

**Sunnyvale Municipal Code**[Up](#)[Previous](#)[Next](#)[Main](#)[Collapse](#)[Search](#)[Print](#)[No Frames](#)[Title 3. REVENUE AND FINANCE](#)**Chapter 3.50. TRANSPORTATION IMPACT FEE**

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**3.50.010. Authority.**

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This chapter is enacted pursuant to [Government Code](#) sections 66000 - 66009 and the charter city authority provided by the Constitution of the State of California. (Ord. 2737-03 § 1).

**3.50.020. Application.**

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This chapter applies to fees charged as a condition of development approval to defray the cost of certain transportation improvements required to serve new development within the city of Sunnyvale. This chapter does not replace other subdivision map exactions or other measures required to mitigate site specific impacts of a development project including but not limited to, mitigations pursuant to the California Environmental Quality Act; regulatory and processing fees; fees required pursuant to a development agreement; funds collected pursuant to a reimbursement agreement that exceed the developer's share of public improvement costs; or assessment district proceedings, benefit assessments, or taxes. (Ord. 2737-03 § 1).

**3.50.030. Intent and purpose.**

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(a) Adequate transportation improvements are needed to protect the health, safety, and general welfare of the citizens to facilitate transportation, and to promote economic well-being within the city. Transportation improvements are provided for residents, businesses, and employees within the city. Individual traffic improvements are part of an integrated transportation system serving and providing benefits to the entire city. New development within the city will create an additional burden on the existing street system. The Level of Service (LOS) standards set forth in the Land Use and Transportation Element of the General Plan shall be the standards used for determining necessary street and intersection improvements. Improvements to the existing street system in the city are needed both to mitigate the cumulative impacts of new development and to accommodate future development by maintaining the appropriate level of service on streets and intersections, or providing offsetting sidewalk and bicycle improvements to meet Santa Clara County congestion management program requirements.

(b) All types of development require and use the street system. There are not adequate public funds available to maintain designated levels of service at all intersections in the city. In order to ensure that the appropriate level of service is maintained, and to promote the health, safety, and general welfare of the community, it is necessary that new development pay a fee representing its share of costs of the necessary improvements. The transportation impact fee is based upon the evidence that new development generates additional residents, employees, and structures which in turn place an additional cumulative burden upon the local street system and should be expected to pay a share of the new facilities.

(c) The purpose of this fee is to help provide adequate transportation-related improvements to serve cumulative development within the city. However, the fee does not replace the need for all site-specific traffic improvements that may be needed to mitigate the impact of specific projects upon the city's street system. The transportation improvements for which the fee will be used are identified in the city's Capital Improvement Program (CIP) and/or in the Sunnyvale Traffic Mitigation Program Study, as exist at the time this chapter is enacted or as subsequently amended. (Ord. 2737-03 § 1).

## ATTACHMENT 3

**3.50.040. Definitions.**

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The following definitions apply to this chapter:

(a) Intensification of Use. "Intensification of use" occurs when a use generates a greater number of peak hour trips than the prior use, according to trip generation rates contained in the most current edition of the Institute of Transportation Engineers (ITE) Trip Generation Manual.

(b) Traffic/Transportation Improvements. "Traffic Improvements" or "Transportation Improvements" includes all street and intersection improvements and related facilities, including, for example, sidewalks, bikeways and pedestrian and bicycle bridges, and equipment.

(c) Uses. "Uses" shall be defined as set forth in Title 19. The director of community development shall determine the appropriate land use category for any use not set forth, based on similarity of use, and peak hour trip characteristics of the use as indicated in the most current edition of the Institute of Transportation Engineers (ITE) Trip Generation Manual. (Ord. 2737-03 § 1).

**3.50.050. Fee requirement.**

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(a) General. A transportation impact fee is hereby imposed on development which generates traffic and meets the requirements of this section. The amount of the fee shall be established periodically by resolution of the city council. The fee shall be based on the percentage of the cost of the new improvements attributable to new development as determined in the Sunnyvale Traffic Mitigation Program Study prepared by Hexagon Transportation Consultants (Hexagon), and future additions and amendments to the report, all of which are incorporated in this chapter by this reference.

(b) Types of Development Subject to the Fee. The fee shall be applicable to development projects throughout the city that: require a building permit for new or additional floor area, involve expansion of floor area of an existing use that requires a planning application pursuant to Title 19, result in a change of use intensifying the number of peak hour trips generated, or results in construction of new dwelling units.

