local service businesses have reported difficulty hiring and retaining employees, even when offering wages well above minimum wage.

The City of Burlingame has been proactive in addressing the supply aspect of the housing situation through the encouragement and approval of significant numbers of new housing units. The Burlingame Downtown Specific Plan, together with the 2015 Housing Element and recently adopted General Plan Update, have emphasized the construction of new housing units to address the increased demand for housing units near employment in Burlingame and San Mateo County. Per the City's most recent Residential Projects Overview document (attached), 645 units have been approved, and an additional 644 units are currently under review by the Planning Commission, for a total of 1,289 units. Of these, 243 would be priced below market rate for households in the Moderate, Median, Low, or Very Low income categories.<sup>1</sup> Looking to the future, the General Plan

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<sup>1</sup> By government definition, "Moderate-Income" means a household with an income that is 120% of the "Area Median Income" (AMI), "Low-income" means a household with an income that is 80% of AMI, "Very-Low Income" means a household with an income that is 50% of AMI, and "Extremely-Low Income" means a household with an income at 30% of AMI. In 2018 (the most recent year data is available), the San Mateo County AMI was \$82,900 for a single-person household, \$94,700 for a two-person household, and

Update has had a strong emphasis on promoting housing production, with increased residential densities and the addition of new housing areas in the northern portion of the city.

**Legal and Policy Context:** Impact fees are charges imposed by jurisdictions that can be used to support and build new development. Since the 1970s, California cities have used impact fees to reduce costs paid by the public for items like roads, parks, schools, water, and sewer. The money generated by housing impact fees is placed into a fund to help pay for new affordable housing. Fees can be set per square foot, per unit, or by some other measure, and can only be applied to new development projects. Before being adopted, jurisdictions must show that there is a connection, or nexus, between the impacts of development and the fees charged.

A nexus study assesses the connection between new development and the need for new affordable housing. This is accomplished by calculating the number, type, and salaries of jobs that will result from a new development. The study then establishes the maximum impact fee that can legally be charged to a developer for each type of development being studied. Residential developments include townhomes, condominiums, and apartments.

The logic behind impact fee nexus studies is that residents of new housing spend money on goods and services like landscaping, childcare, and restaurants. Many of the workers providing these services and working at these new businesses earn lower wages, and cannot afford to buy or rent a home at market-rate. Nexus studies calculate the maximum fees that would be necessary to bridge the difference between what these new worker households can afford to pay, and the cost of developing housing units to accommodate them.

While a nexus study will inform a jurisdiction about the maximum amount it can legally charge as an impact fee, the maximum fee level may not be appropriate given local housing market conditions, existing fee levels in the region, or the jurisdiction's current fee structure. A feasibility study considers these conditions and recommends a more appropriate range of fees that does not unduly burden or lessen the profitability of new development. The study prepared by Seifel Consulting evaluates the feasibility of residential impact fees on both rental and for-sale development, utilizing recently obtained market data.

**Proposed Fee Structure:** At the November 14<sup>th</sup> City Council meeting, the Council provided direction for a tiered fee structure, with tiers based on residential density and whether a project is rental or for sale. The Planning Commission concurred with this fee structure in its recommendation for approval to the City Council.

As demonstrated in the Seifel Consulting study, rental projects have a significantly lower developer margin/return compared to for sale projects: therefore, the feasibility of a rental project is more sensitive to variables in cost such as impact fees. Likewise, the feasibility of a lower density project is more sensitive to fees than a higher density project because the fixed costs are distributed over fewer units.

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\$118,400 for a household of four.

Table 1 summarizes the fee structure proposed by the City Council at its November 14th meeting, and further recommended by the Planning Commission:

**TABLE 1:  
PROPOSED RESIDENTIAL IMPACT FEE STRUCTURE**

	Impact Fee – Per Square Foot	
	Base	With Prevailing / Area Wage
<b>Rental Multifamily – 11 units and above</b>		
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
<b>For Sale Multifamily (Condominiums) – 7 units and above</b>		
	\$35.00 / sq ft	\$30.00 / sq ft
<b>Notes:</b> 1. Rental Multifamily with total of 10 units or fewer are exempt. 2. For Sale Multifamily (Condominiums) with total of 6 units or fewer are exempt. 3. Rental projects that convert to condominiums within 10 years of completion of construction would be subject to the fee differential as a condition of conversion. <u>The fee differential shall be based on the fee structure in place at the time of conversion to condominiums, minus the fees originally submitted at the time of construction.</u>		

**In-Lieu Option:** Developers would have an “in-lieu” option where the developer could choose to provide an affordable unit or units on site in lieu of submitting the impact fee. Whether a developer would choose an on-site option would depend on a number of factors such as the amount of the impact fee, the size of the development, the comparable cost of underwriting the affordable units for the designated time period and affordability level, and whether the ownership of the development is expected to be retained or sold at completion of construction. For example, a developer building apartments that it intends to own and manage for an extended time frame may have a different perspective and make a different choice than a developer building condominiums to be sold at completion of construction.

At the November 14<sup>th</sup> City Council meeting, the Council provided direction for in-lieu options for both rental and for sale projects:

- Rental Multifamily – 10% of the units affordable to Moderate Income households (80% - 120% AMI) for a period of 55 years
- For Sale Multifamily (Condominiums) – 10% of the units affordable to Above-Moderate Income households (120% - 150% AMI, with the price set at the 135% AMI level) for a period of 55 years

**Changes Since the March 4, 2019 City Council Meeting:** On March 4, 2019, the City Council opened a public hearing to introduce an ordinance establishing residential impact fees. The following changes have been made to the ordinance in response to Council direction:

State Density Bonus Clarification. Section 25.82.050 has been revised to clarify that affordable units provided through State Density Bonus provisions are not subject to residential impact fees.

