

ORDINANCE NO. .

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

* * * * *

ORDINANCE ADDING CHAPTER 5.154 TO TITLE 5 TO THE SAN MATEO COUNTY ORDINANCE CODE, ESTABLISHING AN AFFORDABLE HOUSING IMPACT FEE PROGRAM

RESOLVED, by the Board of Supervisors of the County of San Mateo, State of California, that

WHEREAS, the provision of safe and stable housing for households at all income levels is essential for the public welfare of the County; and

WHEREAS, housing in San Mateo County has become steadily more expensive and housing costs have gone up faster than incomes in this County, and Federal and state government programs do not provide enough affordable housing to satisfy the needs of very low, low, or moderate income households; and

WHEREAS, 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 findings in the County's 2014–2022 General Plan Housing Element; and

WHEREAS, as provided in the Housing Element, the County seeks to lead in providing resources to facilitate the development of housing, and especially affordable housing; and

WHEREAS, Housing Element Goal 2 is to “Support the production of new housing of diverse size and type that is affordable to moderate, low, very-low, and extremely low-income households, in order to meet the housing needs of all persons who reside, work, or who can be expected to work or reside in the County”; and

WHEREAS, Housing Element Policies HE 20 and 23 call for the facilitation of a variety of housing choices in the unincorporated areas and consideration of various avenues to ensure the provision or construction of affordable housing and other community benefits; and

WHEREAS, to implement these goal and policies, Housing Element Policy 31 calls on the County to participate in a countywide nexus study to consider affordable housing impact fees and commercial linkage fees; and

WHEREAS, residents of new market-rate housing purchase goods and utilize services in the community, increasing local employment and attracting employees, of whom some will have very low, low, or moderate incomes and will be unable to afford market-rate housing; and

WHEREAS, new housing construction that does not include affordable units aggravates the existing shortage of affordable housing by decreasing the supply of land available for affordable housing; and

WHEREAS, because non-residential development, including commercial, residential hotel and officer development also attracts employees, of whom some will have very low, low, or moderate incomes, new non-residential 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; and

WHEREAS, based on the findings above, the County intends to further the public health, safety and welfare by requiring developers to mitigate the impact of residential and non-residential development on the need for affordable housing in the unincorporated areas, as follows; and

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that:

Section 1. A new Chapter 5.154 (“Affordable Housing Impact Fee”), consisting of Sections 5.154.100 to 5.154.900 is hereby added to Title 5 of the San Mateo County Code to read as follows:

Section 5.154.100 – Short Title, Authority, and Applicability:

- A. This Article shall be known and may be cited as the “Affordable Housing Impact Fee Ordinance.”
- B. The fees established pursuant to this Chapter are adopted under the authority of Article XI, Section 7 of the California Constitution, which provides that “[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 made in connection with the adoption of the Affordable Housing Impact Fee Ordinance.

- C. The Affordable Housing Impact Fee Ordinance shall apply to the full extent permitted by the statutes and laws of the State of California.

Section 5.154.110. – Purpose:

- A. The purpose of this Ordinance is to: (1) enhance the public welfare by imposing a residential and non-residential development impact fee whereby developers of residential and non-residential development projects will mitigate their impacts 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.

Section 5.154.120. – Definitions:

The following words and terms as used in this Chapter shall have the meaning respectively ascribed thereto:

- A. "Affordable housing fund" means a fund or account designated by the County to maintain and account for all monies received pursuant to this Chapter.
- 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 Sections 6910 through 6924 of Title 25 of the California Code of Regulations.

- C. "Affordable rent" means the total monthly housing expenses for a rental unit that do not exceed the rents specified by Section 50053 of the California Health and Safety Code and Sections 6910 through 6924 of Title 25 of the California Code of Regulations. 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 television service; 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 Housing Unit" means a dwelling unit which a developer proposes to make available as an alternative to payment of the Housing Impact Fee, as defined in this Chapter 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 with a deed restriction meeting County standards.
- E. "Building permit" includes structural building permits as well as initial permits such as grading permits.
- F. "The County" means the County of San Mateo, and "in the County" in reference to development means development located in the unincorporated area of the County of San Mateo.
- G. "Decision-making body" means the County staff person or body authorized to approve or deny an application for a planning or building permit for a residential or non-residential development project.
- H. "Development Project" means a project for the construction of a residence or residences, or a non-residential development project, including subdivision of land for such purpose.
- I. "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 County or developing a particular project in the County.