(c) Fees shall be calculated as follows:

(1) Residential. Fees shall be charged for each new dwelling unit. No fee is applicable for remodeling or for an addition to an existing unit not resulting in a new unit.

(2) Non-residential. Fees shall be charged on a per square foot basis for all new gross floor area, including additions where floor area is increased. No fee is applicable for remodeling or restoration only, where the floor area is improved or replaced but not increased and there is no intensification of use. Gross floor area is determined in accordance with Title 19. Parking area and exterior walkways are not included in the fee calculation. The director of community development shall have authority to render final determinations regarding the appropriate classification of land use and the correct calculation of gross building floor area for a particular development project. For a development subject to a planning permit, the final review authority shall render the final determination on land use.

(3) Intensification of use. Fees shall be charged upon the incremental difference between the peak hour trips generated by a prior use and the peak hour trips generated by the proposed new use. Floor area measurement to calculate peak hour trips for a portion of a building when there is an intensification of use shall be to the exterior façade of building wall planes or from the center line of party walls.

(4) Trip Reduction. The final approval authority for developments subject to the impact fee may allow for reductions in the fee on certain developments that demonstrate site design features or binding trip reduction programs which significantly reduce trip generation below levels anticipated in the formulation of this chapter. Reductions shall be based on documentation of trip reduction and costs per trip used in the impact fee formulation. (Ord. 2737-03 § 1).

**3.50.060. Fee formula.**

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The amount of the fee shall be determined by the following formula:

$$\text{Fee} = \text{APHT} \times \text{ACT} \times \text{TLUU}$$

Where

APHT = Average Peak Hour Trips per Land Use Unit, defined as the number of evening peak hour trips per Land Use Unit for each category of land use as determined by the ITE Trip Generation Manual.

ACT = Average Cost per Trip, defined as the estimated traffic improvement costs attributable to new development within the city divided by the number of new evening peak hour trips associated with new development as determined in the Traffic Mitigation Program Study or subsequent amendments to the report.

LUU = Land Use Unit, defined as dwelling units for residential uses including hotels, or as square feet for non-residential uses, or other units as defined in the ITE Trip Generation Manual.

TLUU = Total Land Use Units, defined as the total number of residential dwellings or non-residential square feet or discrete units involved in the project subject to the fee.

(Ord. 2737-03 § 1).

**3.50.070. Fee payment.**

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The fee shall be paid in full to the city before any building permit is issued. If no building permit is required, the fee shall be paid before a conversion of use of an existing building may take place. The fee shall apply to any project for a change in use or receiving a building permit on or after January 1, 2004. (Ord. 2737-03 § 1).

**3.50.080. Authority for additional mitigation.**

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Fees collected pursuant to this chapter are not intended to replace or limit requirements to provide mitigation of traffic impacts not mitigated by the fee and created by a specific project, and imposed upon development projects as part of the development review process. (Ord. 2737-03 § 1).

**3.50.090. Exemptions.**

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Public park facilities, city buildings, and those government facilities entitled to an exemption under law, are exempt from the fee. (Ord. 2737-03 § 1).

**3.50.100. Fee credit.**

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The director of public works may adjust the fee imposed pursuant to this chapter in consideration for certain on-site and off-site facilities or improvements constructed or paid for by the developer. In determining an adjustment, the director shall give a developer credit for the value of improvements if the improvement is identified in the Traffic Mitigation Program Study and the developer: dedicates land for the improvement(s) identified in the study, constructs the improvement(s), finances the improvement(s) by cash, pays the

## ATTACHMENT 3

assessments of an assessment district, or Mello-Roos Community Facilities District, or a combination of the foregoing. (Ord. 2737-03 § 1).

**3.50.110. Accumulation and use of funds.**

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(a) Transportation Impact Fee Fund. The city shall deposit the fees collected under this chapter in a special fund, the Transportation Impact Fee Fund, designated solely for transportation improvements.

(b) Use of Funds. The fees and interest earned on accumulated funds shall be used only to:

(1) Complete the traffic improvement projects specified in the Capital Improvement Program and/or the Traffic Mitigation Program Study, or to reimburse the city for such construction if funds were advanced by the city from other sources; or

(2) Reimburse developers, pursuant to a reimbursement agreement, who have been required or permitted to install improvements identified in the Traffic Mitigation Program Study which are oversized in width, length, or capacity, relative to demand generated by the subject project; or

(3) Pay costs required for the administration of this chapter. (Ord. 2737-03 § 1).

