



**City Council Agenda Item  
Staff Report**

CITY OF SAN BRUNO

**DATE:** November 9, 2016

**TO:** Honorable Mayor and Members of the City Council

**FROM:** David Woltering, Community Development Director

**SUBJECT:** Hold Public Hearing, Waive First Reading and Adopt Ordinance Amending and Replacing Chapter 12.230 Establishing an Affordable Housing Program and Affordable Housing Impact Fees, to Title 12 (Land Use) of the San Bruno Municipal Code; and a Resolution Establishing Affordable Housing Impact Fees for Residential and Nonresidential Development Projects

**BACKGROUND**

This City Council public hearing continues the public hearing held on September 13, 2016 to consider adoption of an ordinance amending Section 12.230 of the Municipal Code to establish residential impact fees and commercial linkage fees, and an accompanying resolution stating the amount of the fee and methods of calculation. The proposed City Council action is to consider adoption of the revised affordable housing ordinance (Attachment 1) and a revised resolution setting the amount of the fees (Attachment 2). The proposed ordinance would replace the existing Below Market Rate (BMR) Housing ordinance with more effective tools to help mitigate the impacts of nonresidential development and new market-rate housing on the need for affordable housing. A summary of the proposed ordinance and resolution amendments is provided in Attachment 3.

At the September 13, 2016 City Council public hearing staff outlined the background, purpose and content of the proposed affordable housing ordinance and impact fee resolution and summarized public comments. Several comments were received after the release of the staff report for this meeting. The City Council expressed its support for adopting affordable housing impact fees, however, following discussion of the public comments, the City Council directed staff to conduct further research and return with recommendations for review and discussion at a future meeting and continued the public hearing. The comments focused on the four issues below.

1. Include more specific language exempting the San Mateo Community College District from the affordable housing requirements for residential projects on property owned by the district.
2. Allow flexibility in phasing requirements of affordable housing units with City Council approval.
3. Allow employees of public schools to rent affordable units.

4. Create an incentive for projects that pay area standard wages.

The complete analysis of the proposed affordable housing ordinance and impact fee resolution is contained in the September 13, 2016 City Council staff report and meeting minutes (Attachment 4).

## DISCUSSION

After careful review of the public comments received prior to the September 13, 2016 City Council meeting, staff has prepared recommendations for the City Council to consider. The discussion below provides staff's analysis of each comment and recommendations for potential adjustments to the ordinance and resolution presented on September 13, 2016. It should also be noted that the attached ordinance includes other minor clarifying edits. A detailed list of the proposed amendments to the ordinance and resolution is included in Attachment 3.

1. The Community College District requested that the City add specific language exempting the District from the requirements of the ordinance. The District cited a determination of the County Counsel's office that the District is an agency of the state and should be exempt under the current language of Section 230.050.D of the proposed ordinance, which exempts residential or nonresidential development projects located on property owned by an agency of the State or federal government and used exclusively for governmental or educational purposes.

While staff recommends amending the ordinance to specifically exempt nonresidential projects used exclusively for governmental or educational purposes, staff also recommends that residential projects should include an acceptable percentage of housing affordable to low and moderate income households in accordance with the City's affordable housing objectives. Although housing built by a community college or school district may be intended to provide affordable housing to staff and faculty, without deed restrictions specifying the qualifying tenant income levels and term of affordability, there is no guarantee that this housing will remain affordable. Therefore, staff does not recommend that residential development should be exempt from the ordinance, given that it already provides a mechanism to determine the affordable housing obligation on a case by case basis through an Affordable Housing Plan. Therefore, staff proposes the following change to Section 230.050.D of the proposed ordinance:

"The requirements of this Chapter do not apply to:

~~Residential or nonresidential~~ Development projects which fall within one or more of the following categories:

1. ~~Residential or nonresidential~~ Nonresidential development projects located on property owned by the state of California, the United States of America, or any of its agencies and used exclusively for governmental or educational purposes.
2. Summerhill Homes cited Section 12.230.080.B of the draft ordinance states, "affordable units shall be made available for occupancy concurrently with the market-rate units." This language does not allow flexibility in special circumstances, such as the proposed Skyline College residential project, which would include both

rental housing for staff and faculty and a separate single family subdivision.

3. Staff acknowledges the complexity of particular projects may require flexibility with respect to phasing of the construction of market-rate and affordable units. Accordingly, staff supports allowing flexibility in phasing, provided that the completion of the rental project occurs within a reasonable timeframe as determined in the negotiation of an Affordable Housing Plan, and with the final approval of the City Council. Staff proposes to add the following language to Section 12.230.080.B:
  - “, unless an alternative phasing plan is approved by the City Council.”
4. Section 12.230.080.C3, Conflict of interest, states that the project owner and its officers and employees (and their spouses and dependents) are ineligible to purchase or rent certain affordable housing units. This provision would not allow the Skyline College residential project to rent to faculty and staff, which is the specific intent of the project.

The Community College District is responding to the affordable housing crisis which has resulted in significant challenges in retaining and attracting qualified faculty and staff. Additionally, many of these households earn low and moderate incomes. This is an example of when it may be important to provide flexibility within the ordinance for the City Council to allow an employee to purchase or rent housing within an affordable development project. Therefore, staff proposes to add the following language to Section 12.230.080.C3:

- “However, employees of the project applicant and project owner may purchase or rent affordable housing units if the units were designed and intended to be occupied by employees of the applicant or owner, with approval of the City Council. Officials, employees, or consultants of the City and members of City boards and commissions shall comply with all applicable laws, regulations, and policies relating to conflicts of interest as to their eligibility to develop, construct, sell, rent, lease, occupy, or purchase an affordable unit.”
5. Consider allowing a 25% reduction to the impact fee for projects that pay its workers Area Standard Wages, which are typically defined as union scale wages.

Staff does not recommend providing a fee reduction for projects that use area standard wages because the fees have been set at a level to ensure the financial feasibility of development projects, based on the analysis of the Nexus Study. The Nexus Study impact fee analysis methodology utilized conservative assumptions, which results in a lower estimate of the nexus supported fees. The Nexus Study has already taken prevailing wages into account in determining the fee amounts. The study subtracted out the higher cost of paying prevailing wages for development costs, resulting in a lower housing affordability gap, which is the basis for calculating the fees. In addition, the study used older market data from 2014 and 2015 reducing the impact fee calculation. A 25% reduction would also represent a very small portion of the additional cost for a project to pay standard wages and is unlikely to be an incentive for union labor or prevailing wages.

If the City Council wishes to consider providing an incentive, staff recommends reducing the percentage of affordable units required rather than reducing the amount of the impact fees. This would incentivize construction affordable units within a development project and to disperse the units throughout the community, which is the City's primary objective.

Of the six jurisdictions in San Mateo County that have adopted affordable housing impact fees in the past two years, four provide a 25 percent reduction in impact fees for projects paying area standard wages: Redwood City, San Mateo County, the City of San Mateo, and San Carlos.

Summary of the Affordable Housing Ordinance and Impact Resolution

The proposed ordinance would impose affordable housing impact fees and rules for construction of affordable units, alternatives to comply with the ordinance, and the use of the fees. The ordinance would apply to residential ownership or rental developments of five (5) units or more, and all nonresidential developments throughout the City, except public uses such as hospitals and community facilities and quasi-public uses such as child care centers, community facilities, churches and schools.

