



## ORDINANCE NO. \_\_\_\_-15

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY  
OF SUNNYVALE AMENDING CHAPTER 19.22  
(INDUSTRIAL ZONING DISTRICTS) AND ADDING  
CHAPTER 19.75 (HOUSING IMPACT FEES) OF TITLE 19  
(ZONING) OF THE SUNNYVALE MUNICIPAL CODE TO  
ALLOW HOUSING IMPACT FEES FOR  
NONRESIDENTIAL DEVELOPMENT AND RENTAL  
HOUSING

WHEREAS, pursuant to City Council direction to expand the Housing Mitigation Fee and to establish a new fee for rental housing developments, the City of Sunnyvale ("City") staff has reviewed the provisions in the zoning code related to the Housing Mitigation Fee, and desires to make certain changes to the code for the purpose of expanding the Housing Mitigation Fee to include housing impact fees for nonresidential development and rental housing.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. SECTION 19.22.035 AMENDED. Section 19.22.035 of Chapter 19.22 (Industrial Zoning Districts) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby amended to read as follows:

**19.22.035. Requirements for high-intensity industrial development.**

(a) Purpose. The purpose of this section is to mitigate the ~~housing and~~ traffic impacts of high-intensity industrial development, ~~including the demand for affordable housing created by additional jobs.~~

(b) Applicability. This section applies to high-intensity industrial development in the M-S or M-3 zoning district. High-intensity industrial development means any project that creates new floor area exceeding floor area ratio (FAR) thresholds defined in Table 19.32.020 (Building Height, Lot Coverage and Floor Area Ratio) or exceeding seventy percent FAR in industrial intensification areas defined in Section 19.32.070 (Floor area ratio (FAR).)

~~(c) — Housing Mitigation Fee. High-intensity industrial developments are subject to a housing mitigation fee.~~

~~— (1) — Use of Housing Mitigation Fees. Housing mitigation fees are placed in the city's housing fund and used to support the provision of affordable housing within the city. The provision of housing may include funding the creation or acquisition of new units, providing assistance to potential home buyers, and assisting with the maintenance and rehabilitation of existing units.~~

~~—— (2) Calculation of Fee. The amount of the fee is set by the city fee resolution and is imposed on a per square foot basis for new gross floor area exceeding specified FAR thresholds. For calculation purposes, the floor area allowed is seventy percent FAR for industrial intensification sites or the FAR limitation in Table 19.32.020 (Building Height, Lot Coverage and Floor Area Ratio) for all other industrial sites. The fee amount is calculated as follows:~~

~~(Gross floor area) minus (Floor area allowed) multiplied by (per square foot fee) equals (total housing mitigation fee).~~

~~—— (3) Exemptions to Gross Floor Area. The following areas are exempt from the gross floor area used in housing mitigation fee calculations:~~

~~—— (A) Recreational facilities such as gyms, showers, indoor pools, locker rooms;~~

~~—— (B) Cafeterias, auditoriums, atria or other special presentation rooms not easily converted to work areas;~~

~~—— (C) Architectural design features not utilized for occupancy or storage;~~

~~—— (D) Childcare facilities;~~

~~—— (E) Hazardous materials storage; and~~

~~—— (F) Existing structures that were vacated or demolished no more than twelve months prior to the filing date of the development application.~~

~~—— (4) Timing of Payment. Housing mitigation fees shall be paid prior to issuance of the first grading or 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 grading or building permit for each phase.~~

~~—— (5) Alternative to Payment. As an alternative to payment of the housing mitigation fee, a developer may request to mitigate the housing impacts through construction of residential units on an appropriate housing site, the dedication of land or the provision of other resources. The director may approve this request if the proposed alternative furthers affordable housing opportunities in the city to an equal or greater extent than payment of the housing mitigation fee.~~

~~—— (6) Adjustments to Mitigation Fee. An adjustment, reduction or waiver of the required housing mitigation fee may be granted at the time the development application is approved under the following circumstances:~~

~~—— (A) Additions to Existing High FAR Buildings. For projects adding square footage to existing structures exceeding FAR thresholds, housing mitigation fees shall be paid only on the additional square footage.~~

~~—— (B) Absence of Nexus. The approving body may waive housing mitigation fees for projects that have no nexus between development impact and housing need. The applicant bears the burden of proof for this finding. If subsequent use or structure changes occur that trigger the need for housing, the waiver is revoked and housing mitigation payment shall be calculated and due at that time. Notice of this waiver, with the condition regarding subsequent use changes, shall be recorded with the county of Santa Clara.~~

(~~cd~~) Transportation Demand Management Plan.

(1) Standard M-S and M-3 Floor Area Ratios. Projects requiring a use permit for floor area ratio may be required to submit a transportation demand management (TDM) plan, at the determination of the approving body.

(2) Industrial Intensification Areas. Projects greater than seventy percent in the industrial intensification areas described in Section 19.32.070 (Floor area ratio (FAR)) are required to submit a TDM plan for the entire project site. The TDM plan shall demonstrate that vehicle-trip rates for the project do not exceed the projected trip generation of a seventy percent FAR project.

(3) Green Building Incentives. TDM plans may also be required for projects to use green building incentives, as described in Chapter 19.39 (Green Building Regulations).

SECTION 2. CHAPTER 19.75 ADDED. Chapter 19.75 (Housing Impact Fees) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby added to read as follows:

## **Chapter 19.75**

### **HOUSING IMPACT FEES**

**19.75.010. Findings and Purpose.**

**19.75.020. General Applicability.**

**19.75.030. Housing Impact Fees for Nonresidential Development.**

**19.75.040. Housing Impact Fees for Rental Housing.**

**19.75.050. Waiver.**

**19.75.060. Enforcement.**

**19.75.070. Severability.**

**19.75.010. Findings and Purpose.**

(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 & 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.

#### **19.75.020. General Applicability.**

(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 **[insert effective date of ordinance here]**.

(2) Projects that have received final approval pursuant to this title by **[insert effective date of ordinance here]** 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 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.

**19.75.030. Housing Impact Fees for Nonresidential Development.**

(a) Applicability. Housing impact fees shall be imposed on all new construction of commercial, industrial, research & 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 25,000 square feet for commercial, industrial and research & 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 & development or office uses:  
(A) Child care facilities for the care of children of onsite employees;

(B) Freestanding amenities buildings for onsite 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.

**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 (4) 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 (55) 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 (8) units or more shall pay the full fee established by Council resolution. Developments consisting of four (4) to seven (7) units shall pay fifty (50) 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 (55) 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 Chapter 19.69 and the Affordable Housing Developer Guidelines.

**19.75.050. Waiver.**

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.

**19.75.060. Enforcement.**

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.

**19.75.070. Severability.**

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.

**SECTION 3. CEQA - EXEMPTION.** The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15378(b)(4), that adoption of this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) because it

constitutes a governmental fiscal activity that does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 5. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in The Sun, the official publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on \_\_\_\_\_, 2015, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on \_\_\_\_\_, 2015, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

RECUSAL:

ATTEST:

APPROVED:

\_\_\_\_\_  
City Clerk  
Date of Attestation: \_\_\_\_\_

\_\_\_\_\_  
Mayor

(SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney