

RESOLUTION NO. 28-2019

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BURLINGAME ESTABLISHING AN AREA STANDARD WAGE POLICY FOR NEW RESIDENTIAL DEVELOPMENTS SUBJECT TO THE IMPOSITION OF IMPACT FEES UNDER CHAPTER 25.82 OF THE MUNICIPAL CODE

WHEREAS, California Government Code Section 65580(d) states that all cities have a responsibility to use the powers vested in them to facilitate the improvement and development of housing and to make adequate provision for the housing needs of all economic segments of the community; and

WHEREAS, the City Council of the City of Burlingame has determined that the development of an area standard wage policy, in addition to the City's commitment to enforcing prevailing wage requirements as to public works projects, as such projects are defined in California Labor Code Section 1720 et seq., is necessary to protect local job opportunities and to increase wages of workers and residents in the city; and

WHEREAS, the Council has adopted a residential impact fee ordinance (Municipal Code Section 25.82) that authorizes the imposition of residential impact fees for certain residential development projects to mitigate the impact of such projects on the need for affordable housing in the city (the "Residential Impact Fee Ordinance"); and

WHEREAS, in connection with its Residential Impact Fee Ordinance, the City has received and considered reports from the Residential Impact Fee Nexus Study dated November 2015, prepared by Strategic Economics and Vernazza Wolfe Associates, Inc.; and

WHEREAS, the Nexus Study demonstrates that new residential development projects create a need for affordable housing in the city by creating many jobs paying such low wages that workers cannot afford market rate housing in the city; and

WHEREAS, the findings provided in the Nexus Study have been further supported in the Financial Analysis of Proposed Affordable Housing Program (the "Financial Analysis"), dated November 2018, prepared by Seifel Consulting, Inc.; and

WHEREAS, the City has determined that the payment by residential development projects of "Area Standard Wages," which shall be defined as the general prevailing wage determinations for San Mateo County as made by the State of California Director of the Department of Industrial Relations, will increase certain households' ability to afford housing in the city, thereby reducing the impact of those residential development projects on the need for affordable housing in the city; and

WHEREAS, in recognition of the reduced impact of projects paying Area Standard Wages, the Planning Commission recommends that the City Council adopt an Area Standard Wage Policy that will reduce the Residential Impact Fee for all residential development projects

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that voluntarily enter into an agreement with the City to pay Area Standard Wages consistent with this Resolution; and

WHEREAS, the staff report accompanying this Resolution and referenced documents have been presented to and considered by the City Council in support of the findings and approvals set forth in this Resolution; are hereby incorporated by reference to this Resolution; and, together with the above recitals any public testimony received, form the evidentiary basis and establish the analytical route for reaching the ultimate findings and conclusions contained in this Resolution.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Burlingame as follows:

1. The foregoing recitals are true and correct and incorporated into this Resolution by this reference.

2. The provisions of this Resolution shall apply to all residential development projects, as such terms are defined in the Residential Impact Fee Ordinance, where the developer voluntarily enters into an "Area Standard Wage Participation Agreement" (an "Agreement") with the City. The Agreement shall apply to construction of the development project and related public works that are within the customary jurisdiction of the construction trades and crafts, whether performed on or off-site, but need not include off-site work performed by materialmen, as defined under California law.

3. Upon execution of an Agreement that conforms to the requirements of this Resolution, initial fees shall be imposed on new residential development projects as follows:

With Prevailing / Area Wage	
Rental Multifamily – 11 units and above	
Up to 50 du/ac	\$14.00
51-70 du/ac	\$17.00
71 du/ac and above	\$25.00
For Sale Multifamily (Condominiums) – 7 units and above	
	\$30.00

If the developer commits a material breach of such Agreement, the difference in residential impact fees between the adopted fees and the reduced amount under this Resolution shall become due and payable to the City, in addition to all other remedies set forth herein.

4. All employees performing construction work for a project subject to an Agreement shall be paid not less than the Area Standard Wage or the highest prevailing rate of per diem wages as determined and published by the California Department of Industrial Relations subject to California Labor Code Section 1733 from the commencement of construction until the issuance of the latter of either a final certificate of occupancy or a final

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inspection. Nothing in this Resolution shall be construed to prohibit payment of more than Area Standard Wages.

5. The Agreement shall apply to the employees of any employer, including the developer, any general contractor or subcontractor, or other contractor engaged in construction including their successors or assignees (collectively, the "employer"), but it shall not apply to supervisory or managerial personnel or to persons employed in the rental, operation, or maintenance of the residential development project.

6. The initial Area Standard Wage for each of the employer's employees shall be the published wage rate as of the date the employee commences work on the residential development project. The employer shall be responsible for checking on a quarterly basis whether the Area Standard Wage has been adjusted. In the event that the Area Standard Wage has been adjusted, the employer shall pay such adjusted Area Standard Wage; provided, however, that in no event shall the employer pay less than the initial Area Standard Wage.