Residential rental and commercial projects would be required to pay impact fees, with the possibility of an alternative compliance method, such as the provision of affordable units on- or off-site, with the approval of the City Council. Residential for-sale projects would be required to include affordable units within the project, with the possibility of an alternative compliance method, such as the payment of residential impact fees, with the approval of the City Council.

Table 1 shows the recommended fee levels for residential impact fees and commercial linkage fees for each development type, based on the findings of the Nexus Study.

**Table 1. Recommended Impact Fees**

Unit Type	Recommended Fees	Minimum Project Size
Single Family	\$25	Residential projects with 5 or more net new units
Condominium	\$20	
Apartment	\$20	
Office	\$5	All new commercial development
Retail	\$5	
Hotel	\$5	

Table 2 shows the recommended percentages of affordable units, which would be required for ownership housing and allowed as an alternative for rental housing development.

**Table 2: Required Affordable Units per Residential Project**

	Single Family	Condominium	Apartment
Very Low Income	-	-	6%
Low Income	6%	6%	9%
Moderate Income	9%	9%	-
TOTAL	15%	15%	15%

\*Definitions of project types and affordability categories are contained in the Nexus Study.

Table 3 shows the recommended number of affordable units, which would be required per 100,000 square feet of nonresidential development.

**Table 3: Required Number of Affordable Units per 100,000 sf in a Nonresidential Project**

	Hotel	Retail, etc.	Office, R&D, Medical
Very Low Income	1	1	1
Low Income	1	1	1
Moderate Income	1	1	1
<b>TOTAL</b>	<b>3</b>	<b>3</b>	<b>3</b>

\*Definitions of project types and affordability categories are contained in the Nexus Study.

The adoption of an affordable housing ordinance and impact fees is not a project under the California Environmental Quality Act (CEQA) as it creates a governmental funding mechanism that does not involve any commitment to a specific project, which may result in a potentially significant effect on the environment (CEQA Guidelines Section 15378(b) (4)). Furthermore, even if these approvals were a project, they would be exempt from CEQA because it can be seen with certainty that there is no possibility that the fees may have a significant effect on the environment, given that the ordinance and resolution contain no provisions modifying the physical design, development, or construction of residences or nonresidential structures (CEQA Guidelines Section 15061(b)(3)).

### **FISCAL IMPACT**

Expected revenues were described in the September 13, 2016 staff report. The exact amount of the fiscal impact is unknown due to the fact that it is dependent on the amount and type of development projects that are brought forward. The City could receive several million dollars in affordable housing impact fees per year in the current economic cycle; however, these amounts will vary widely over time based on the level of development activity. The impact fee resolution requires a \$1,500 deposit to pay for staff time in collecting and administering the fee.

### **ALTERNATIVES**

1. Do not adopt the ordinance and resolution and provide direction to staff
2. Direct staff to revise the Affordable Housing Ordinance and/or the Impact Fee Resolution and schedule for additional review and discussion at a future meeting

### **RECOMMENDATION**

Hold Public Hearing, Waive First Reading and Adopt Ordinance Amending and Replacing Chapter 12.230, Establishing an Affordable Housing Program and Affordable Housing Impact Fees, to Title 12 (Land Use) of the San Bruno Municipal Code; and a Resolution Establishing Affordable Housing Impact Fees for Residential and Nonresidential Development Projects

### **DISTRIBUTION**

None

**ATTACHMENTS**

1. Draft Affordable Housing Ordinance
2. Resolution Establishing Affordable Housing Impact Fee Amounts
3. Summary of proposed ordinance and resolution amendments
4. September 13, 2016 City Council Staff Report, Attachments and Minutes

RELATED DOCUMENTS AVAILABLE ON THE CITY WEBSITE AT  
[WWW.SANBRUNO.CA.GOV](http://WWW.SANBRUNO.CA.GOV) AND PROVIDED UNDER SEPARATE COVER

1. Residential Impact Fee Nexus Study for San Bruno – October 2015
2. Commercial Linkage Fee Nexus Study for San Bruno – October 2015

**DATE PREPARED**

November 4, 2016

**REVIEWED BY**

\_\_\_\_\_ CM

ATTACHMENT 1

DRAFT - ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF SAN BRUNO AMENDING AND REPLACING  
CHAPTER 12.230, THEREBY UPDATING AND ESTABLISHING AN AFFORDABLE  
HOUSING PROGRAM AND AFFORDABLE HOUSING IMPACT FEES, IN TITLE 12 (LAND  
USE) OF THE SAN BRUNO MUNICIPAL CODE**

**Section 1.** Chapter 12.230 of Title 12 of the City of San Bruno Municipal Code is hereby repealed in its entirety.

**Section 2.** City Council makes the following findings:

**A.** The provision of safe and stable housing for households at all income levels is essential for the public welfare of the city. Housing in San Bruno has become steadily more expensive and housing costs have gone up faster than incomes. Federal and state government programs do not provide enough affordable housing to satisfy the needs of very low, low, or moderate income households. As a result, there is a severe shortage of adequate, affordable housing for extremely low, very low, lower, and moderate income households, as evidenced by the following findings in the City's 2015-2023 Housing Element:

1. Almost half of San Bruno's households are lower income (see Housing Element Figure 2.3-2).

2. Households of any size earning less than the median income cannot afford the average home purchase price or the average rents in San Bruno.

3. More than 90 percent of San Bruno renter households and two thirds of owner households earning under \$35,000 annually are overpaying for housing. Over half the households earning between \$35,000 and \$75,000 per year are overpaying as well. Without choices and availability of affordable housing in San Bruno, lower income people may choose to live elsewhere and commute to work. Or, lower income households may live in overcrowded homes, and have limited money to dedicate towards other necessities such as food, transportation and medical care.

**B.** As provided in the Housing Element of the General Plan, the City aims to meet the housing needs of the citizens of San Bruno, including the creation and retention of housing for lower income households and households with special needs, given the limitations imposed by current political, economic, and social conditions, and availability of State and federal funding.

1. Housing Element Goal 5 is to ensure the continued availability of affordable housing for very-low, low, and moderate income households, seniors, persons with disabilities, single-parent households, large families, and other special needs groups.

2. Housing Element Goal 2 is to accommodate regional housing needs through a community-wide variety of residential uses by size, type, tenure, affordability, and location.

3. Housing Element Goal 3 is to expand the variety of construction and financing techniques available to achieve new affordable housing and maintain it over time. Housing Element Program 3-J calls for the City to adopt an Affordable Housing Impact Fee, including an implementation action to participate in a countywide nexus study to estimate the increase in demand for affordable housing associated with new residential and nonresidential development and to determine permissible and reasonable impact fees for both residential and nonresidential development based on local conditions that will not discourage development.

## ATTACHMENT 1

**C.** The City adopted the Below Market Rate (BMR) Housing Ordinance establishing inclusionary housing requirements for new construction for for-sale and rental development projects in 2008. The 2009 Palmer vs the City of Los Angeles court decision invalidated inclusionary requirements for rental developments, but not for for-sale developments.

**D.** Because the City's first preference is for the actual construction of new affordable units to ensure that affordable housing is actually provided within residential projects, the City intends to retain the BMR requirements for "for-sale" units.

**E.** New residents of market rate housing purchase goods and utilize services in the community, increasing local employment and attracting employees, of whom a quantifiable number will have very low, low, or moderate incomes and cannot afford market-rate housing.

**F.** New housing construction that does not include affordable units aggravates the existing shortage of affordable housing by absorbing the supply of available residential land.

