

ORDINANCE NO. 2032

**AN ORDINANCE OF THE CITY OF SAN RAFAEL AMENDING
TITLE 14 OF THE SAN RAFAEL MUNICIPAL CODE (ZONING)
TO AMEND SECTION 14.16.030 (AFFORDABLE HOUSING
REQUIREMENT), ADOPTING A COMMERCIAL LINKAGE
NEXUS STUDY, ADOPTING UPDATED COMMERCIAL
LINKAGE FEES, AND ADOPTING A COMMERCIAL LINKAGE
FEE PROJECT LIST**

WHEREAS, Section 14.16.030 of the San Rafael Municipal Code (SRMC) requires nonresidential development projects within the city to contribute to the attainment of affordable housing goals and requirements by promoting and increasing, through actual construction and/or alternative equivalent actions, the development of rental and ownership housing units for very low, low and moderate income households; and

WHEREAS, the City of San Rafael, the County of Marin, and five other jurisdictions in Marin County hired Strategic Economics and Vernazza Wolfe Associates (“Consultants”) to conduct a commercial linkage fee nexus study, completed November 16, 2023 (“Commercial Linkage Fee Study”), that demonstrated the nexus between the need for affordable housing and new commercial development and calculated reasonable fees that could be charged by the participating jurisdictions to new commercial development as commercial linkage fees. The Commercial Linkage Fee Study is attached hereto as **Exhibit A** and incorporated by reference; and

WHEREAS, on June 20, 2023, the City Council held a duly noticed public meeting and received an informational report outlining the findings of the Commercial Linkage Fee Study and the unified fee proposal, accepting all public testimony and the written report of the Community Development Department; and

WHEREAS, on October 10, 2023, the Planning Commission held a duly noticed public hearing and reviewed and recommended for adoption: (a) the Commercial Linkage Fee Study, (b) proposed amendments to SRMC Title 14 related to the affordable housing requirement for nonresidential development projects, and (c) updated commercial linkage fees; and

WHEREAS, on December 4, 2023, the City Council held a public hearing to consider adoption of: the Commercial Linkage Fee Study, an ordinance making the proposed amendments to SRMC Title 14, and a methodology for applying commercial linkage fees; and voted to adopt the study and introduce the ordinance, and that ordinance will come up for adoption at the City Council meeting of December 18, 2023; and

WHEREAS, in connection with the amendment to SRMC Title 14 and the Commercial Linkage Fee Study, the San Rafael City Council finds it necessary to establish a new methodology for applying commercial linkage fees; and

WHEREAS, the Commercial Linkage Fee Study substantiates a methodology that will charge new development projects only for the costs necessary to mitigate the impacts related to those new projects; and

WHEREAS, there is a reasonable relationship between the Commercial Linkage Fee's use and the development projects on which the Commercial Linkage Fee will be imposed because the fee will only fund costs reasonably related to each new development; and

WHEREAS, the Commercial Linkage Fee does not exceed the estimated reasonable cost of providing the affordable housing facilities for which the fee is imposed; and

WHEREAS, the Commercial Linkage Fee is not levied, collected or imposed for general revenue purposes, but is levied specifically to fund facilities of the types set forth in the Commercial Linkage Fee Study; and

WHEREAS, the Commercial Linkage Fees bear a reasonable relationship to the use of affordable housing facilities by new development; and

WHEREAS, the Commercial Linkage Fee Study establishes a proposed amount and provides an evaluation of the need for an updated Commercial Linkage Fee and establishes the nexus between the imposition of the new fee and the estimated reasonable cost of providing the service for which the fee is charged; and

WHEREAS, the Commercial Linkage Fee Study identifies the City's existing level of affordable housing service, identifies the proposed new level of service, and includes an explanation of why the new level of service is appropriate; and

WHEREAS, the Commercial Linkage Fee Study includes information that supports the City's actions, as required by subdivision (a) of Section 66001 of the Government Code; and

WHEREAS, the Commercial Linkage Fee Study reviewed the assumptions of the prior fee study, which supported the existing Commercial Linkage Fee, and evaluated the amount of fees collected under the existing fees; and

WHEREAS, the City is adopting a Commercial Linkage Fee Project List, which is attached hereto as **Exhibit B** and serves as its capital improvement plan pursuant to subdivision (a)(6) of Section 66016.5 of the Government Code, for the development and maintenance of affordable housing facilities; and

WHEREAS, the Commercial Linkage Fee Project List indicates the approximate location, size, time of availability, and estimates of cost for all facilities or improvements to be financed with the fees; and

WHEREAS, the City is setting rates for the Commercial Linkage Fee, which are attached hereto as **Exhibit C**, and once effective, will be incorporated into the City's Master Fee Schedule; and