7. The employer shall keep an accurate payroll record as specified in California Labor Code Section 1776(a). Certified copies of the payroll records shall be available for inspection at all reasonable hours at a local office of the employer. Copies of the Area Standard Wage Participation Agreement and the records granting the permits authorizing the residential development project shall be provided upon request of a City representative. Any employee, his or her designee, or the public may also request copies of the payroll records from the City. The addresses and social security numbers of the employees may be masked or deleted so as to prevent disclosure in copies furnished to the public. The failure of an employer to comply with the requirements of this section shall create a presumption that Area Standard Wages have not been paid.

8. Nothing in this Resolution shall prevent the employment of any number of properly registered apprentices, as defined in Chapter 4, Division 3 of the California Labor Code. Every such apprentice shall be paid not less than the Area Standard Wage paid to apprentices under the regulations of the crafts or trade at which he or she is employed and shall be employed only at the work of the craft or trade to which he or she is registered. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he or she is in training.

9. The provisions of this Resolution shall be incorporated into the Agreement for all residential development projects where the developer voluntarily agrees to enter into an Agreement. The developer shall also cause the provisions of this requirement to be incorporated into each contract and subcontract which would be subject to this requirement. In the event the provisions are not so incorporated, the developer shall be liable to the worker in any action or proceeding for the difference between the Area Standard Wage rate required to be paid and the amount actually paid to the worker, including costs and attorney fees, as if the developer were the actual employer.

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10. The Community Development Director, or his or her designee, shall maintain for public inspection the current Area Standard Wages. All bid specifications and contracts subject to the provisions of this Resolution shall reference the obligations imposed under this Resolution. A copy of the applicable wage rates together with a copy of a "Notice to Employees," which notice shall be prepared by the developer and approved by City staff, shall be given to any employer subject to the provisions of this Resolution, and all such employers shall post a copy of the Area Standard Wages applicable to the work to be done at the job site in a prominent, visible place readily accessible to the workers employed in the construction of the improvements.

11. No laborer or employee to whom the wage, salary, or other labor standards of this Resolution are applicable shall be discharged or in any other manner discriminated against by the employer because such employee has filed any complaint or instituted, or caused to be instituted, any proceeding or has testified or is about to testify in any proceeding under or relating to the provisions of this Resolution.

12. In the event of a breach of this Resolution or an Area Standard Wage Participation Agreement, the employer shall be liable to the employee for any unpaid wages overtime wages, and benefits established by this Resolution.

13. In the event of failure to pay any employee, laborer, or mechanic (including any apprentice, trainee, or helper) employed in the construction of a residential development project subject to this Resolution all or part of the wages required by this Resolution, the developer shall, upon written demand of the Community Development Director, withhold or cause to be withheld from any moneys payable on account of work performed by a contractor an amount as may be considered necessary to pay laborers and mechanics employed by such contractor or subcontractor the full amount of wages, overtime wages, and benefits required by these labor standards after providing 10-days written notice of such intent to the contractor or subcontractor who has failed to pay the applicable Area Standard Wages to any worker. The developer shall, after such written notice to the contractor, disburse such amounts withheld for and on account of the contractor to the respective employees to whom they are due. If the employee cannot be found to satisfy the unpaid wages, unpaid overtime wages, and benefits, all such sums shall be remitted to the City's general fund, including a credit for applicable accrued penalties.

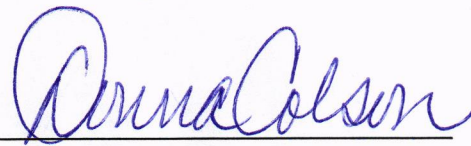
14. Nothing in this Resolution shall preclude enforcement by the California Division of Labor Standards Enforcement for any matter over which the Division has jurisdiction.

15. The Community Development Director shall have the authority to issue guidelines, rules or regulations from time to time in furtherance of this Resolution.

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16. Adoption of this Resolution is exempt from the California Environmental Quality Act (CEQA) because the adoption of this Resolution is not a project, in that it is related to 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 Area Standard Wages provisions may have a significant effect on the environment, in that this Resolution contains no provisions modifying the physical design, development, or construction of residences or residential structures (CEQA Guidelines Section 15061(b)(3)).


17. This Resolution shall take effect only if the Residential Impact Fee Ordinance is adopted and effective.



Donna Colson, Mayor

I, Meaghan Hassel-Shearer, City Clerk of the City of Burlingame, certify that the foregoing resolution was adopted at a regular meeting of the City Council held on the 18th day of March, 2019 by the following vote:

AYES:	COUNCILMEMBERS: BEACH, BROWNRIGG, COLSON, KEIGHRAN, ORTIZ
NOES:	COUNCILMEMBERS: NONE
ABSENT:	COUNCILMEMBERS: NONE


Meaghan Hassel-Shearer, City Clerk