**G.** Because nonresidential development also attracts employees, of whom a quantifiable number will have very low, low, or moderate incomes, new nonresidential developments similarly increase the demand for and exacerbate the shortage of housing available for people at these income levels while also reducing the supply of land potentially available for housing development.

**H.** Based on the findings above and the findings from the Residential Impact Fee and Commercial Linkage Fee Nexus Studies prepared for San Bruno, dated October 2015, the City desires to further the public health, safety and welfare by requiring residential and nonresidential development projects in the City to help mitigate their impact on the need for affordable housing in the City.

**Section 3.** A replacement Chapter 12.230 (Affordable Housing Program) is hereby added to Title 12 (Land Use) of the San Bruno Municipal Code to achieve the purpose in Section 12.230.010 of this Chapter, based on the Findings in Section 2 of this Chapter, to read as follows:

### CHAPTER 12.230 AFFORDABLE HOUSING PROGRAM

Sections:

- 12.230.010 Purpose
- 12.230.020 Definitions
- 12.230.030 Affordable Housing Requirements
- 12.230.040 Affordable Housing Impact Fees
- 12.230.050 Exemptions
- 12.230.060 Alternatives
- 12.230.070 Compliance Procedures
- 12.230.080 Affordable Housing Unit Standards
- 12.230.090 Owner-Occupied Units
- 12.230.100 Rental Units
- 12.230.110 Administrative Relief
- 12.230.120 Affordable Housing Fund
- 12.230.130 Enforcement

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### 12.230.010 Purpose

The purpose of this Chapter is to:

A. Encourage the development and availability of housing affordable to a broad range of Households with varying income levels within the City as mandated by State Law, California Government Code Sections 65580 et seq.

B. Promote Housing Element Goal 2 to accommodate regional housing needs through a community-wide variety of residential uses by size, type, tenure, affordability, and location.

C. Implement the Housing Element by creating a mechanism to provide benefits to the community from new development in the form of affordable housing, thereby, helping to meet the housing needs of all socioeconomic segments of the community as provided in the Housing Element.

D. Promote Housing Element Goal 5 to ensure the continued availability of affordable housing for very low, low, and moderate income households, seniors, and persons with disabilities, single-parent households, large families, and other special needs groups.

E. Implement Housing Element Program 3-J to adopt permissible and reasonable impact fees for both residential and nonresidential development based on impact fee nexus studies.

F. Implement Housing Element Program 5-A to support the Affordable Housing Ordinance (BMR Program, adopted in 2008) and to modify the BMR program as appropriate to maximize efforts to achieve affordable housing objectives in San Bruno.

G. Enhance the public welfare by imposing affordable housing impact fees for residential and nonresidential development projects whereby developers of residential and nonresidential development projects will help mitigate the impacts of their projects on the need for affordable housing by contributing to the supply of housing for households with very low, low, and moderate incomes.

### 12.230.020 Definitions

As used in this Chapter, the following terms shall have the following meanings:

A. "Affordable housing agreement" means a written agreement between the City and the developer as provided in Section 12.230.070 of this Chapter.

B. "Affordable housing fund" means a fund for the deposit of fees established under this Chapter as provided in Section 12.230.120 of this Chapter.

C. "Affordable housing impact fee" means the fee paid by developers of residential or nonresidential development projects to help mitigate the impacts that such developments have on the demand for affordable housing in the City and to support affordable housing development and operation.

D. "Affordable housing plan" means a plan required for any residential or nonresidential development project which includes the provision of affordable housing units that demonstrates how the project complies with Section 12.230.070 of this Chapter.

E. "Affordable housing unit" means a dwelling unit that shall be offered at an affordable rent or affordable ownership cost to very low, low and moderate income households.

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F. "Affordable ownership cost" means the sales price of a for-sale affordable unit resulting in projected average monthly housing payments, during the first calendar year of a household's occupancy, including interest, principal, mortgage insurance, property taxes, homeowners insurance, homeowners' association dues, if any, and a reasonable allowance for utilities, property maintenance, and repairs, not exceeding the sales prices specified by Section 50052.5 of the California Health and Safety Code and California Code of Regulations Title 25, Sections 6910-6924.

G. "Affordable rent" means the total monthly housing expenses for a rental affordable unit not exceeding the rents specified by Section 50053 of the California Health and Safety Code and California Code of Regulations Title 25, Sections 6910-6924. As used in this Chapter, "affordable rent" shall include the total of monthly payments by the tenant for all of the following: (1) use and occupancy of the affordable unit and land and all facilities associated with the affordable unit, including but not limited to parking, bicycle storage, storage lockers, and use of all common areas; (2) any additional separately charged fees or service charges assessed by the owner, other than security deposits; (3) an allowance for utilities paid by the tenant as established by the San Mateo County Housing Authority, including garbage collection, sewer, water, electricity, gas, and other heating, cooking, and refrigeration fuel, but not telephone service or cable TV; and (4) any other interest, taxes, fees or charges for use of the land or affordable unit or associated facilities and assessed by a public or private entity other than the owner, and paid by the tenant.

H. "Building permit" includes full structural building permits as well as partial permits such as foundation-only permits

I. "City" means the City of San Bruno.

J. "City Council" means the City Council of the City of San Bruno.

K. "City Manager" means the City Manager of the City or his or her designee.

L. "Commercial linkage fee" means a fee or charge imposed on commercial developers to pay for the development's impact on the need for affordable housing. The fee is based on projected household incomes of new employees that will work in newly created space.

M. "Decision-making body" means the City staff person or body authorized to approve or deny an application for a planning or building permit for a residential or nonresidential development project.

N. "Developer" means the person(s) or legal entity(ies), who also may be the property owner seeking real property development permits or approvals from the City or developing a particular project in the City.

O. "For-sale unit" means a residential dwelling unit that may be sold individually in conformance with the Subdivision Map Act. For-sale units also include units that are converted from rental units to for-sale units.

P. "Household" means one person living alone or two or more persons sharing residency in one dwelling unit.

Q. "Inclusionary unit" has the same meaning as affordable housing unit.

R. "Low income households" means households with incomes no greater than the maximum income for low income households, as published annually by the City for each household size, based on United States Department of Housing and Urban Development (HUD) and the California Department of Housing and Community Development (HCD) income limits for San Mateo County.

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S. "Market-rate unit" means a new dwelling unit in a residential development project that is not an affordable unit.

T. "Median income" means the median income applicable to San Mateo County, as published annually by the City for each household size, based on median income data for San Mateo County published by the United States Department of Housing and Urban Development (HUD) and the California Department of Housing and Community Development (HCD).

U. "Moderate income households" means households with incomes no greater than the maximum income for moderate income households, as published annually by the City for each household size, based on United States Department of Housing and Urban Development (HUD) and the California Department of Housing and Community Development (HCD) income limits for San Mateo County.

V. "Nonresidential development project" means an application for a planning permit or building permit that includes the new construction of gross square feet of nonresidential space or the conversion of a residential use to a nonresidential use.

W. "Planning permit" means any discretionary approval of a residential or nonresidential development project, including, but not limited to, a general or specific plan adoption or amendment, rezoning, tentative map, conditional use permit, variances, or design review.

X. "Rental unit" means a dwelling unit that is intended to be offered for rent or lease and that cannot be sold individually in conformance with the Subdivision Map Act.

Y. "Residential impact fee" means a fee or charge imposed on residential development to pay for a development's impact on the need for affordable housing. The fee is based on the projected incomes of new employees associated with the new market rate developments.

