

RESOLUTION 23-____

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX ADOPTING AFFORDABLE HOUSING IN-LIEU FEES AND COMMERCIAL/NONRESIDENTIAL LINKAGE FEES IN THE MASTER FEE SCHEDULE

WHEREAS, all communities in the State of California, including the Town of Fairfax, face a housing crisis that includes the lack of access to affordable housing, which has a direct negative impact on the public health, safety, and welfare of the residents of Fairfax; and

WHEREAS, inclusionary housing policies, and related affordable housing in-lieu and commercial/nonresidential linkage fees, are tools that help jurisdictions increase the supply of affordable housing units; and

WHEREAS, the provision of safe and stable housing for households at all income levels is in the public interest; and

WHEREAS, California Government Code section 65580 provides that the availability of housing is of vital Statewide importance and that local governments have a responsibility to use their powers to facilitate the development of housing and make adequate provision for the housing needs of all economic segments of the community; and

WHEREAS, the adoption of affordable housing policies, including affordable housing in-lieu fees and commercial/nonresidential linkage fees, is critical for the Town in reaching its RHNA housing requirements for very low, low, and moderate income households; and

WHEREAS, the Town of Fairfax was awarded funding pursuant to a State Grant established by California Senate Bill 2 (SB 2) for actions to increase housing, and a portion of this money was utilized in collaboration with other Marin jurisdictions to formulate affordable housing policies and supporting fee studies; and

WHEREAS, using the SB 2 funding, the Town of Fairfax collaborated with several Marin jurisdictions lead by Strategic Economics, Inc. and Vernazza Wolf Associates (Consultants) on the development of a common affordable housing policy; and

WHEREAS, Consultants also completed an In-Lieu Housing Fee Study and a Commercial Linkage Fee Study (Fee Study Reports), which studies support the adoption of said fees; and

WHEREAS, in furtherance of the Town's housing goals and consistent with the analysis set for in the "Inclusionary Program and In-Lieu Fee Study for Fairfax" dated February 10, 2023 and "Commercial Linkage Fee Study" dated February 18, 2023, the Town Council has adopted an Ordinance No. ____ adding Chapter 17.140 "Affordable Housing" to Title 17 "Zoning" of the Fairfax Municipal Code adding inclusionary housing requirements and

authorizing the Town Council to establish by Resolution, affordable housing in-lieu fees and commercial/nonresidential linkage fees based on the Fee Study Reports (“Affordable Housing Ordinance”); and

WHEREAS, the Affordable Housing Ordinance provides in section 17.140.120 that the Town Council shall adopt the Affordable Housing In-Lieu Fees that would be paid by residential developers as an alternative means of compliance with the Town’s Affordable Housing Ordinance, and commercial/nonresidential linkage fees that would be paid by nonresidential developers to offset the impacts of the demand the new nonresidential development has on the demand for affordable housing.

WHEREAS, to ensure that the affordable housing in-lieu fees and the commercial/nonresidential linkage fees set forth in this Resolution do not exceed the actual affordable housing impacts attributable to the development projects on which the fees are imposed, the Town Council has received and considered the Fee Study Reports, entitled “Inclusionary Program and In-Lieu Fee Study for Fairfax” dated February 10, 2023 and “Commercial Linkage Fee Study” dated February 18, 2023 which demonstrate that said fees do not exceed the affordable housing impacts attributable to the development projects on which the fees are imposed; and

WHEREAS, at least ten (10) days prior to the date this Resolution is being heard, data was made available to the public indicating the amount of cost, or estimated cost, required to provide the affordable housing for which the fee is being levied and the revenue sources anticipated to provide the affordable housing, in accordance with Government Code section 66019; and

WHEREAS, notice of the hearing on the proposed fees was published twice in a newspaper of general circulation in the manner set forth in Government Code section 6062(a), in accordance with Government Code sections 66004 and 66018; and

WHEREAS, on ~~July 20~~September 14, 2023, the Planning Commission of the Town of Fairfax voted to recommend Town Council approval of the proposed Affordable Housing In-Lieu Fees and Commercial/Nonresidential Linkage Fees; and

WHEREAS, a duly and properly noticed public hearing regarding the Affordable Housing In-Lieu Fees and Commercial/Nonresidential Linkage Fees proposed in this Resolution was conducted by the Town Council on ~~September 6~~October 4, 2023.

NOW, THEREFORE, BE IT RESOLVED that the facts set forth in the recitals in this Resolution are true and correct and incorporated herein by reference. The recitals constitute findings in this matter and, together with the staff report, other written reports, oral staff presentation, public testimony, and other information contained in the record, are an adequate and appropriate evidentiary basis for the actions taken in this Resolution.

