



City of Sunnyvale

Agenda Item-No Attachments (PDF)

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REPORT TO COUNCIL

SUBJECT

Introduce an Ordinance and Adopt Two Resolutions to Approve Two New Affordable Housing Impact Fees: Housing Impact Fee for Nonresidential Development and Housing Impact Fee for Rental Housing; Find that the Project is Exempt from Environmental Review Pursuant to CEQA Guideline 15378(b)(4)

REPORT IN BRIEF

Recent Council direction to expand the Housing Mitigation Fee and to establish a new fee for rental housing developments requires amendments to the Sunnyvale Municipal Code (SMC). A draft ordinance (Attachment 1) and two resolutions (Attachments 2 and 3) have been prepared to make these changes.

The Housing Impact Fee for Nonresidential Development, set at \$15 per net new square foot for all office and industrial projects (\$7.50 for the first 25,000 square feet) and \$7.50 per square foot for all retail and lodging projects, will apply to all new commercial, industrial, research and development (R&D), retail and lodging projects in any zone, unless otherwise exempted, as outlined in Exhibit C to Attachment 2.

The Housing Impact Fee for Rental Housing, set at \$17 per net new habitable square foot, applies to all new rental developments and includes provisions to allow developers several alternatives to paying the fee. Any alternative compliance option, other than providing standard affordable units within the project (the "on-site" option) will require approval by Council. Revenues generated by these fees will be used to subsidize the development of affordable units.

Staff recommends that Council approve Alternative 1: Approve the Draft Ordinance and Fee Resolutions establishing the Housing Impact Fees for Nonresidential Development and Housing Impact Fee for Rental Housing, as provided in Attachments 1, 2, and 3.

Staff held a stakeholder outreach meeting on the draft ordinance and resolutions on May 19 at the Sunnyvale Community Center. Stakeholders asked questions about when the new fees would take effect, which projects would be subject to the fee, details of the pipeline provisions, and the proposed uses of the fees. Meeting notes are provided in Attachment 4.

The Housing and Human Services (HHSC) and the Planning (PC) Commissions held public hearings on the draft ordinance and resolutions on May 20 and 27, respectively. The HHSC voted unanimously to recommend Alternative 1, and the PC voted 5-1 to recommend Alternative 1. The draft HHSC meeting minutes are provided as Attachment 5 and the PC minutes are provided as Attachment 6.

BACKGROUND

At the December 9, 2014 City Council meeting, Council heard a presentation and took public testimony concerning a proposed commercial linkage fee for affordable housing, which would expand the existing Housing Mitigation Fee (HMF), and reviewed the associated impact fee nexus study (RTC 14-0673). Following that hearing, Council directed staff to prepare an ordinance to expand the HMF to include all office/industrial, retail, and lodging development projects in any zone; and to set the initial fee at \$15 per net new square foot for all office/R&D and industrial projects (\$7.50 for the first 25,000 square feet) and \$7.50 per square foot for all retail and lodging projects, both adjusted annually for inflation as part of the annual fee schedule adoption. The draft ordinance prepared to implement this Council direction, provided as Attachment 1 to this report, refers to this expanded fee as the “Housing Impact Fee for Nonresidential Development.”

At the March 17, 2015 City Council meeting, Council heard a presentation and took public testimony concerning a proposed Housing Impact Fee for Rental Housing (*Rental Housing Impact Fee* is used in this report) for New Market-Rate Rental Housing Developments and reviewed the associated impact fee nexus study (RTC 14-0846). Following that hearing, Council directed staff to prepare an ordinance and set the initial fee at \$17 per habitable square foot for all new market-rate rental housing developments, adjusted annually as part of the City Fee Schedule. The Council further directed the following: 1) allow developers to provide affordable units within a project instead of paying the impact fee, as well as other possible options such as providing off-site affordable units or dedicating land; 2) require any alternative options, except for the provision of standard on-site affordable units as allowed by the ordinance to be approved by Council; 3) require all affordable units provided to satisfy the fee requirement to be restricted for an affordability term of at least 55 years; and 4) that the developer should strive to locate affordable units close to transit.

At both of the above hearings, Council directed staff to return within two years to re-evaluate and possibly adjust the rates of the new fees.