**3.50.120. Refund of fee.**

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(a) If a building permit or use permit expires, is canceled, or is voided and any fees paid pursuant to this chapter have not been expended, no construction has taken place, and the use has never occupied the site. the director of community development may, upon the written request of the applicant, order return of the fee and interest earned on it, less administrative costs.

(b) During the annual review pursuant to Section [3.50.130](#), the city council shall make findings with respect to any fee revenue not expended or committed five years or more after it was paid, as called for by [Government Code](#) Section 66001 or successor legislation. If the city council finds that there is unexpended revenue, the council, at its option, may refund or redirect those revenues, consistent with Section 66001 or successor legislation. (Ord. 2737-03 § 1).

**3.50.130. Annual review.**

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The fee authorized by this chapter, implementing council resolutions, and supporting documentation, including the Traffic Mitigation Program Study, shall be reviewed annually in order to make any findings required by state law. (Ord. 2737-03 § 1).

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**Sunnyvale Municipal Code**[Up](#)[Previous](#)[Next](#)[Main](#)[Collapse](#)[Search](#)[Print](#)[Title 19. ZONING](#)[Article 5. SPECIAL HOUSING ISSUES](#)**Chapter 19.74. PARK DEDICATION FEES FOR RENTAL HOUSING PROJECTS**

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**19.74.010. Findings.**

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The city council hereby finds that multifamily rental housing projects have a significant effect on the use and availability of parks and recreation space and facilities, and that the limited open space and recreation amenities provided by multifamily residential housing projects are insufficient to meet the needs of the residents for open space and recreational facilities. The council further finds that increased population, regardless of the type of housing, impacts existing open space resources and increases the need to improve, expand and/or develop new parks, open space and recreation facilities. While multifamily residential complexes do provide limited open space areas and recreation amenities, they are insufficient to meet the needs of people for more and larger open space areas. The intent of this chapter is to treat multifamily/rental housing developments in the same fashion as other residential development in the city requiring that such development pay its fair share toward improvements, and/or purchase and development of parks and recreational facilities. The provisions of this chapter are enacted pursuant to Article IV of the Charter of the city of Sunnyvale and the Sunnyvale general plan. (Ord. 2623-99 § 1; prior zoning code § [19.86.010](#)).

**19.74.020. General requirements.**

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As a condition of approval of any multifamily, residential housing project, other than a subdivision as defined in Chapter [18.10](#) of this code, the owner and/or developer shall dedicate land, pay a fee, or both, at the option of the city, for park or recreational purposes according to the following standards:

(a) **Dedication of Sites.** Where a park or recreational facility has been designated in the open space and recreation subelement of the general plan, and the park or facility is to be located in whole or in part within a proposed multifamily residential housing project, to serve the immediate and future needs of the residents of the rental housing project, the owner and/or developer shall be required to dedicate land for park and recreational facilities sufficient in size to serve the residents of the project. The park land to be so dedicated shall conform to locations and standards set forth in the general plan. The slope, topography and geology of the site, as well as its surroundings, must be suitable for the intended park or recreation purpose. The amount of land to be provided shall be determined pursuant to the standards set forth in this chapter establishing the formula for land dedication or for payment of fees in lieu thereof.

(b) **Fees In Lieu of Dedication.** If there is no park or recreational facility designated or required in whole or in part within a proposed multifamily residential housing project, the owner and/or developer shall be required to pay a cash payment in lieu of the land equal to the value of the land as determined by this chapter.

A fee in lieu of land dedication hereunder shall be required when:

(1) An applicant is developing a multifamily residential unit project on land on which no park has been designated or proposed; or

(2) Dedication is impossible, impracticable, or undesirable, as determined by the city; or

(3) The proposed multifamily residential housing project contains twenty or fewer units.

(c) **Dedication and Fees Required.** In certain multifamily residential housing projects in excess of twenty units, a combination of land dedication and fee payment may be required. These shall be projects in which:

(1) Only a portion of the land to be developed is proposed in the general plan as the location for a park

## ATTACHMENT 3

or recreational facility, in which case that land, or a portion thereof within the project, shall be dedicated for park purposes, and a fee shall then be required in lieu of any additional land that would have been required to be dedicated under this chapter; or

(2) A major part of the park or recreational site falling within the project has already been acquired, and only a small portion of land is needed from the applicant to complete the park or recreation site, in which case the land needed shall be required for dedication, and a fee shall then be required in lieu of the additional land that would have been required to be dedicated under this chapter.

(d) Use of and Basis for In-Lieu Fees. The money collected pursuant to this chapter is to be used only for the purpose of providing park or recreational facilities to serve the multifamily residential housing project from which the fees are collected. Fees so collected shall be used to purchase land, buy equipment or construct improvements in neighborhood and district parks and recreational facilities serving the housing project. The fee so required shall be based on the fair market value of the land that otherwise would have been required for dedication. (Ord. 2623-99 § 1; prior zoning code § [19.86.020](#)).

### **19.74.030. Land requirement.**

In accordance with the open space and recreation sub-element of the general plan, it is found and determined that the public interest, convenience, health, welfare and safety require that acres of property, as prescribed below, for each one thousand persons residing within each neighborhood planning area within the city be devoted to public park and recreational facilities. The Murphy planning area shall be divided by Fair Oaks Avenue into two sections, to be designated Murphy West and Murphy East. The table that follows prescribes the acreage requirements and their effective dates. Multifamily residential housing projects are subject to the acreage requirement in effect at the time the planning permit application is deemed complete.

Effective Date	Acres of Property Per One Thousand
	Persons
Until June 30, 2010	1.75 acres
July 1, 2010 - June 30, 2011	2.25 acres
July 1, 2011 - June 30, 2012	3.00 acres
July 1, 2012 - June 30, 2013	3.5 acres
July 1, 2013 - June 30, 2014	4.25 acres
July 1, 2014 and thereafter	5.00 acres

(Ord. 2953-11 § 3; Ord. 2951-11 § 2; Ord. 2911-09 § 3; Ord. 2623-99 § 1; prior zoning code § [19.86.030](#)).

### **19.74.040. Density formula.**

In determining dedication or in-lieu fee payment requirements under this chapter, the following table, derived from density assumptions of the general plan and prevailing household sizes, shall apply:

Dwelling Category	Dwelling Units Per	Acreage Requirement Per Dwelling Unit Within Housing Project

## ATTACHMENT 3

	Net Acre	Until June 30, 2010	July 1, 2010 to June 30, 2011	July 1, 2011 to June 30, 2012	July 1, 2012 to June 30, 2013	July 1, 2013 to June 30, 2014	July 1, 2014 and thereafter
Low density residential	7 or fewer	0.0048125	0.0061875	0.0082500	0.009625	0.0116875	0.01375
Low-medium density residential	Over 7 to 14	0.0043750	0.0056250	0.0075000	0.00875	0.010625	0.0125
Medium density residential	Over 14 to 27	0.0031500	0.0040500	0.0054000	0.0063	0.00765	0.009
High density residential	Over 27	0.0031500	0.0040500	0.0054000	0.0063	0.00765	0.009

A deduction for the number of existing dwelling units will be allowed in calculating the land dedication or in-lieu fees required pursuant to this chapter as set forth in Section [19.74.070](#). (Ord. 2951-11 § 2; Ord. 2911-09 § 3; Ord. 2623-99 § 1; prior zoning code § [19.86.040](#)).

#### **19.74.050. Procedure.**

The planning commission shall upon approving a development permit for a multifamily residential housing project, determine the conditions necessary to comply with the requirements for park land dedication or fees in lieu thereof as set forth in this chapter, and the conditions shall be attached as conditions of permit approval. (Ord. 2623-99 § 1; prior zoning code § [19.86.050](#)).

#### **19.74.060. Calculation of fair market value and payment of in-lieu fees.**

Annually, on a fiscal year basis, the director of community development shall determine the fair market value for an acre of land in the city. The fair market value amount shall be included in the fee resolution adopted by the city council. The fair market value applicable to the calculation of all park in-lieu fees shall be based on the fee in effect at the time of complete building permit application submittal. The calculation of all park in-lieu fees shall be applied at building permit application submittal and payable prior to building permit issuance. (Ord. 2953-11 § 4; Ord. 2911-09 § 4; Ord. 2630-99 § 2; Ord. 2623-99 § 1; prior zoning code § [19.86.060](#)).

#### **19.74.070. Calculation of requirement.**

For the purposes of the formula established by this section, the following definitions shall apply:

- A — the acreage required per dwelling unit within the proposed residential housing project for park and recreational facilities from Section [19.74.040](#).
- B — the number of dwelling units in the proposed residential housing project.



## ATTACHMENT 3

- C — the fair market value per acre of land.
- D — the number of existing dwelling units.
- F — the in-lieu fee required.
- L — the land required for dedication.

The following formula shall be used in calculating land required for dedication:

$$A \times (B-D) = L$$

The following formula shall be used in calculating fees to be paid in lieu of land dedication:

$$A \times (B-D) \times C = F$$

(Ord. 2911-09 § 4; Ord. 2630-99 § 2; Ord. 2623-99 § 1; prior zoning code § [19.86.070](#)).