Z. "Residential development project" means an application for a planning permit or building permit at one location to create one or more additional dwelling units, convert nonresidential uses to dwelling units, subdivide a parcel to create one or more separately transferable parcels intended for residential development, or implement a condominium conversion, including development constructed at one time and in phases. "One location" includes all adjacent parcels of land under common ownership or control, the property lines of which are contiguous at any point, or the property lines of which are separated only by a public or private street, road, or other public or private right-of-way, or separated only by the lands owned or controlled by the developer.

AA. "Very low income households" means households with incomes no greater than the maximum income for very low income households, as published annually by the City for each household size, based on United States Department of Housing and Urban Development (HUD) and the California Department of Housing and Community Development (HCD) income limits for San Mateo County.

### **12.230.030 Affordable Housing Requirements**

A. For-sale residential development projects. All new for-sale residential development projects of five (5) or more units shall either include at least fifteen percent (15%) of the total units as affordable housing units restricted for occupancy by low and moderate income households, unless an alternative is proposed by the developer and approved by the City Council, as provided in Section 12.230.060.B.

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1. For purposes of this Chapter, the number of units in a residential development whose development includes the demolition or removal of existing residential units and the construction of new residential units shall be the difference between the new units constructed and the existing units demolished or removed.

2. Total units shall not include any units granted pursuant to density bonuses provided under state density bonus law.

3. For "for-sale" residential development projects, forty percent (40%) of the affordable housing units (or six percent (6%) of the total development) shall be restricted to occupancy by Low Income Households, and sixty percent (60%) of the affordable housing units (or nine percent (9%) of the total development) shall be restricted to occupancy by Moderate Income Households.

4. In determining the number of affordable housing units required, any decimal fraction of less than 0.5 shall be rounded down to the nearest whole number, and any decimal fraction of 0.5 or more shall be rounded up to the nearest whole number.

5. In determining the number of affordable housing units required for decimal fractions of less than 0.5, the developer shall be required to either construct one additional affordable unit or to pay the partial unit payment set forth in Subsection 12.230.040.C below.

**B.** Rental residential development projects. A residential impact fee is hereby imposed on all developers of rental residential development projects as required under Section 12.230.040 of this Chapter, unless an alternative is proposed by the developer and approved by the City Council. No application for a rezoning, tentative map, conditional use permit, design review, or building permit shall be approved, nor shall any such rental project be constructed or condominium conversion approved without compliance with this Chapter.

**C.** Nonresidential development projects. A Commercial Linkage Fee is hereby imposed on all developers of nonresidential development projects, as required under Section 12.230.040 of this Chapter, unless an alternative is proposed by the developer and approved by the City Manager.

**D.** Mixed-use development projects. Mixed use developments must comply with the requirements for nonresidential developments in the nonresidential portion of the development and must comply with the requirements for residential developments for the residential portion of the development.

### **12.230.040 Affordable Housing Impact Fees**

**A.** Affordable Housing Impact Fees are hereby established for all residential and nonresidential development projects, including residential impact fees for residential development projects and Commercial Linkage Fees for nonresidential development projects. The amount of the affordable housing impact fees shall be established and adjusted from time to time by resolution of the City Council. The impact fees shall not exceed the cost of mitigating the impact of residential or nonresidential development projects on the need for affordable housing in the City.

1. Residential Impact Fees for Rental Residential Projects. As provided in Section 12.230.030.B, all rental residential projects of five (5) or more units shall pay a Residential Impact Fee, unless an alternative is proposed by the developer and approved by the City Council as described in Section 12.230.060.

## ATTACHMENT 1

2. Commercial Linkage Fees. As provided in Section 12.230.030, all nonresidential development projects shall pay a Commercial Linkage Fee, unless an alternative is proposed by the developer and approved by the City Council as described in Section 12.230.060.

3. Residential Impact Fees for "For Sale Residential Projects." As provided in Section 12.230.060.B, and with the approval of the City Council, for-sale residential projects may pay a Residential Impact Fee rather than provide onsite units.

**B.** Payment of the impact fees shall be due at the issuance of the building permit for the development. The fees shall be calculated based on the fee schedule in effect at the time the building permit is issued.

**C.** For for-sale development projects that trigger an affordable unit requirement with a decimal fraction of less than 0.5, the developer shall either build one additional affordable unit or pay an impact fee equal to the decimal fraction multiplied by the residential impact fee for the for-sale residential project.

### **12.230.050 Exemptions**

The requirements of this Chapter do not apply to:

**A.** Residential development projects of four (4) or fewer new housing units, the creation of four or fewer parcels, provided that no more than four dwelling units are allowed; or accessory dwellings created under Section 12.92.031 of the San Bruno Municipal Code.

**B.** Replacement construction that results in a net increase of four (4) or fewer new housing units.

**C.** Residential developments that already have more deed-restricted units that are affordable to very low, low and moderate income households than this Chapter requires, for the period required under this Chapter.

**D.** Residential or nonresidential development projects which fall within one or more of the following categories:

1. Nonresidential development projects located on property owned by the state of California, the United States of America, or any of its agencies and used exclusively for governmental or educational purposes.

2. Any structure proposed to repair or replace a building that was damaged or destroyed by fire or other calamity, so long as the square footage and use of the building remains the same, and construction of the replacement building begins within one year of the damage's occurrence.

3. Residential or nonresidential development projects to the extent they have received a vested right to proceed without payment of Affordable Housing Impact Fees pursuant to state law, including those that are the subject of development agreements currently in effect with the City, if such development agreements were approved prior to the effective date of this Chapter and where such agreements expressly preclude the city from requiring payment of the Affordable Housing Impact Fee.

4. Residential or nonresidential development projects for which applications have been deemed complete prior to the effective date of this chapter.

5. Other uses that may be specified by resolution of the City Council.

## ATTACHMENT 1

### 12.230.060 Alternatives

**A.** Notwithstanding any contrary provisions of this Chapter, the City may determine that alternatives to the requirements in Section 12.230.030 of this Chapter as proposed by the developer in the affordable housing plan required by Section 12.230.070 of this Chapter, provided that the City Council makes the findings in Section 12.230.070.D E, or F as appropriate.

**B.** For-sale residential projects. As an alternative to construction of affordable housing units on-site or payment of an Residential Impact Fee, if approved by the City Council, developers of for-sale residential development projects may propose to mitigate affordable housing impacts of such housing through alternative means, including but not limited to:

1. Payment of Residential Impact Fees in accordance with Section 12.230.040.
2. Provision of affordable units off site.
3. Dedication of land to the City suitable for construction of affordable units.
4. Purchase of existing units for conversion to affordable units.
5. Acquisition and rehabilitation of affordable units.
6. Increase in the total number of affordable housing bedrooms.
7. Provision of greater level of affordability.
8. Construction of second dwelling units.
9. Providing rental affordable units rather than for-sale affordable units.

**C.** Rental residential development projects. As an alternative to payment of housing impact fees, developers of rental residential development projects may propose to help mitigate the affordable housing impacts of such developments through an alternative mitigation program, including but not limited to:

1. Construction of affordable housing units on site or through an alternative mitigation program, such as the provision of off-site affordable units, donation of land for the construction of affordable units, or purchase of existing units for conversion to affordable units.

2. For rental residential developments proposing this alternative, six percent (6%) of the total development shall be restricted to occupancy by very low income households, and nine percent (9%) of the total development shall be restricted to occupancy by low and moderate income households.