EXISTING POLICY

General Plan, Housing Element

Goal A: Assist in the provision of adequate housing to meet the diverse needs of Sunnyvale’s households of all income levels.

Policy A.4: Continue to require office and industrial development to mitigate the demand for affordable housing.

Policy A.7: Support collaborative partnerships with non-profit organizations, affordable housing builders, and for-profit developers to gain greater access to various sources of affordable housing funds.

ENVIRONMENTAL REVIEW

This action is not a project for purposes 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. (CEQA Guideline 15378 (b)(4)).

DISCUSSION

Economics and Planning Systems, Inc., (EPS) prepared the Housing Mitigation Nexus and Fee Study in September 2014 and updated the Nexus-Based Affordable Housing Fee Analysis for Rental

Housing in December 2014. Both reports identify a maximum defensible nexus-based fee that could be charged to office/industrial, retail, and lodging development projects in any zone, and to new multifamily rental residential developments in Sunnyvale. These fees mitigate the demand for affordable rental housing generated by new jobs and new market-rate rental development in Sunnyvale.

Before Council can adopt the new fees, the SMC must be amended to establish regulations for their implementation. To do this, staff is proposing to amend Section 19.22.035 of the Zoning Code (Title 19), which is the section that established the current HMF for high-intensity industrial developments, and create a new Chapter 19.75 entitled “Housing Impact Fees”. The new Chapter 19.75 will contain two new sections: Section 19.75.030, Housing Impact Fees for Nonresidential Development (formerly known as the HMF); and Section 19.75.040, Housing Impact Fees for Rental Housing. A draft ordinance (Attachment 1) has been prepared to make these changes to the SMC. Attachments 2 and 3 are resolutions to amend the City fee schedule to establish the fee rates for FY 2015-16 (one resolution for each new fee).

Housing Impact Fee for Nonresidential Development

The Housing Impact Fee for Nonresidential Development, also referred to as the commercial linkage fee, will apply to new office, R&D, industrial, retail, and lodging development projects, as defined in the draft ordinance and resolution, in any zoning district. The draft resolution sets the fee at \$15 per net new square foot for all office/R&D and industrial projects (\$7.50 for the first 25,000 square feet) and \$7.50 per net new square foot for all retail and lodging projects, both adjusted annually for inflation as part of the annual fee schedule adoption.

Exempt Uses

The Housing Impact Fee for Nonresidential Development will apply to all new commercial, industrial, R&D, retail and lodging projects in any zone, unless otherwise exempted.

The Housing Mitigation Nexus and Fee Study only covered office, R&D, industrial, retail, and lodging uses. Consistent with many cities, certain nonresidential uses would not be assessed a housing impact fee, such as educational institutions, health care uses and places of assembly. The nexus study did not evaluate a possible fee for these specific uses.

Therefore, the draft ordinance and resolution exempt the above land uses and several other uses that would not generate significant jobs. The list below summarizes the major use types that are exempted in the draft ordinance:

- Child and Adult Day Care, Hospitals, Assisted Living Facilities and Convalescent Hospitals;
- Agriculture and Resource Uses;
- Public Uses;
- Stand-alone Parking Structures and Surface lots; and
- Education, Recreation and Places of Assembly.

A complete Zoning Use Table identifying exempt and non-exempt uses is provided as Exhibit C to the Housing Impact Fee for Nonresidential Developments Resolution (Attachment 2).

Alternative Compliance

As an alternative to paying the Housing Impact Fee for Nonresidential Development, 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 City Council 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 fee.

Grandfathering Provision for Pipeline Projects

Any nonresidential project that would otherwise be subject to the new nonresidential fee but has obtained an approved (entitled) planning permit or has submitted an application that has been deemed complete by the Planning Division before the effective date of the ordinance will not be subject to the new fee. However, some of these “pipeline” projects are still subject to the current HMF (i.e., “high intensity” projects in industrial zones as described in Section 19.22.035) and will continue to be subject to that fee, payable at the rate in effect at the time of building permit issuance. For the next several years, there will be two similar fee rates in the fee schedule, one for the existing HMF and one for the new Housing Impact Fee for Nonresidential Development, until all of the pipeline projects subject to the existing HMF have been completed, at which time the HMF can be removed from the fee schedule.