#### **[19.74.080. Exemption.](#)**

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Any dwelling units designated as affordable housing are exempt from the total number of dwelling units used in the calculations in Section [19.74.070](#). (Ord. 2976-12 § 14; Ord. 2623-99 § 1; prior zoning code § [19.86.080](#)).

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**Sunnyvale Municipal Code**

[Up](#)      [Previous](#)      [Next](#)      [Main](#)      [Collapse](#)      [Search](#)      [Print](#)      [No Frames](#)

[Title 19. ZONING](#)

[Article 5. SPECIAL HOUSING ISSUES](#)

**Chapter 19.75. HOUSING IMPACT FEES**

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**19.75.010. Findings and purpose.**

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(a) Findings. The city council finds that:

- (1) Regional housing prices and rents have increased at a significantly higher rate than regional wages;
- (2) The lack of affordable housing in Sunnyvale forces many residents to pay a very high percentage of their income for housing and requires many of those employed in the city to commute considerable distances, adding to air pollution and traffic congestion in Sunnyvale and adjacent communities;
- (3) New housing developments do not provide enough housing affordable to lower-income households, and continued new development which does not include housing lower-income households will serve to further aggravate the current shortage of affordable housing by reducing the scarce supply of undeveloped land;
- (4) Based on a nexus analysis to evaluate the impact of new commercial, industrial, research and development, retail, hotel/motel and market-rate rental housing developments, these new developments generate an increased demand for affordable housing which must be mitigated through the imposition of housing impact fees; and
- (5) Such housing impact fees are a necessary part of the city's efforts to meet the regional housing needs of the Bay Area as required by state law.

(b) Purpose. This chapter requires the payment of housing impact fees for certain types of development to mitigate the impact of nonresidential and residential development on the need for affordable housing in the city of Sunnyvale and to implement the housing element of the city's general plan and California [Government Code](#) Section 65583(c), which expresses the state housing policy that requires cities to assist in the development of adequate housing to meet the needs of lower-income households. Housing impact fees are placed in the city's housing mitigation fund and used to support the development of affordable housing within the city. (Ord. 3057-15 § 2).

**19.75.020. General applicability.**

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(a) New Construction. Projects that include new nonresidential construction or new market-rate rental housing construction shall be subject to the housing impact fees required in this chapter. Payment of the housing impact fees shall be added as a condition of approval for all development projects subject to this chapter.

(b) Pipeline Projects. The following development projects shall be exempt from payment of the housing impact fees required in this chapter:

- (1) Projects for which a development application pursuant to this title has been filed and deemed complete by September 14, 2015.
- (2) Projects that have received final approval pursuant to this title by September 14, 2015, and which are subsequently the subject of a pending application for modifications to the approved plans or permit, except that any increase in floor area from the amount already approved shall be subject to the housing impact fees required by this chapter.
- (3) Pipeline projects not subject to the new housing impact fees must pay any applicable housing

## ATTACHMENT 3

mitigation fees that were in existence at the time the application was deemed complete.

(c) Adoption of Housing Impact Fees. Housing impact fee amounts for each applicable use are established by the fee resolution adopted by the city council, which may be amended from time to time by council. The fee amounts shall be adjusted annually based on the Consumer Price Index for all urban consumers for the San Francisco-Oakland-San Jose area unless otherwise modified by council. Such fees shall not exceed the cost of mitigating the impact of developments on the need for housing for lower-income households in the city.

(d) Timing of Payment. Housing impact fees shall be paid prior to issuance of the first building permit for the project. A developer may pay all or a portion of the fee owed at any time prior to issuance of the building permit, at the rate in effect at the time payment is made. For phased projects, the amount due shall be paid on a pro rata basis across the entire square footage of the approved development, and each portion shall be paid prior to the issuance of any building permit for each phase. (Ord. 3057-15 § 2).

### **19.75.030. Housing impact fees for nonresidential development.**

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(a) Applicability. Housing impact fees shall be imposed on all new construction of commercial, industrial, research and development, office, retail and hotel/motel development projects, regardless of zoning designation of the project site, unless otherwise exempted under this chapter. A detailed matrix of nonresidential land uses required to pay the housing impact fee is incorporated as part of the fee resolution adopted by council.

(b) Calculation of Fee. The amount of the fee, as further described in the fee resolution, is imposed on a per square foot basis for net new gross floor area. A reduced fee shall apply to the first twenty-five thousand square feet for commercial, industrial and research and development projects. The formula below shall be used in calculating the amount of the housing impact fee:

(Gross square feet nonresidential floor area) minus (existing square feet floor area) multiplied by (per square foot fee) equals (total housing impact fee).