3. If a developer proposes to provide affordable rental units, then, to ensure compliance with the Costa-Hawkins Rental Housing Act (Chapter 2.7 of Title 5 of Part 4 of Division 3 of the Civil Code), the City may only approve such a proposal if, as required by Civil Code Sections 1954.52(b) and 1954.53(a)(2), the developer agrees in a contract with the City to limit rents in accordance with Section 12.260.070 of this Chapter in consideration for a direct financial contribution from the City or a form of assistance specified in the State's Density Bonus Law (Chapter 4.3, commencing with Section 65915, of Division 1 of Title 7 of the Government Code). The developer may request that the City waive the Residential Impact Fee as a direct financial contribution to the rental residential development project.

## ATTACHMENT 1

**D.** Nonresidential development projects. As an alternative to payment of the Commercial Linkage Fees, developers of nonresidential development projects may propose to mitigate the affordable housing impacts of such development through the construction of affordable housing units on site or through an alternative mitigation program, as provided in subsections B or D of this section.

1. The City Council may adopt by resolution the percentage of affordable units needed to help mitigate the impact of nonresidential development projects on the need for affordable housing.

**E.** Any affordable rental or for-sale units proposed as an alternative shall be subject to the requirements described in Section 12.230.080 of this Chapter.

### **12.230.070 Compliance Procedures**

**A.** General. Approval of an Affordable Housing Plan and execution, recordation and implementation of an Affordable Housing Agreement shall be conditions of any approval of a residential or nonresidential development project, which includes the provision of affordable housing units as provided in Section 12.230.030 or 12.230.060. No Affordable Housing Plan is required if the developer proposes only to pay the Residential Impact Fee or commercial linkage fee.

**B.** Affordable Housing Plan. No application for approval of a residential or nonresidential development project which includes the provision of affordable housing units may be deemed complete until an Affordable Housing Plan containing all the elements identified below is submitted to the Community Development Department. The Affordable Housing Plan shall include:

1. The number, location, number of bedrooms and size of the proposed market rate and affordable housing units and the basis for calculating the number of affordable housing units;

2. The City may approve an increase in the number of units per acre in a residential development if the increase is consistent with state density bonus law per Section 65915 of the State Government Code. If the applicant is proposing to apply for a density bonus, the Affordable Housing Plan must include an analysis of the density bonus request;

3. A site plan depicting the proposed location of the initial affordable housing units;

4. A floor plan depicting the proposed location of the initial affordable housing units within a residential development;

5. The income levels to which each affordable housing unit will be made affordable;

6. The mechanisms that will be used to assure that the units remain affordable for the desired term, such as resale and rental restrictions, deeds of trust, and City's option to purchase and other documents;

7. For a phased residential development proposing any change to the phasing requirements specified in Section 12.230.080.B, a phasing plan that provides for the timely development of affordable housing units in each proposed phase of development;

8. The conceptual plan for initial sales or rental by Developer of the affordable housing units; and

## ATTACHMENT 1

9. Any proposed Alternative as provided in Section 12.230.060 along with information necessary to support the findings required in Section 12.230.070.E. for approval of such alternatives.

10. The City Manager may request additional information as reasonably needed to assist with evaluation of the Affordable Housing Plan under the standards of this Chapter.

**C.** The Affordable Housing Plan shall be processed concurrently with all other permits required for the residential or nonresidential development project. Before approving the Affordable Housing Plan, the City Council shall find that the Affordable Housing Plan conforms to this Chapter. A condition shall be attached to the first approval of any residential or nonresidential development project to require recordation of an affordable housing agreement, as described in this subsection, prior to the approval of any final or building permit for the residential or nonresidential development project.

**D.** Findings – all alternatives. The City Council may or conditionally approve an alternative contained in an affordable housing plan if the City Council determines, based on substantial evidence, that the proposed alternative supports adopted Housing Element policies and goals and assists the City in meeting state housing requirements.

**E.** Findings – alternative proposing on-site affordable units. The City Council may approve or conditionally approve an affordable housing plan that proposes on-site construction of affordable units if the City Council determines, based on substantial evidence, that:

1. The proposed affordable units comply with the standards in Section 12.230.080, including without limitation compliance with Section 12.230.080.B requiring that the affordable units be made available for occupancy concurrently with the market-rate units; and

2. The affordable units will help mitigate the impact of the project on the need for affordable housing.

**F.** Findings – alternative proposing off-site affordable units. If a developer proposes off-site affordable housing units or any other alternative in the Affordable Housing Plan, the City Manager may approve, conditionally approve or reject any alternative proposed by a developer subject to final approval by the City Council in its discretion. Any approval or conditional approval shall be based on a finding that:

1. Financing or a viable financing plan, which may include public funding sources, is in place for the proposed affordable housing units;

2. The proposed location is suitable for the proposed affordable housing, is consistent with the Housing Element, General Plan, and Zoning Ordinance, and will not tend to cause residential segregation; and

3. The net cost of the alternative is at least equal to the net cost to provide affordable housing units;

4. The alternative does not detract from the City's program to meet its housing goals and obligations under California Housing Law (Government Code Section 65580 and following) and California Community Redevelopment Law (Health and Safety Code Section 33000 and following).

**G.** Affordable Housing Agreement. To ensure compliance with the approved Affordable Housing Plan, an affordable housing agreement acceptable to the City Manager or designee shall be recorded against the residential or nonresidential development project prior to approval of any final, or issuance of any building permit, whichever occurs first. The affordable

## ATTACHMENT 1

housing agreement shall specify the number, type, location, size, phasing, and terms of affordability of all affordable units, provisions for income certification and screening of potential purchasers or renters of units, and resale control mechanisms, including the financing of ongoing administrative and monitoring costs, consistent with the approved Affordable Housing Plan, and subject to final approval by the City Council.

H. The City Manager may adopt affordable housing guidelines consistent with this Chapter and the Housing Element for the purpose of carrying out the administration of this Chapter and may update those guidelines periodically as required.

### **12.230.080 Affordable Housing Unit Standards**

A. All affordable units provided pursuant to Sections 12.230.030 and 12.230.060 shall be comparable to the overall quality of construction to market-rate units in the same housing development as follows:

1. The exterior appearance of the affordable units shall be compatible with that of market-rate units.

2. Interior finishes and amenities may not differ from those provided in the base model market rate units.

3. The number of bedrooms in the affordable units shall be comparable to the average number of bedrooms in the market-rate units, and the affordable units shall be reasonably dispersed within the residential development, with unit locations comparable to those of the market-rate units, subject to review and approval by the Community Development Director.

4. The affordable units shall have the same amenities as the market rate units, including the same access to and enjoyment of common open space, parking, storage, and other facilities in the residential development, provided at an affordable rent as defined in Section 12.230.010 or at affordable ownership cost as defined in Section 12.230.010.

B. Affordable units provided pursuant to Sections 12.230.030 and 12.230.060 shall be made available for occupancy concurrently with the market-rate units. For the purposes of this subsection, "concurrently" means that the City may not issue building permits for more percent (50%) of the market-rate units until it has issued building permits for all of the affordable units, and the City may not approve any final inspections or certificates of occupancy for more than fifty percent (50%) of the market-rate units until it has issued final inspections or certificates of occupancy for all of the affordable units. However, the City Council may modify the timing requirements for construction and occupancy of market-rate units to accommodate phasing schedules, model variations, or other factors, if the City Council determines this will provide greater public benefit.

C. All affordable units provided pursuant to Sections 12.230.030 and 12.230.060 shall be subject to a resale restriction, deed of trust, and/ or regulatory agreement recorded against the property for execution by the City Manager, in a form approved by the City Attorney, to ensure the continued affordability of the affordable units.