WHEREAS, the City Council finds that the impact fees and charges imposed by this Ordinance are necessary and reasonable to implement the goals and objectives of the City's General Plan and are permitted by California state law; and

WHEREAS, the Commercial Linkage Fees are "exempt charges," within the meaning of Section 1 of Article XIII C of the California Constitution and the Taxpayer Protection and Government Accountability Act (Initiative No. 21-0042) because they are a charge imposed as a condition of property development; and

WHEREAS, pursuant to Government Code sections 66016.5, 66018, and 66019, the City must adopt the Commercial Linkage Fee only after notice and public hearing; and

WHEREAS, pursuant to Government Code sections 66016.5, 66018, and 6062a, a notice of a public hearing on the proposed fee update was published on November 4, 2023 and November 23, 2023 in the Marin Independent Journal, a newspaper of general circulation; and

WHEREAS, pursuant to Government Code sections 66016.5, notice of the time and place of the meeting, including a general explanation of the matters to be considered and a statement that required data is available was provided at least 30 days prior to the meeting to those members of the public who filed a written request with the City; and

WHEREAS, at least 14 days prior to the public hearing referenced above, the City made available for public inspection information required under the Mitigation Fee Act; and

WHEREAS, pursuant to Government Code section 66017, fees imposed on a development project that apply to the filing, accepting, reviewing, approving, or issuing of an application, permit, or entitlement to use shall not take effect until at least 60 days have passed since the final action on the adoption or increase of the fee.

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

SECTION 1. FINDINGS.

The City Council of the City of San Rafael does hereby find that the above referenced recitals are true and correct and material to the adoption of this Ordinance.

SECTION 2. Subsection 14.16.030(D) – General Requirements-Nonresidential Development Projects and Subsection 14.16.030(E) – Housing In-Lieu Fee Fund of Section 14.16.030-Affordable Housing Requirement of the San Rafael Municipal Code are hereby amended to read as follows. Additions are shown in underline, and deletions are shown in ~~strikethrough~~.

Section 14.16.030 – Affordable Housing Requirement

D. General Requirements—Nonresidential Development Projects.

1. Application. An affordable housing requirement is hereby imposed on all developers of nonresidential development projects, including all construction of additional square footage to existing nonresidential developments and conversion of residential square footage to nonresidential use, subject to the following exceptions:
 - a. Any project involving new construction under ~~five~~ two thousand five hundred (~~2,500~~ 5,000) square feet;
 - b. Residential components of a mixed-use project, which shall be subject to the requirements of subsection B of this section;
 - c. A mixed-use project where the number of affordable units equals or exceeds the housing required by subsection (1)(2) of this section for the gross square footage of nonresidential uses;
 - d. Projects where a building permit application has been accepted as complete by the city prior to January 5, 2005; however, any extension or modification of such approval or permit after such date shall not be exempt;

- e. Projects that are the subject of development agreements in effect prior to January 5, 2005 where such agreements specifically preclude the city from requiring compliance with this type of affordable housing program;
 - f. Any nonresidential building that is damaged or destroyed by fire or other natural catastrophe if the rebuilt square footage of the nonresidential portion of the building does not increase upon reconstruction;
 - g. Project for which no nexus can be established between the proposed nonresidential development and an increase in the demand for affordable housing.
2. ~~Number of Affordable Units or Linkage Fee Required.~~

~~Proposed nonresidential development projects shall pay a commercial linkage fee, prior to building permit issuance, on a per square footage basis at the rates adopted by the City Council by ordinance or resolution, provide twenty percent (20%) of the total number of residential units needed to provide housing for project employees in very low-, low- and moderate-income households, as set forth in Table 14.16.030-3 of this section. Alternative to the linkage fee, a proposed nonresidential development project may provide an equivalent number of units for low-income households, based on the following calculation: Total fee obligation / Affordable housing in-lieu fee established by ordinance or resolution of the City Council = Number of low-income units required. Any decimal fraction greater than 0.50 shall be interpreted as requiring one additional dwelling unit.~~

~~For uses not listed in Table 14.16.030-3 of this section, the community development director shall determine the number of affordable units required based on comparable employment densities to uses listed. In making such a determination, the decision of the community development director shall be based on data concerning anticipated employee density for the proposed project submitted by the applicant, employment surveys or other research on similar uses submitted by the applicant or independent research, and/or such other data the director determines relevant.~~

Table 14.16.030-3
 Number of New Very low, Low and Moderate
 Income Units Required for
 New Nonresidential Development