BE IT FURTHER RESOLVED that the Town Council of the Town of Fairfax hereby finds as follows with regard to the Affordable Housing In-Lieu Fees and the Commercial/Nonresidential Linkage Fees to be adopted pursuant to Fairfax Municipal Code section 17.140.120:

A. The purpose of the affordable housing requirements and the Affordable Housing In-Lieu Fees and the Commercial/Nonresidential Linkage Fees are to ensure that the private sector, in addition to public sector, participates in the provision of affordable housing for current and future residents of the Town of Fairfax and ensure the long-term affordability of units and availability for income-eligible households in years to come.

B. The Affordable Housing In-Lieu Fees and the Commercial/Nonresidential Linkage Fees will be placed in the Town's Affordable Housing Fund established pursuant to Fairfax Municipal Code section 17.140.110 and be used exclusively to provide housing affordable to extremely low-income, very low-income, low-income, and moderate-income households in the Town of Fairfax leveraging funds, and administration and compliance monitoring of the Affordable Housing Program.

C. Every new residential development creates a further demand for affordable housing to the extent that such development offers market-rate-only housing. The affordable housing requirements and the affordable in-lieu fee are reasonably related to the mitigation of negative impacts upon the Town's affordable housing supply.

D. The lack of affordable housing options in the Town has an impact upon a broad range of income groups, and no single housing program will be sufficient to meet the Town's housing need. Affordable housing ordinances applicable to new residential developments necessarily increase the supply of affordable housing (*Homebuilders Assoc. v. City of Napa* (2001) 90 Cal. App. 4th, 188, 196), and therefore there is a direct relationship between the affordable housing in-lieu fee and the Town's attainment of its affordable housing goals. Based on the information and analysis provided in the "Inclusionary Program and In-Lieu Fee Study for Fairfax" dated February 10, 2023, the Town Council hereby finds that the schedule of affordable Housing in-lieu fees adopted by this Resolution is reasonably related to the cost to develop affordable housing units in accordance with the Affordable Housing Ordinance.

BE IT FURTHER RESOLVED that this Resolution is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility that the Amendment will have a significant effect on the environment.

BE IT FURTHER RESOLVED that the Town Council hereby adopts the Affordable Housing In-Lieu Fees as set forth in Exhibit "A" attached hereto and incorporated herein by reference; and the Commercial/Nonresidential Linkage Fees as set forth in Exhibit "B" attached hereto and incorporated herein by reference and directs that these fees be incorporated into the Town's Master Fee Schedule.

BE IT FURTHER RESOLVED that the Town Clerk shall attest and certify to the passage and adoption of this Resolution which shall take effect thirty (30) days after the adoption of the Town Council Ordinance adding Chapter 17.140 “Affordable Housing” to Title 17 “Zoning” of the Fairfax Municipal Code or sixty (60) days from approval of this Resolution whichever occurs later.

BE IT FURTHER RESOLVED that each component of the fees and all portions of this Resolution are severable. Should any individual component of the fee or other provision of this Resolution be adjudicated to be invalid and unenforceable, the remaining provisions shall be and continue to be fully effective, and the fee shall be fully effective except as to that portion that has been judged to be invalid.

The foregoing resolution was introduced and adopted at a public hearing at a regular meeting of the Town Council of the Town of Fairfax held in said Town on the 4th day of October 2023 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST: _____
Michele Gardner, Town Clerk

Chance Cutrano, Mayor

EXHIBIT "A"

Fees for Residential Development Projects In Lieu of Provision of On-Site Affordable Units

The following fees apply to Rental Residential Development Projects in-lieu of the provision of on-site affordable inclusionary units.

A. **Rental Residential Development.** The in-lieu fee for the construction of one affordable Rental residential unit shall be \$362,817.

B. For-Sale Residential Development.

1. Single-Family Detached Subdivision. The in-lieu fee for the construction of one affordable unit shall be \$362,817. The amount of the in-lieu fee will be calculated based on the percentage of the fractional unit.

2. Condominium Town Homes. The in-lieu fee for the construction of one affordable Condominium Town Home unit shall be \$288,650.

C. Comments.

1. Application. Fee applies to residential components of mixed-use projects.

2. Annual Fee Adjustment. Fee amounts shall be adjusted annually by the Planning Director in accordance with the year over year increase or decrease in the California Construction Cost Index (CCCI) as measured from December to December. The first adjustment shall be made on January 1, 2024, and thereafter on January 1.

EXHIBIT "B"
**Affordable Housing Linkage Fee for Commercial/Nonresidential
Development Projects**

The following fees apply to Commercial/Nonresidential Development Projects in-lieu of the provision of on-site affordable inclusionary units.

Type of Project	Fee per Square Foot of Net New Gross Floor Area
Office	\$3
Retail/Restaurant	\$3
Hotel	\$3
Other	\$3

Comments.

1. Application. Fee applies to commercial/nonresidential components of mixed-use projects.
2. Annual Fee Adjustment. Fee amounts shall be adjusted annually by the Planning Director in accordance with the year over year increase or decrease in the California Construction Cost Index (CCCI) as measured from December to December. The first adjustment shall be made on January 1, 2024, and thereafter on January 1.