1. Affordable housing units produced under this Chapter shall be legally restricted to occupancy by Households of the income levels for which the units were designated for a period of not less than fifty-five (55) years for rental units and forty-five (45) years for owner-occupied units.

2. To the extent permitted by state and federal law, preferences will be given to those Households where at least one member in the Household lives or works in San Bruno

## ATTACHMENT 1

or works for a school district serving the residents living in the City, except for those deemed ineligible due to conflict of interest noted below.

3. Conflict of Interest. The following individuals are ineligible to purchase or rent certain affordable housing units: (i) Elected or appointed City officials (including their spouse and dependents) who participated in the approval process for a project that included the affordable housing units (ii) the project applicant and its officers and employees (and their spouse and dependents), and (iii) the project owner and its officers and employees (and their spouse and dependents). However, employees of the project applicant and project owner may purchase or rent affordable housing units if the units were designed and intended to be occupied by employees of the applicant or owner, with approval of the City Council. Officials, employees, or consultants of the City and members of City boards and commissions shall comply with all applicable laws, regulations, and policies relating to conflicts of interest as to their eligibility to develop, construct, sell, rent, lease, occupy, or purchase an affordable unit.

4. Any household that occupies an affordable unit must occupy that unit as its principal residence, unless otherwise approved in writing for rental to a third party for a limited period of time due to household hardship, as determined by the City.

5. No household may begin occupancy of an affordable unit until the household has been determined to be eligible to occupy that unit by the community development director or designee. The City Manager or designee may from time to time adopt guidelines for determining household income and affordable housing cost, determining buyer eligibility, monitoring, and relevant administrative provisions.

### **12.230.090 Affordable Owner-Occupied Units**

**A.** Sale to Eligible Households. Owner-occupied units will be offered to eligible households at a sales price set so that the eligible household will pay an affordable ownership cost. The developer shall certify each prospective purchaser's income to the City or City's designee and obtain approval of the household prior to close of escrow. The developer must obtain and review documents that demonstrate the prospective owner's total income and assets and submit such information on a form approved by the City.

**B.** Initial Sales Price. The initial sales price of the affordable housing unit shall be set by the City so that the eligible household will pay an affordable ownership cost. The City shall respond to a written request by developer and provide developer with a good-faith estimate of the initial sales price during pre-development.

**C.** Deed Restrictions. Deed restrictions provided by the City, recorded against title to the affordable housing unit, and secured by a deed of trust shall be required as condition of sale for all owner-occupied affordable housing units and will include, but are not limited to, the City's or its designee's option to purchase, resale restrictions, occupancy requirements, payment of penalty for any default, and procedures and policies regarding changes in title. Deed restrictions must be approved by the City Attorney prior to close of escrow.

**D.** Administration. The Developer or subsequent seller shall pay all administrative costs associated with the sale of the for sale affordable housing units, including for buyer review and qualification, and the review and processing of documents associated with the transaction.

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### 12.230.100 Affordable Rental Units

**A. Non-Discrimination.** When selecting tenants, the owners of Affordable housing units shall comply with all fair-housing laws, rules, regulations, and guidelines. The owner shall apply the same rental terms and conditions to tenants of affordable housing units as are applied to all other tenants, except as required to comply with this Chapter or with other applicable government programs.

**B. Annual Report.** The owner shall submit an annual report summarizing the occupancy of each affordable housing unit for the year and demonstrating the income-eligibility of the tenant. The City Manager may require additional information to confirm household income and rental price of the unit if he or she deems necessary. The City Council may establish and charge the owner or operator of the rental residential development an annual fee to cover the costs of this monitoring. The fee will be added to the Master Fee Schedule by City Council resolution.

**C. Periodic Audit.** The City shall have the right to periodically audit the information supplied to the City for the annual report if deemed necessary to ensure compliance with this Chapter. In addition, owners of affordable housing units shall cooperate with any audits conducted by the City, State agencies, Federal agencies, or their designees.

**D. Change in Income.** If, after moving into an affordable rental housing unit, a tenant's household income exceeds the limit for that unit, the tenant household may remain in the unit as long as his or her household income does not exceed 120 percent of the income limit, but the tenant's rent shall be increased to 30 percent of monthly income upon expiration of the tenant's lease. Once the tenant's income exceeds 120 percent of the income limit, the tenant shall be given one year's notice to vacate the unit, or the next available market rate unit in the residential development shall be offered as an affordable housing unit. The owners of the residential development are responsible for notifying the City of such changes in income and documenting the process by which the existing tenant will be removed or the next available unit shall be offered as an affordable housing unit.

### 12.230.110 Administrative Relief

**A.** As part of an application for the first approval of a residential or nonresidential development project, a developer may request that the requirements of this Chapter be waived or modified by the City Council, based upon a showing that applying the requirements of this Chapter would result in an unconstitutional taking of property or would result in any other unconstitutional result, or because there is no reasonable relationship between the impact of the development and the need for affordable housing. concurrently

1. Any request for a waiver or modification shall be submitted with the project application. The developer shall set forth in detail the factual and legal basis for the claim, including all supporting technical documentation.

2. Any request for a waiver or modification based on this Section shall be reviewed and considered at the same time as the project application. The City Council may from time to time establish by resolution a processing fee for review of any request for a waiver or modification.

**B.** The waiver or modification may be approved only to the extent necessary to avoid an unconstitutional result, based upon legal advice provided by or at the behest of the City Attorney, after adoption of written findings, based on legal analysis and the evidence. If a waiver or modification is granted, any change in the project shall invalidate the waiver or modification, and a new application shall be required for a waiver or modification pursuant to this Section.

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### 12.230.120 Affordable Housing Fund

A. There is hereby established in the City of San Bruno a separate "Affordable Housing Fund," pursuant to Section 66006 of the California Government Code. All Affordable Housing Impact Fees or other funds collected under this Chapter shall be deposited into the City's Affordable Housing Fund.

B. The monies in the Affordable Housing Fund and all earnings from investment of the moneys in the Fund shall be expended exclusively to provide housing affordable to extremely low income, very low income, lower income, and moderate income households in the City, consistent with the goals and policies contained in the City's Housing Element and the purposes for which the fees were collected, and for administration and compliance monitoring of the affordable housing program.

C. The City Council may, from time to time, adopt guidelines for expenditure of monies in the affordable housing fund.

### 12.230.130 Enforcement

A. Payment of the Affordable Housing Impact Fee is the obligation of the developer for a residential or nonresidential development project. 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 or development approval.

B. The City Attorney shall be authorized to enforce the provisions of this Chapter and all affordable housing agreements, regulatory agreements, and all other covenants or restrictions placed on affordable units, by civil action and any other proceeding or method permitted by law.

C. Failure of any official or agency to fulfill the requirements of this Chapter shall not excuse any developer or owner from the requirements of this Chapter. No permit, license, map, or other approval or entitlement for a residential development shall be issued, including without limitation a final inspection or certificate of occupancy, until all applicable requirements of this Chapter have been satisfied.

D. The remedies provided for in this Section shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.

**Section 4.** Adoption of this ordinance is found to be categorically exempt from the California Environmental Quality Act because the adoption of this resolution is not a project, in that it is a government funding mechanism which does not involve any commitment to any specific project (CEQA Guidelines Section 15378(b)(4)), and because it can be seen with certainty that there is no possibility that the fees may have a significant effect on the environment, in that this ordinance contains no provisions modifying the physical design, development, or construction of residences or nonresidential structures CEQA Guidelines Section 15061(b)(3)).