Development Type	Number of New Very Low-, Low- and Moderate-Income Units (per 1,000 square feet of gross floor area ¹)
Office ² or Research and Development uses	0.03
Retail, Restaurant or Personal Service uses	0.0225
Manufacturing or Light Industrial uses	0.01625
Warehouse uses	0.00875
Hotel or motel uses ³	0.0075

~~;note; 1 ;hg;Floor area excludes all areas permanently used for vehicle parking.~~

~~;note;2 Includes professional, business and medical offices.~~

~~;note;3 Accessory uses to a hotel or motel, such as restaurant, retail and meeting facilities shall be subject to requirements for a retail use.~~

3. Provision of Units or ~~In-lieu~~Commercial Linkage Fee. Required affordable housing units shall be provided on the same site as the proposed nonresidential development, at an off-site location within the city, through dedication of suitable real property for the required housing to the city, or through payment of an ~~in-lieu~~ commercial linkage fee, at the discretion of the planning commission or the city council. The planning commission or city council may accept off-site units ~~or an in-lieu fee~~ if it is determined that inclusion of the required housing units within the proposed nonresidential development is not reasonable or appropriate, taking into consideration factors including, but not limited to, overall project character, density, location, size, accessibility to public transportation, and proximity to retail and service establishments; or where the nature of the surrounding land uses is incompatible with residential uses in terms of noise or other nuisances, health or safety hazards or concerns. ~~Where the application of the affordable housing requirement in Section 14.16.030.B results in less than one (1) unit or one (1) or more affordable housing unit and a fractional unit, the applicant may choose to pay an in-lieu fee for the fractional unit without the required findings noted above.~~ Affordable housing units provided as part of the proposed nonresidential development or at an off-site location shall meet the requirements of Section 14.16.030.B ~~and~~ and shall be completed prior to or concurrent with the completion of construction of the proposed nonresidential development, as the conditions of project approval shall specify.
 4. ~~Calculation and Payment of Commercial Linkage~~In-lieu Fee. ~~The amounts and calculation of the housing in-lieu fee shall be based on the following:~~
~~In-lieu fees shall be calculated as a percentage of the projected construction costs of the units. Construction costs of the units shall mean the estimated cost per square foot of construction, site development and land costs and permits and fees, as established by standard construction cost indices and/or surveys of local development projects such fees shall be established by resolution of the city council, as amended from time to time.~~ Unless otherwise preempted by law, or otherwise approved by the planning commission, ~~or~~ city council, or community development director, the in-lieu commercial linkage fee shall be paid prior to the issuance of a building permit for the proposed project.
- E. Housing In-Lieu Fee Fund. The residential housing in-lieu fees and the commercial linkage fees shall be placed in a segregated citywide housing in-lieu fee account. The funds in the housing in-lieu fee account, along with any interest earnings accumulated thereon, shall be used solely to increase and expand the supply of housing affordable to very low-, low- and moderate-income households, including, but not limited to, the following:
1. Design and construction of housing affordable to households of very low, low- and moderate-income households, including costs associated with planning, administration and design;
 2. Acquisition of property and property rights, including acquisition of existing housing units and the provision of long-term affordability covenants on those units;
 3. Other actions that would increase the supply of housing affordable to very low, low- and moderate-income households;
 4. Costs of program development and ongoing administration of the housing fund program;
 5. Expenditures from the housing in-lieu fee fund shall be authorized solely by the city council and controlled and paid in accordance with general city budgetary policies.

SECTION 3: ENVIRONMENTAL REVIEW

The City Council finds that this Ordinance is not subject to the California Environmental Quality Act

(“CEQA”). This action is not a project within the meaning of the CEQA Guidelines Section 15378 as it has no potential for physical effects on the environment because it involves an adoption of certain fees and/or charges imposed by the City and does not commit the City to any specific project, and said fees and/or charges will be used to fund future projects and/or activities, each of which future projects and/or activities will be fully evaluated in compliance with CEQA when sufficient physical details regarding said projects and/or activities are available to permit meaningful CEQA review (see CEQA Guidelines, Section 15004(b)(1)). Pursuant to CEQA Guidelines section 15378(b)(4), the creation of government funding mechanisms which do not involve any commitment to any specific project which may cause significant effect on the environment, is not defined as a “project” under CEQA. Therefore, approval of the fees and/or charges is not a “project” for purposes of CEQA, pursuant to CEQA Guidelines, Section 15378(b)(4); and, even if considered a “project” under CEQA, is exempt from CEQA review pursuant to CEQA Guidelines Sections 15061(b)(3) and 15273 because it can be seen with certainty that there is no possibility that approval of the fees and/or charges may have a significant effect on the environment.