- J. "For-sale unit" means a residential dwelling unit that may be sold individually in conformity with the Subdivision Map Act. For-sale units also include units that are converted from rental units to for-sale units.
- K. "Housing Impact Fee" means the fee paid by developers of residential and non-residential development projects pursuant to this Chapter to mitigate the impacts that such developments have on the demand for affordable housing.
- L. "Low income households" means households with incomes no greater than the maximum income for low income households, as published annually by the County 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.
- M. "Market rate unit" means a new dwelling unit in a residential development project that is not an Affordable Housing Unit.
- N. "Median income" means the median income applicable to San Mateo County, as published annually by the County for each household size, based on median income data for San Mateo County published by the HUD and the HCD.
- O. "Moderate income households" means households with incomes no greater than the maximum income for moderate income households, as

published annually by the County for each household size, based on HUD and the HCD income limits for San Mateo County.

- P. "Non-Residential Development Project" means an application for a planning permit or building permit that includes the new construction of gross square feet of non-residential space or the conversion of a residential use to a non-residential use, including that portion of a project for mixed-use where the residential component is not an Affordable Unit.
- Q. "Planning permit" means any discretionary approval of a residential or non-residential 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.
- R. "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.
- S. "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 non-residential 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.

- T. "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 for each household size, based on HUD and the HCD income limits for San Mateo County.

Section 5.154.130. – Housing Impact Fee:

- A. A Housing Impact Fee is hereby imposed under this Chapter on all developers of Residential Development Projects and Non-Residential Development Projects. The amount of the Housing Impact Fee shall be established from time to time by resolution of the County Board of Supervisors. Notwithstanding the foregoing, Housing Impact Fees shall not exceed the cost of mitigating the impact of Non-Residential Development Projects and Residential Development Projects on the need for affordable housing in the County.
- B. Payment of the Housing Impact Fees under this Chapter shall be paid prior to the issuance of the first grading or building permit for the Residential Development Project or Non-Residential Development Project. The fees shall be calculated based on the fee schedule in effect at the time the first grading or building permit is issued.

Section 5.154.140. – Exemptions from Housing Impact Fee:

- A. The Housing Impact Fee shall not apply to developers of Residential Development Projects subject to Sections 7908 through 7918 of the San Mateo County Zoning Regulations (addressing inclusionary housing for projects consisting of **five** or more dwelling units) or any successor ordinance dealing with the same or similar subject; or accessory dwellings created under Chapter 22.5 of the Zoning Regulations.
- B. The Housing Impact Fee shall not apply to developers of Residential Development Projects adding **1,500** square feet or less of net new square footage to existing dwellings.
- C. The Housing Impact Fee shall not apply to developers of Residential Development Projects or Non-Residential Development Projects which fall within one or more of the following categories:
 - 1. Development Projects located on property owned by a public agency and used exclusively or principally 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 materially the same, and construction of the replacement building begins within one year of the calamity resulting in the damage or destruction.
 - 3. Development Projects to the extent they have received, as of the date of the adoption of this Ordinance, 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 County, if such development agreements were approved prior to the effective date of this Chapter and where such agreements expressly preclude the County from requiring payment of the Housing Impact Fee.

4. Development Projects for which applications were deemed complete prior to August 8, 2016.
5. Other Development Projects that may be specified as exempt from the Housing Impact Fee by resolution of the County Board of Supervisors.

Section 5.154.150. – Alternatives to Payment of Housing Impact Fee:

- A. As an alternative to compliance with the basic provisions included in Section 5.154.130 of this Article, developers of 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 approved by the County's Community Development Director, including, but not limited to, the provision of Affordable Housing Units off-site, conveyance of land for the construction of Affordable Housing Units, or purchase of existing Market Rate Units for conversion to Affordable Housing Units.
- B. The Board of Supervisors may adopt, by resolution, the percentage of affordable units needed to mitigate the impact of Residential Development

Projects or Non-Residential Development Projects on the need for affordable housing.

1. 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 6379 of the San Mateo County Zoning Regulations.
 2. If a developer proposes to provide Affordable Housing Units for rent, 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 California Civil Code), the County 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 County to limit rents in consideration for a direct financial contribution from the County 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 California Government Code).
- C. 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 the Residential Development Project or Non-Residential Development Project for which the alternative is sought shall include an "Affordable Housing Plan" that meets the requirements of this Section and describes how the alternative will comply with the provisions of this

Chapter. No affordable housing plan is required if the developer proposes only to pay the Housing Impact Fee.