(c) Exemptions to Net New Gross Floor Area. The following areas are exempt from the net new gross floor area used in housing impact fee calculations for nonresidential developments:

- (1) Any incidental and accessory storage, structures or appurtenances, such as sheds, trash enclosures, ground-mounted equipment enclosures, garden features, trellises or shade structures;
- (2) Architectural design features not utilized for occupancy or storage;
- (3) For industrial, research and development or office uses:
  - (A) Child care facilities for the care of children of on-site employees,
  - (B) Freestanding amenities buildings for on-site employees with uses such as cafeterias, recreational and athletic facilities, gyms, showers and locker rooms, and
  - (C) Buildings designed exclusively for the storage of hazardous materials;

(4) Existing square feet floor area of structures that were vacated or demolished no more than twelve months prior to the filing date of the development application.

(d) Alternative to Payment. As an alternative to payment of the housing impact fee, a developer may request to mitigate the housing impacts through construction of affordable residential units on an appropriate housing site, the dedication of land for affordable housing or the provision of other resources to provide affordable housing. The city council may approve this request if the proposed alternative furthers affordable housing opportunities in the city equal to the payment of the housing mitigation fee. (Ord. 3057-15 § 2).

## ATTACHMENT 3

**19.75.040. Housing impact fees for rental housing.**

(a) **Applicability.** A housing impact fee shall be imposed for new market-rate rental housing developments in the city of four units or more, unless the applicant elects to provide one of the alternatives listed in subsection (d). For purposes of this chapter, new market-rate housing developments shall include developments that have recorded a condominium map but the developer intends to initially rent the units. In the event the developer has paid the fees and later sells the units within fifty-five years of the fee payment, developer shall receive credit for the housing impact fees paid against the BMR ownership obligations in Chapter 19.67, as further described in the BMR Developer Guidelines.

(b) **Calculation of Fee.** Developments of eight units or more shall pay the full fee established by council resolution. Developments consisting of four to seven units shall pay fifty percent of the fee established by council resolution. The formula below shall be used in calculating the required housing impact fee for new market-rate rental housing developments:

(New habitable square foot area of all market-rate units) minus (existing habitable square foot area of all units) multiplied by (per square foot fee) equals (total housing impact fee).

(c) **Habitable Square Foot Area.** Habitable square foot area means the total interior living area of each dwelling unit within a project, and does not include areas outside of the dwelling units such as common areas, corridors, parking facilities, outside storage lockers and shared laundry facilities.

(d) **Alternatives In Lieu of Housing Impact Fee.** As an alternative to paying the housing impact fee for rental housing developments, an applicant may request to provide affordable units on-site, dedicate land for affordable housing or provide affordable units off-site, as detailed in this section.

(1) **On-Site Units.** An applicant may request to provide a certain number of the rental units in the residential project at rents affordable to very-low income households or low income households, or a combination of both very-low income and low income units. The number of affordable rental units shall provide equivalent mitigation of the project's impact on the need for affordable housing as set forth in the fee resolution. The request to provide on-site units may be granted by the director.

(2) **Off-Site Units or Dedication of Land.** As an additional alternative, the applicant may request to designate affordable units in an off-site location or to dedicate land for the construction of affordable units. The city priority shall be for a location that is accessible to public transit. Any off-site units shall be either new or renovated to near-new conditions. Such requests shall be granted in the sole discretion of the city council if the city council determines that the proposed alternative will mitigate the impact of the project on the need for affordable housing.

(3) In calculating the number of required affordable rental units either on-site or off-site, any fraction of a whole unit shall be satisfied by either developing one additional affordable unit or by paying the remaining fee amount as further described in the fee resolution.

(4) All affordable units developed either on-site or off-site must remain affordable for a minimum period of fifty-five years.

(5) To ensure compliance with the Costa-Hawkins Rental Housing Act and city requirements, the applicant must enter into an affordable housing developer agreement with the city to be recorded against the property prior to recordation of a final or parcel map or issuance of any building permit, acknowledging that the affordable units or land dedication are provided in consideration for a direct financial contribution from the city in the form of a waiver of the housing impact fee. The affordable units shall be administered in accordance with

## ATTACHMENT 3

Chapter [19.69](#) and the Affordable Housing Developer Guidelines. (Ord. 3057-15 § 2).