SECTION 4. The City Council finds and determines that the Commercial Linkage Fee Study, attached hereto as **Exhibit A**, complies with California Government Code section 66000 et seq., and is consistent with the General Plan, and hereby approves and adopts the Commercial Linkage Fe Study.

SECTION 5. The City Council hereby approves and adopts the Commercial Linkage Fee Project List attached hereto as **Exhibit B**.

SECTION 6. The City Council hereby sets rates for the Commercial Linkage Fee as shown in **Exhibit C**, attached hereto and incorporated by this reference. Once effective, the Commercial Linkage Fees, set forth in **Exhibit C**, shall be incorporated into the City’s Master Fee Schedule.

SECTION 7. Pursuant to Government Code Section 65852.2(f)(3), the Commercial Linkage Fee shall not apply to accessory dwelling units of less than 750 square feet.

SECTION 8. The Commercial Linkage Fee rates, the Commercial Linkage Fee Study, and the Commercial Linkage Fee Project List may be amended from time to time by ordinance or resolution of the City Council.

SECTION 9. The Commercial Linkage Fee shall automatically increase starting on July 1, 2025, and each year thereafter, in accordance with changes in regional construction costs. The amount of the adjustment shall be based on May over May construction cost changes according to the “Construction Cost Index” for the San Francisco Bay Area, as reported monthly in the Engineering News Record.

SECTION 10: SEVERABILITY

Every section, paragraph, clause, and phrase of this Ordinance is hereby declared to be severable. If for any reason, any section, paragraph, clause, or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, clauses or phrases, and the remaining portions of this ordinance shall continue in full force and effect unless amended or modified by the city.

SECTION 11: EFFECTIVE DATE AND PUBLICATION

This Ordinance shall be published once, in full or in summary form, before its final passage, in a newspaper of general circulation, published and circulated in the City of San Rafael and shall be in full force and effect 30 days after its adoption. If published in summary form, the summary shall also be published within fifteen (15) days after the adoption, together with the names of those Council members voting for or against same, in a newspaper of general circulation published and circulated in the City of San Rafael, County of Marin, State of California.

Within fifteen (15) days after adoption, the City Clerk shall also post in the office of the City Clerk, a certified copy of the full text of this Ordinance along with the names of those Councilmembers voting for and against the Ordinance.

THE FOREGOING ORDINANCE was first read and introduced at a Regular Meeting of the City Council of the City of San Rafael, held on the 4th day of December 2023, and will come up for adoption as an Ordinance of the City of San Rafael at a Regular Meeting of the Council to be held on the 18th day of December 2023.

AYES: Councilmembers:
NOES: Councilmembers:
ABSENT: Councilmembers:

KATE COLIN, Mayor

Attest:

LINDSAY LARA, City Clerk

SUMMARY OF ORDINANCE NO. 2032

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL AMENDING THE SAN RAFAEL MUNICIPAL CODE SECTION 14.16.030, ENTITLED “AFFORDABLE HOUSING REQUIREMENT”, ADOPTING A COMMERCIAL LINKAGE NEXUS STUDY, ADOPTING UPDATED COMMERCIAL LINKAGE FEES, AND ADOPTING A COMMERCIAL LINKAGE FEE PROJECT LIST

This Summary concerns a proposed ordinance of the City of San Rafael, designated as Ordinance No. 2032, which will amend the San Rafael Municipal Code Section 14.16.030. Ordinance No. 2032 is scheduled for adoption by the San Rafael City Council at its regular meeting of December 18, 2023. The City Clerk has been directed to publish this Summary pursuant to City Charter and California Government Code section 36933(c)(1).

SUMMARY OF AMENDMENT TO MUNICIPAL CODE

A commercial linkage fee is a type of impact fee that charges new commercial development for its role in creating new demand for affordable housing. The City Council’s current commercial linkage fee policy is codified in Title 14 of the municipal code and based on an economic analysis completed in 2004. The City’s current fee is defined as a percentage of the inclusionary in-lieu fee and includes an exemption for projects under 5,000 square feet. The fee must be paid prior to issuance of a building permit unless otherwise approved by the Planning Commission or City Council. This proposed ordinance adopts a commercial linkage nexus study to support updated fees; modifies the policy to express fees on a dollar-per-square-foot basis; authorizes the Community Development Director to approve alternative timing of developer payment; adopts new fee levels for Retail/Restaurant/Services, Hotel/Motel, and Office/R&D development types; and changes the exemption to apply to projects under 2,500 square feet.

Copies of Ordinance No. 2032 will be available for public review as of December 8, 2023, on the City’s website: <https://www.cityofsanrafael.org>. You may also contact the City Clerk at (415) 485-3066 for information.

LINDSAY LARA
San Rafael City Clerk
Dated: 12/08/23