**Section 5.** If any section, subsection, sentence, clause or phrase of the ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it should have adopted the ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that

**ATTACHMENT 1**

any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

**Section 6.** The City Clerk shall publish this ordinance in accordance with applicable law.

**Section 7.** Effective date. This ordinance shall take effect thirty (30) days from the date of its passage. Before expiration of fifteen (15) days after its passage, this ordinance shall be published in the San Mateo Daily Journal, a newspaper of general circulation published and printed in the County of San Mateo and circulated in the City of San Bruno.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM

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

---o0o---

I hereby certify that the foregoing Ordinance No. \_\_\_\_\_ was introduced on \_\_\_\_\_, and adopted at a regular meeting of the San Bruno City Council on \_\_\_\_\_, by the following vote:

AYES: COUNCILMEMBERS: \_\_\_\_\_

NOES: COUNCILMEMBERS: \_\_\_\_\_

ABSENT: COUNCILMEMBERS: \_\_\_\_\_

City Clerk: \_\_\_\_\_

ATTACHMENT 2

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN BRUNO  
ESTABLISHING AFFORDABLE HOUSING IMPACT FEES FOR RESIDENTIAL AND  
NONRESIDENTIAL DEVELOPMENT PROJECTS AND ESTABLISHING A  
STANDARDIZED LIST OF USES AND EXEMPTIONS WITH RESPECT TO THE  
PAYMENT OF NONRESIDENTIAL HOUSING IMPACT FEES**

**WHEREAS**, on April 14, 2015 the City Council of the City of San Bruno adopted its 2015-2023 Housing Element which contemplates, among other things, an ordinance to adopt affordable housing impact fees as a mechanism to increase the supply of affordable housing in the City, pursuant to Housing Element Programs 3-J and 5-J;

**WHEREAS**, to implement the affordable housing goals, policies and programs of the City's 2015-2023 Housing Element, the City Council has considered and introduced on this same date an affordable housing ordinance that, among other things, authorizes the imposition of affordable housing impact fees for certain residential and nonresidential development projects to mitigate the impact of such projects on the need for affordable housing in the City (the "Affordable Housing Ordinance");

**WHEREAS**, to ensure that future development projects mitigate their impact on the need for affordable housing in San Bruno, and to ensure that any adopted housing impact fees do not exceed the actual affordable housing impacts attributable to the development projects to which the fees relate, the City agreed to participate in the preparation of a nexus study through the countywide 21 Elements collaboration project;

**WHEREAS**, the City has received and considered reports from Strategic Economics and Vernazza Wolfe Associates, Inc. dated October 2015 entitled "Residential Impact Fee Nexus Study" and "Commercial Linkage Fee Nexus Study" (together, the "Nexus Study");

**WHEREAS**, the Nexus Study uses widely applied, appropriate methodology to determine the maximum amount needed to fully mitigate the need for affordable housing created by residential and nonresidential development;

**WHEREAS**, to ensure that development projects remain economically feasible, the recommended housing impact fees as shown in the attached Exhibits A and B do not exceed the justified fees needed to mitigate the actual affordable housing impacts attributable to the development projects to which the fees relate, as determined by the Nexus Study;

**WHEREAS**, the Affordable Housing Ordinance authorizes the City Council to adopt by resolution affordable housing impact fees for residential and nonresidential development, and the City Council desires to do so;

**WHEREAS**, the Affordable Housing Ordinance authorizes the City Council to adopt by resolution a standardized list of specific uses that shall be exempt from the payment of housing impact fees, and the City Council desires to do so;

## ATTACHMENT 2

**WHEREAS**, the Affordable Housing Ordinance authorizes the City Council to adopt by resolution the percentage of affordable units needed to fully mitigate the impact of residential or nonresidential development projects on the need for affordable housing, and the City Council desires to do so;

**WHEREAS**, the Affordable Housing Ordinance authorizes the City Council to adopt by resolution a fee for processing applications for waivers from or modifications to the housing impact fees, and the City Council desires to do so;

**WHEREAS**, at least ten 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 service for which the fee or service charge is levied and the revenue sources anticipated to provide the service, including general fund revenues, in accordance with Government Code Section 66019;

**WHEREAS**, at least fourteen days prior to the date this resolution is being heard, notice was provided to any persons or organizations who had requested notice, in accordance with Government Code Section 66019;

**WHEREAS**, notice of the hearing on the proposed fee was published twice in the manner set forth in Government Code Section 6062a as required by Government Code Sections 66004 and 66018; and

**WHEREAS**, the City Council has reviewed the information contained in this Resolution and the accompanying staff report and any attachments at a meeting held on November 9, 2016.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of San Bruno as follows:

1. The foregoing recitals are true and correct and incorporated into this Resolution by this reference.
2. The findings of the Nexus Study have been considered and are hereby incorporated into this Resolution by this reference.
3. The facts and substantial evidence in the record establish that there is a reasonable relationship between the need for affordable housing and the impacts of the development described in the Nexus Study for which the corresponding fee is charged, and that there is also a reasonable relationship between the use of the affordable housing impact fee and the type of development for which the fee is charged, as is described in more detail in the Nexus Study.
4. The Nexus Study sets forth cost estimates, in 2015 dollars, that are reasonable for constructing affordable housing, and the fees expected to be generated by new development will not exceed these costs.

## ATTACHMENT 2

5. The City Council hereby adopts those affordable housing impact fees for residential development projects shown on Exhibit "A", attached hereto and incorporated by reference herein.

6. The City Council hereby adopts those affordable housing impact fees for nonresidential development projects shown on Exhibit "B", attached hereto and incorporated by reference herein.

7. All housing impact fees collected shall be deposited into the City's Affordable Housing Fund to be used to increase and preserve the supply of housing affordable to households of extremely low, very low, low, and moderate incomes (including necessary administrative costs).

8. The City Council hereby adopts the "Land Use Exemptions" set forth in Exhibit "C", attached hereto and incorporated by reference herein.

9. The City Council may review affordable housing impact fees from time to time. For any annual period during which the City Council does not review the housing impact fee, fee amounts shall be adjusted once by the Community Development Director based on the percentage increase in the Engineering News-Record Construction Cost Index for San Francisco, California.

10. The City Council hereby determines that the following percentages of affordable units will mitigate the impacts of residential development on the need for affordable housing:

<b>Required Affordable Units per Residential Project*</b>			
	Single Family	Condominium	Apartment
<b>Very Low Income</b>	-	-	6%
<b>Low Income</b>	6%	6%	9%
<b>Moderate Income</b>	9%	9%	-
<b>TOTAL</b>	15%	15%	15%

\*Definitions of project types and affordability categories are contained in the Nexus Study.

11. The City Council further determines that the following number of affordable units will mitigate the impacts of nonresidential development on the need for affordable housing:

<b>Required Affordable Units per 100,000 sf in a Nonresidential Project*</b>			
	Hotel	Retail, etc.	Office, R&D, Medical
<b>Very Low Income</b>	1	1	1
<b>Low Income</b>	1	1	1
<b>Moderate Income</b>	1	1	1
<b>TOTAL</b>	3	3	3

**ATTACHMENT 2**

\*Definitions of project types and affordability categories are contained in the Nexus Study.

12. The City Council hereby adopts a fee for processing applications for waivers from or modifications as shown on Exhibit "D", attached hereto and incorporated by reference herein.

13. The City Council finds that all of the housing impact fees adopted pursuant to this Resolution do not exceed the actual affordable housing impacts of the development projects to which those housing impact fees relate, as further set forth in the Nexus Study.