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**19.75.050. Waiver.**

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Notwithstanding any other provision of this chapter, the requirement to pay the housing impact fee may be waived, adjusted or reduced by the city council if an applicant shows, based on substantial evidence, that there is no reasonable relationship between the impact of the proposed development and the requirement to pay the housing impact fee, or that applying the requirements of this chapter would take property in violation of the United States Constitution or California Constitution or would result in any other unconstitutional result. (Ord. 3057-15 § 2).

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**19.75.060. Enforcement.**

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The provisions of this chapter shall apply to all agents, successors and assigns of an applicant proposing or constructing a development governed by this chapter. 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, including a development approval, building permit or certificate of occupancy. The city shall be entitled to costs and expenses for enforcement of the provisions of this chapter, or any agreement pursuant thereto, as awarded by the court, including reasonable attorneys' fees. (Ord. 3057-15 § 2).

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**19.75.070. Severability.**

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If any portion of this chapter is held to be invalid, unconstitutional, or unenforceable by a court of competent jurisdiction, that decision will not affect the validity of the remaining portions of this zoning code. The city council declares that this chapter and each portion would have been adopted without regard to whether any portion of this chapter would be later declared invalid, unconstitutional, or unenforceable. (Ord. 3057-15 § 2).

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**Sunnyvale Municipal Code**[Up](#)[Previous](#)[Next](#)[Main](#)[Collapse](#)[Search](#)[Print](#)[Title 18. SUBDIVISIONS](#)**Chapter 18.10. PARKS AND OPEN SPACE DEDICATION**

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**18.10.010. Subdivision map defined.**

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“Subdivision map” means any map filed pursuant to any proceedings for subdivision which creates any additional parcel capable of residential development. (Ord. 2194-86 § 1).

**18.10.020. General requirements.**

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As a condition of approval of any final subdivision map or parcel map, the subdivider shall dedicate land, pay a fee in lieu thereof, or both, at the option of the city, for park or recreational purposes according to the following standards:

(a) **Dedication of Sites.** Where a park or recreational facility has been designated in the open space and recreation subelement of the general plan, and the park or facility is to be located in whole or in part within a proposed subdivision, to serve the immediate and future needs of the residents of the subdivision, the subdivider shall be required to dedicate land for park and recreational facilities sufficient in size to serve the residents of the subdivision area. The park land to be so dedicated shall conform to locations and standards set forth in the general plan. The slope, topography and geology of the site, as well as its surroundings, must be suitable for the intended park or recreation purpose. The amount of land to be provided shall be determined pursuant to the standards set forth in Sections [18.10.030](#) through [18.10.070](#), inclusive, of this chapter establishing the formula for land dedication or for payment of fees in lieu thereof.

(b) **Fees In Lieu of Dedication.** If there is no park or recreational facility designated or required in whole or in part within a proposed subdivision, the subdivider shall be required to pay a cash payment in lieu of the land equal to the value of the land as determined by Sections [18.10.030](#) through [18.10.070](#), inclusive, of this chapter.

A fee in lieu of land dedication hereunder shall be required when:

- (1) A subdivider is subdividing land on which no park has been designated or proposed; or
- (2) When dedication is impossible, impractical, or undesirable, as determined by the city; or
- (3) When the proposed subdivision contains fifty or fewer parcels of land.

(c) **Dedication and Fees Required.** In certain subdivisions in excess of fifty parcels of land, a combination of land dedication and fee payment may be required. These shall be subdivisions in which: (1) only a portion of the land to be subdivided is proposed in the general plan as the location for a park or recreational facility, in which case that land, or a portion thereof within the subdivision, shall be dedicated for park purposes, and a fee shall then be required in lieu of any additional land that would have been required to be dedicated under this chapter; or (2) a major part of the park or recreational site falling within the subdivision has already been acquired, and only a small portion of land is needed from the subdivider to complete the park or recreation site, in which case the land needed shall be required for dedication, and a fee shall then be required in lieu of the additional land that would have been required to be dedicated under this chapter.

(d) **Use of and Basis for In Lieu Fees.** The money collected pursuant to this chapter is to be used only for the purpose of providing park or recreational facilities to serve the subdivision from which fees are collected. Fees so collected shall be used to purchase land, buy equipment or construct improvements in neighborhood and district parks and recreational facilities serving said subdivision. The fee so required shall be based on the fair market value of the land that otherwise would have been required for dedication. (Ord. 2194-86 § 1).