1. Residential Development Projects or Non-Residential Development Projects requesting an alternative to payment of the Housing Impact Fee require that an Affordable Housing Plan be submitted in conformity 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 or Non-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 or Non-Residential Development Project to require recordation of an affordable housing agreement prior to the approval of any final or parcel map or building permit for the Residential Development Project or Non-Residential Development Project.
3. The approved Affordable Housing Plan may be amended prior to issuance of any building permit for the Residential Development Project or Non-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 or Non-Residential 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 Housing Units proposed, 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 County Manager or designee.
5. The decision-making body may approve or conditionally approve an Affordable Housing Plan that proposes on-site construction of Affordable Housing Units if the decision-making body determines, based on substantial evidence, that:

- a. The proposed Affordable Housing Units comply with the standards in Section 6379 of the San Mateo County Zoning Regulations; and
 - b. The Affordable Housing Units will mitigate the impact of the project on the need for affordable housing.
- 6. 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:
 - a. Financing or a viable financing plan, which may include public funding sources, is in place for the proposed Affordable Housing Units; and
 - b. The proposed location is suitable for the proposed Affordable Housing Units, is consistent with the Housing Element, General Plan, and zoning, and will not tend to cause residential segregation.

Section 5.154.160. – Standards for Development of Affordable Housing:

- A. All Affordable Housing Units provided pursuant to Section 5.154.150 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 Housing Units shall be materially similar to and compatible with that of Market-Rate Units.

2. Interior finishes and amenities may not materially differ from those provided in the base model Market-Rate Units.
3. The number of bedrooms in the Affordable Housing Units shall be comparable to the average number of bedrooms in the Market-Rate Units, and the Affordable Housing 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 Housing 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 or at an Affordable Ownership Cost as defined in Section 5.154.120.
5. All Affordable Housing Units provided pursuant to 5.154.150 shall be made available for occupancy concurrently with the Market-Rate Units. For the purposes of this subsection, "concurrently" means that the County 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 Housing Units, and the County 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 Housing Units.

6. All Affordable Housing Units provided pursuant to Section 5.154.150 shall be subject to a resale restriction, deed of trust, and/or regulatory agreement recorded against the property for execution by the County Manager, in a form approved by the County Counsel, to ensure the continued affordability of the affordable units.
7. All Affordable Housing Units shall remain affordable to the targeted income group for 55 years.
8. Any household that occupies an Affordable Housing 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 County.
9. No household may begin occupancy of an Affordable Housing 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 other relevant administrative provisions.

Section 5.154.170. – Affordable Housing Fund:

- B. There is hereby established in the County of San Mateo an "Affordable Housing Fund." All Housing Impact Fees or other funds collected under this Chapter shall be deposited into the County's Affordable Housing Fund.

- C. 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 very low income, lower income, and moderate income households throughout the jurisdictional boundaries of the County, consistent with the goals and policies contained in the County's Housing Element and the purposes for which the fees were collected, and for administration and compliance monitoring of the affordable housing program, including, but not limited to, by provision by grant to or agreement with the Housing Endowment and Regional Trust of San Mateo County.
- D. The Board of Supervisors may, from time to time, adopt guidelines for expenditure of monies in the Affordable Housing Fund.

Section 5.154.180. – Administrative Relief:

- A. As part of an application for the first approval of a Residential Development Project or Non-Residential Development Project, a developer may request that the requirements of this Chapter 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.
 - a. 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.

- b. 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 County Board of Supervisors 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 to the decisionmaking body, after adoption of written findings, based on legal analysis and the evidence. If a waiver or modification is granted, any subsequent 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 5.154.190. – Enforcement:

- A. Payment of the Housing Impact Fee is the obligation of the developer for a Residential Development Project or Non-Residential Development Project. The County may institute any appropriate legal actions or proceedings necessary to ensure compliance with this Chapter, including, but not limited to, actions to revoke, deny, or suspend any permit or development approval.
- B. The County Counsel shall be authorized to enforce the provisions of this Chapter 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 Chapter shall not excuse any developer or owner from the requirements of this Chapter. 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 Chapter have been satisfied.
- D. The remedies provided for in this Section shall be cumulative and not exclusive and shall not preclude the County from any other remedy or relief to which it otherwise would be entitled under law or equity.

Section 2. Adoption of this Ordinance is found to be categorically exempt from the California Environmental Quality Act because the adoption of this Ordinance 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 non-residential structures (CEQA Guidelines Section 15061(b)(3)).

Section 3. 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 County Board of Supervisors 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 4. The Clerk shall publish this Ordinance in accordance with applicable law.

Section 5. 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 San Mateo Daily Journal, a newspaper of general circulation published and printed in the County of San Mateo and circulated in the County of San Mateo.

* * * * *