Payment of the Housing Impact Fee for Nonresidential Developments will be due at the time a building permit is issued for the project subject to the fee.

Housing Impact Fee for Rental Housing

The Council approved a Rental Housing Impact Fee of \$17 per habitable square foot for all new market-rate residential rental developments, adjusted annually as part of the City Fee Schedule. Council’s direction was based on the desire to identify a revenue source that would enable the City to continue to provide affordable rental housing opportunities to lower-income households. Payment of the Rental Housing Impact Fee (RHIF) will be due at the time that building permits are issued for a project.

Council’s direction also included provisions that allow developers to provide affordable housing units within a new rental project instead of paying the impact fee, and other options, such as providing off-site affordable units or dedicating land. Any alternative compliance option, other than providing standard affordable units within the project (the “on-site” option) will require approval by Council.

If a developer opts to provide affordable units on-site instead of paying the fee, the draft ordinance allows the developer to be credited \$300,000 for every very low-income unit provided on-site and/or \$150,000 for every low-income unit provided on-site, up to the total fee amount owed by the project. These amounts are based on the subsidy amounts required to develop affordable units, which the recent rental impact fee nexus study determined to be \$302,496 for a very low-income unit and \$146,233 for a low-income unit. These subsidy levels will be adjusted periodically as needed to reflect significant changes in the costs to develop affordable units.

An example is provided in Table 1 below to illustrate how this option would work. In this example, the developer opts to provide five very low and five low income units within the project in exchange for a \$2.25 million credit against the project’s fee obligation, which is approximately \$2.26 million for a project of 140 new units. In the event any fee obligation remains after the affordable unit credits are applied, the developer may opt to provide another affordable unit or just pay the remaining balance, which is \$11,000 in the example below. In addition, developers may opt to pay a larger portion of the

fee and provide fewer units in lieu, as a variation on this option.

Table 1: Credit for Affordable Units Provided On-Site In-Lieu of RHIF

Unit Affordability Level	Credit Toward RHIF	Number of Units Provided in Project	Total Credit
Very Low Income	\$300,000	5	\$1,500,000
Low Income	\$150,000	5	\$750,000
Total Credit for Project for On-Site Affordable Units			\$2,250,000
RHIF Owed by Project (140 units @ 950 HSF each x \$17)			\$2,261,000
Balance of RHIF owed by project			\$11,000

All of the affordable units provided instead of the fee payment will be subject to 55-year affordability restrictions, and developers should strive to provide them in a location that is easily accessible to public transit.

Although not originally discussed at the March 17, 2015 Council meeting, the draft resolution sets the fee for rental developments of 4 to 7 units at \$8.50 per habitable square foot and developments with 8 or more units at \$17.00 per habitable square foot. This responds to concerns expressed about the greater financial impact of the impact fee on smaller projects, similar to the discussion regarding the Housing Impact Fee for Nonresidential Development. Council could also consider exempting from the impact fee residential projects with less than eight units, similar to the threshold for when ownership housing projects are required to provide inclusionary units.

Alternative Compliance Options for Rental Projects

As an alternative to payment of the RHIF or providing on-site units, as described above, a rental housing developer subject to the fee may request to mitigate the project's impacts through various alternative compliance options. Such requests may be granted by Council, if it determines that the proposed alternative will contribute to the City's affordable housing stock to an equal or greater extent than payment of the fee.

Any off-site units or sites to be dedicated for affordable housing shall be near public transit and shall be subject to Council approval. As a condition of approving any of the alternative compliance options, Council may require that the developer provide a greater number of affordable units and/or a greater degree of affordability (i.e., extremely low units) than would otherwise be required to off-set the project's fee obligation, consistent with guidelines to be developed for this purpose by the Community Development Department.

1. Off-site Affordable Housing Units: The developer may propose to provide affordable housing units in another new residential development in Sunnyvale, provided those units meet the requirements noted above.
2. Unit Conversion: The developer may propose to convert existing residential units in another location into affordable housing, or provide financial incentives to extend the affordability term of an affordable housing development with expiring rent restrictions.
3. Land Dedication/Partnership: The developer may propose to dedicate land and/or grant funds to a non-profit developer for the development of affordable housing units. This option shall be

substantially consistent with the requirements of the comparable alternative provided in Municipal Code Section 19.67.090(c)(2), and as further described in the draft Ordinance.