## ATTACHMENT 3

**18.10.030. Land requirement.**

In accordance with the open space and recreation subelement of the general plan; it is hereby found and determined that the public interest, convenience, health, welfare and safety require that acres of property, as prescribed below, for each one thousand persons residing within each neighborhood planning area within the city of Sunnyvale be devoted to public park and recreational facilities. The Murphy planning area shall be divided by Fair Oaks Avenue into two sections to be designated Murphy West and Murphy East. The table below prescribes the acreage requirements and their effective dates. Subdivisions are subject to the acreage requirement in effect at the time the tentative map application is deemed complete.

<b>Effective Date</b>	<b>Acres of Property Per One Thousand Persons</b>
Until June 30, 2010	1.75 acres
July 1, 2010 - June 30, 2011	2.25 acres
July 1, 2011 - June 30, 2012	3.00 acres
July 1, 2012 - June 30, 2013	3.5 acres
July 1, 2013 - June 30, 2014	4.25 acres
July 1, 2014 and thereafter	5.00 acres

(Ord. 2953-11 § 1; Ord. 2951-11 § 1; Ord. 2911-09 § 1; Ord. 2194-86 § 1).

**18.10.040. Density formula.**

In determining dedication or in lieu fee payment requirements under this chapter, the following table, derived from density assumptions of the general plan and prevailing household sizes shall apply:

<b>Dwelling Category</b>	<b>Dwelling Units Per Net Acre</b>	<b>Acreage Requirement Per Dwelling Unit Within Subdivision</b>					
		<b>Until June 30, 2010</b>	<b>July 1, 2010 to June 30, 2011</b>	<b>July 1, 2011 to June 30, 2012</b>	<b>July 1, 2012 to June 30, 2013</b>	<b>July 1, 2013 to June 30, 2014</b>	<b>July 1, 2014 and thereafter</b>
Low density residential	7 or fewer	0.0048125	0.0061875	0.0082500	0.009625	0.0116875	0.01375

## ATTACHMENT 3

Low-medium density residential	Over 7 to 14	0.0043750	0.0056250	0.0075000	0.00875	0.010625	0.0125
Medium density residential	Over 14 to 27	0.0031500	0.0040500	0.0054000	0.0063	0.00765	0.009
High density residential	Over 27	0.0031500	0.0040500	0.0054000	0.0063	0.00765	0.009

A deduction for the number of existing dwelling units will be allowed in calculating the land dedication or in-lieu fees required pursuant to this chapter as set forth in Section [18.10.070](#).

The value of any park and recreational improvements and equipment to the dedicated land shall be credited against the payment of fees or dedication of land required pursuant to this chapter. (Ord. 2951-11 § 1; Ord. 2911-09 § 1; Ord. 2194-86 § 1).

#### **18.10.050. Procedure.**

The planning commission shall, upon approving a tentative map, determine the conditions necessary to comply with the requirements for park land dedication or fees in lieu thereof as set forth in this chapter and said conditions shall be attached as conditions of approval of the map. (Ord. 2194-86 § 1).

#### **18.10.060. Calculation of fair market value and payment of in-lieu fees.**

Annually, on a fiscal year basis, the director of community development shall determine the fair market value for an acre of land in the city. The fair market value amount shall be included in the fee resolution adopted by the city council. The fair market value applicable to the calculation of all park in-lieu fees shall be based on the fee in effect at the time the final map is complete. The calculation of all park in-lieu fees shall be applied and payable upon approval of the final map. (Ord. 2953-11 § 2; Ord. 2911-09 § 2; Ord. 2630-99 § 1; Ord. 2194-86 § 1).

#### **18.10.070. Calculation of requirement.**

For the purposes of the formula established by this section, the following definitions shall apply:

- A — the acreage required per dwelling unit within the proposed subdivision for park and recreational facilities from Section [18.10.040](#).
- B — the number of dwelling units in the proposed subdivision.
- C — the fair market value per acre of land from Section [18.10.060](#).
- D — the number of existing dwelling units.
- L — the land required for dedication in proposed subdivision.
- F — the fee required.

The following formula shall be used in calculating land required for dedication under this section:



## ATTACHMENT 3

$$A \times (B-D) = L$$

The following formula shall be used in calculating in lieu of fees required to be paid under this chapter:

$$A \times (B-D) \times C = F$$

(Ord. 2911-09 § 2; Ord. 2630-99 § 2; Ord. 2194-86 § 1).

**18.10.080. Exclusions.**

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The provisions of this chapter shall not apply to commercial or industrial subdivisions or to condominium projects or stock cooperatives which consist of subdivision of airspace in an existing apartment building which is more than five years old when no dwelling units are added. (Ord. 2194-86 § 1).

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