Use of Affordable Housing Funds. Section 25.82.100 has been revised to reflect a range of potential housing programs that benefit the workforce, as follows:

(a) *Purpose and Limitations.* Monies deposited in the fund shall be used to increase, ~~and~~ improve, ~~and/or protect~~ the supply of housing affordable to moderate-, low-, very low-, and extremely low-income households. Such purpose may include but not be limited to the construction of new affordable units, ~~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, and support to workforce households experiencing unanticipated short-term income disruptions. Monies may also be used to cover reasonable administrative or related expenses associated with the administration of this chapter.

Conversion from Rental to Condominium Ownership. Section 25.82.030(c) has been revised to specify that if a project converts from rental to condominium ownership within ten years of construction, the applicable fee differential shall be based on the fee structure in place at the time of conversion to condominiums, minus the fees originally submitted at the time of construction.

**Status/Progress Report:** At the March 4<sup>th</sup> City Council meeting, Councilmembers expressed interest in having a progress report of the residential impact fee program after one or two years. Staff suggests that the status of both the residential impact fee and commercial linkage fee programs be included in the Housing Element Annual Progress Report (APR). The State requires the City Council to review the APR before April 1<sup>st</sup> of each year prior to it being submitted to the California Department of Housing and Community Development (HCD) and the Governor's Office of Planning and Research.

## **FISCAL IMPACT**

Estimating potential fees anticipated to be collected depends on a number of variables, including the residential densities, sizes of units (since the fees are typically based on square feet, not number of units), and the sliding scale of the fees themselves. The proposed ordinance would also provide discounts for projects paying prevailing construction wages, similar to the model the City adopted for commercial linkage fees. Furthermore, if an in-lieu option is offered, the impact fees collected would be lower depending on how many units are built with projects.

Upon adoption, residential impact fees will apply to new residential projects that have not had applications deemed complete as of the effective date of the ordinance implementing the fee. In the near term (within the next five years), staff estimates that there could be potentially 400 to 600 new units that have been discussed in conjunction with the update of the General Plan, based on property owner input, and factoring the residential densities proposed in the Draft General Plan. Over the course of the General Plan, up to 2,951 units are projected through the year 2040.

Table 2 below provides rough estimates of the range of potential fees that could be collected, working with the assumption that applications for 400 to 600 new units may be contemplated in the near term (approximately 5 years). For purposes of the estimate, the assumption is an average unit size of 850 square feet. The estimate provides a range of potential fees based on:



- Lowest fee - \$14.00/sq ft for a rental project 50 units/acre or less with prevailing/area wage
- Medium/Average fee - \$23.50/sq ft based on an average of all fee levels
- High fee - \$30.00/sq ft based on prevalence of higher density rental projects and/or for sale/condominium projects

**TABLE 2:  
ESTIMATE OF POTENTIAL NEAR-TERM HOUSING IMPACT FEES**

Units	Floor Area (assuming 850 sf/unit)	Housing Impact Fees – Low (\$14.00/sf)	Housing Impact Fees – Medium/Average (\$23.50/sf)	Housing Impact Fees – High (\$30.00/sf)
<b>400</b>	340,000	\$4,760,000	\$7,990,000	\$10,200,000
<b>600</b>	510,000	\$7,140,000	\$11,985,000	\$15,300,000

Table 3 below includes three scenarios that adjust for the in-lieu option, whereby some or most projects would choose to provide an affordable unit or units on site in lieu of submitting the impact fee. These scenarios are hypothetical, as it is not possible to forecast what proportion of new projects would choose the in-lieu option; the scenarios are presented for informational purposes. This table was first presented in the staff report for the March 4<sup>th</sup> City Council meeting, and has subsequently been expanded to include the number of on-site units that would be produced in each scenario.

**TABLE 3:  
ESTIMATES OF POTENTIAL NEAR-TERM HOUSING IMPACT FEES**

Units	Number of On-Site Affordable Units Provided Through In- Lieu Option	Housing Impact Fees <i>Low</i> (\$14.00/sf)	Housing Impact Fees <i>Medium / Average</i> (\$23.50/sf)	Housing Impact Fees <i>High</i> (\$30.00/sf)
<b>400 Units</b>				
25% projects utilize in-lieu option	10	\$3,570,000	\$5,992,500	\$7,650,000
50% projects utilize in-lieu option	20	\$2,380,000	\$3,995,000	\$5,100,000
75% projects utilize in-lieu option	30	\$1,190,000	\$1,997,500	\$2,550,000
<b>600 Units</b>				
25% projects utilize in-lieu option	15	\$5,355,000	\$8,988,750	\$11,475,000
50% projects utilize in-lieu option	30	\$3,570,000	\$5,992,500	\$7,650,000
75% projects utilize in-lieu option	45	\$1,785,000	\$2,996,250	\$3,825,000

Exhibits:

- City Council Meeting Minutes – November 14, 2018
- Planning Commission Meeting Minutes Excerpt – February 11, 2019

- Proposed Ordinance
- Proposed Resolution – Area Standard Wage Policy
- “Financial Analysis of Proposed Affordable Housing Program, City of Burlingame” – Seifel Consulting
- San Mateo County Association of Realtors (SAMCAR) Letter – June 27, 2018
- Residential Applications Overview – March 2019