Provisions for Pipeline Projects

Pipeline projects include those new rental development projects that have obtained Planning approval (entitlements), and those for which the developer has submitted a planning application and it has been deemed complete by the Planning Division, prior to the effective date of the ordinance. Such pipeline projects will be exempt from paying the RHIF.

As directed, staff will return to Council within two years with information regarding implementation of the new fee programs so that Council may re-evaluate and possibly adjust the fees.

FISCAL IMPACT

The new Housing Impact Fees enacted through the proposed ordinance and resolutions have the potential to generate significant fee revenues for funding affordable housing projects. Once a considerable amount of funds have been collected, staff will begin issuing requests for proposals for affordable rental housing projects periodically to use the available funds in a timely manner.

It should be noted that it is likely that a portion of new market-rate rental project developers may opt to provide affordable units on-site rather than paying the fees. Other cities with rental impact fees in place for some time have reported that many developers pursue this option, so the revenues generated could be significantly less than projected if that tendency prevails in Sunnyvale as well. In addition, when the market for new rental development slows, as it has in prior downturns, there may be some years when few rental projects are proposed or built, in which case fee revenues will be minimal.

PUBLIC CONTACT

Public contact was made through posting of the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and the Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and the City's website.

The HHSC and PC held public hearings on this item in May. The HHSC voted unanimously to recommend Alternative 1 and the PC voted 5-1 to recommend Alternative 1. The Planning Commissioner who voted against the motion noted that it was for philosophical reasons and also because he did not understand the logic of imposing the fees on rental housing, and felt they would be counter-productive. The draft HHSC minutes are provided in Attachment 5, and PC minutes are provided in Attachment 6.

ALTERNATIVES

1. Find that the Project is Exempt from Environmental Review Pursuant to CEQA Guideline 15378(b)(4); and Introduce the Proposed Ordinance and Fee Resolutions establishing the Housing Impact Fees for Nonresidential Development and Housing Impact Fee for Rental Housing, as provided in Attachments 1, 2, and 3.
2. Find that the Project is Exempt from Environmental Review Pursuant to CEQA Guideline 15378(b)(4); and Introduce the Proposed Ordinance and Fee Resolutions establishing the Housing Impact Fees for Nonresidential Development and Housing Impact Fee for Rental Housing, as provided in Attachments 1, 2, and 3, with modifications as directed by Council.

STAFF RECOMMENDATION

Alternative 1: Find that the Project is Exempt from Environmental Review Pursuant to CEQA Guideline 15378(b)(4); and Introduce the Proposed Ordinance and Fee Resolutions establishing the Housing Impact Fees for Nonresidential Development and Housing Impact Fee for Rental Housing, as provided in Attachments 1, 2, and 3 to the report.

Alternative 1 implements the previous direction of the City Council to expand and increase the existing housing impact fee for Nonresidential projects and to establish a new housing impact fee for rental housing projects. The Housing Impact Fees for Nonresidential Development and Housing Impact Fee for Rental Housing will provide the City with important new sources of revenue to address the increasing demand for affordable housing. This action will result in the development of new housing affordable to lower-income households. These new fees will complement other existing City programs for providing affordable housing in the City, such as the inclusionary zoning requirements for new for-sale housing, density bonus incentives, zoning for adequate sites, direct subsidies of affordable units using federal grants and other available resources.

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Reviewed by: Trudi Ryan, Planning Officer

Reviewed by: Hanson Hom, Director, Community Development Department

Reviewed by: Kent Steffens, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Draft Ordinance Amending Section 19.22.035 and Adding Chapter 19.75, both of Title 19: Zoning, of the Sunnyvale Municipal Code
2. Fee Resolution: Housing Impact Fee for Nonresidential Development
3. Fee Resolution: Housing Impact Fee for Rental Housing
4. Community Outreach Meeting Notes
5. Draft Minutes of the May 20, 2015 HHSC Meeting
6. Minutes of the May 27, 2015 PC Meeting