14. Adoption of this Resolution is exempt from the California Environmental Quality Act because the adoption of this resolution is not a project, in that it is a government funding mechanism which does not involve any commitment to any specific project (CEQA Guidelines Section 15378(b)(4)), and because it can be seen with certainty that there is no possibility that the fees may have a significant effect on the environment, in that this resolution contains no provisions modifying the physical design, development, or construction of residences or nonresidential structures (CEQA Guidelines Section 15061(b)(3)).

15. This Resolution shall take effect on the effective date of the Affordable Housing Ordinance.

**THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED** by the City Council of the City of San Bruno, at a regular meeting of said City Council held on \_\_\_\_\_, 2016, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of San Bruno

ATTEST: \_\_\_\_\_  
City Clerk of the City of San Bruno

**ATTACHMENT 2**

**EXHIBIT "A"**

**Housing Impact Fees for Residential Development Projects**

\*Residential impact fees for residential projects shall be calculated using the net new square footage of Residential Floor Area for the dwelling unit to which the housing impact fee relates.

As used in the Nexus Study, "Residential Floor Area" for Single-Family Detached Homes, Townhomes, Duplexes, and Triplexes includes all horizontal areas of the several floors of such buildings measured from the exterior faces of exterior walls or from the center line of party walls separating two (2) buildings, minus the horizontal areas of such buildings used exclusively for parking.

As used in the Nexus Study, "Residential Floor Area" for Apartments and Condominiums includes all horizontal areas of the several floors of such buildings measured from the exterior faces of exterior walls or from the center line of party walls separating two (2) buildings, minus the horizontal areas of such buildings used exclusively for parking, elevators, stairwells or stairs between floors, hallways, and between-unit circulation.

Fees shall be paid that are in effect at the time of issuance of the building permit for the residential development, based on the effective rate at the time of building permit issuance.

<b>Type of Residential Unit</b>	<b>Fee per Square Foot of Net New Residential Floor Area</b>
Single-Family Detached Home	<b>\$25.00</b>
Apartments and Condominiums	<b>\$20.00</b>

**ATTACHMENT 2**

**EXHIBIT "B"**

**Commercial Linkage Fees for Nonresidential Development Projects**

\*All commercial linkage fees for nonresidential projects, including new construction and conversion of a residential use to a nonresidential use shall be calculated using the gross floor area of net new nonresidential space, excluding structured parking.

<b>Nonresidential Use</b>	<b>Fee per Square Foot of Net New Gross Floor Area</b>
Hotel	<b>\$5.00</b>
Retail, Restaurants and Services	<b>\$5.00</b>
Office, Medical Office and Research and Development Uses	<b>\$5.00</b>

## ATTACHMENT 2

### EXHIBIT "C"

#### LAND USE EXEMPTIONS

In accordance with Section 12.230.050 of the Affordable Housing Ordinance, the following specific nonresidential uses are exempt from the payment of the housing impact fee:

1. Public Uses and Quasi-Public Uses, as defined in Section 2-3, Land Use Framework, of the 2009 San Bruno General Plan, including, but not limited to, government offices, fire and police facilities, transit stations, airports, and cemeteries;
2. Open Space Uses, as defined by Section 12.96.170 of the San Bruno Zoning Code, including, but not limited to, public and private parks, schools and cemeteries;
3. Child Care Centers, including Family Child Care Homes;
4. Recreational facilities for public use and enjoyment within commercial or industrial developments;
5. Housing for the elderly, nursing homes, rest homes, and residential care facilities, as defined by Section 12.80 of the San Bruno Zoning Code; and
6. Public and private schools.

**ATTACHMENT 2**

**EXHIBIT "D"**

**FEE FOR WAIVERS AND MODIFICATIONS**

Waivers and Modifications of Requirements of Affordable Housing Ordinance:

Initial Deposit of \$1,000

To be charged on a cost recovery basis, where the staff charges their time and other costs against the initial deposit, recovering the actual cost of project review.

## Attachment 3

### Proposed Amendments Affordable Housing Ordinance and Affordable Housing Impact Fees Resolution

November 9, 2016

The table below shows all changes to the draft Affordable Housing Ordinance and Impact Fee Resolution since September 13, 2016 City Council meeting.

#### Affordable Housing Ordinance Amendments

	Section	
1	12.230.020.X	<del>“Public/Quasi-Public Use” means the San Bruno General Plan land use designation, which permits a variety of public and quasi-public uses, including: government offices, fire and police facilities, transit stations, and cemeteries.</del>
2	12.230.030.A	For-sale residential development projects. All new for-sale residential development projects of five (5) or more units shall either include at least fifteen percent (15%) of the total units as affordable housing units restricted for occupancy by low and moderate income households, <del>or, if approved by the City Manager and subject to final approval by the City Council,</del> unless an alternative is proposed by the developer and approved by the City Council, as provided in Section 12.230.060.B. <del>pay the impact fee required under Section 12.230.040 of this Chapter.</del>
3	12.230.030.A.5	In determining the number of affordable housing units required for decimal fractions of less than 0.5, the developer shall be required to <u>either construct one additional affordable unit or to pay the partial unit payment set forth in Subsection 12.230.040.C below</u>
4	12.230.030.B	<del>...and approved by the City Manager</del> City Council.
5	12.230.040.A.1	...all rental residential projects of five (5) or more units shall pay a Residential Impact Fee, unless an alternative is proposed by the developer and approved by <del>the City Manager and subject to final approval by the City Council</del> <u>as described in Section 12.230.060.</u>
6	12.230.040.A.2	...all nonresidential development projects shall pay a Commercial Linkage Fee, unless an alternative is proposed by the developer and approved by <del>the City Manager and subject to final approval by the City Council</del> <u>as described in Section 12.230.060.D.</u>
7	12.230.040.A.3	Residential Impact Fees for “For Sale Residential Projects.” As provided in <del>Section 12.230.030</del> <u>12.230.060.B</u> , and with the approval of <del>the City Manager,</del> Council, for-sale residential projects may pay a Residential Impact Fee rather than provide onsite units.
8	12.230.040.C	For for-sale development projects that trigger an affordable unit requirement with a <u>decimal fraction of less than 0.5, the developer shall either build one additional affordable unit or pay an impact fee equal to the decimal fraction multiplied by the residential impact fee for the for-sale residential project.</u>
9	12.230.050.D.1	<del>Residential or Nonresidential development projects located on property owned by the state of California, the United States of America, or any of its agencies and used exclusively for governmental or educational purposes</del>
10	12.230.050.D.1	Residential or nonresidential development projects for which applications have been deemed complete prior to <del>September 1, 2016</del> <u>the effective date of this chapter.</u>
11	12.230.060.A	provided that the <del>City Council</del> <u>decision-making body</u> makes the findings in Section 12.230.070.D E, or F as appropriate.
12	12.230.060.B	if approved by the <del>City Council</del> Manager.
13	12.230.060.B.1	<u>Payment of Residential Impact Fees in accordance with Section 12.230.040.</u>

14	12.230.060.C	<del>The City Council may approve alternatives to the payment of Residential Impact Fees where the proposed alternative supports adopted Housing Element policies and goals and assists the City in meeting its state housing requirements.</del>
15	12.230.070.B.7	<del>For a phased residential development proposing any change to the phasing requirements specified in Section 12.230.080.B...</del>
16	12.230.070.D	<del>Findings — all alternatives. The City Council may or conditionally approve an alternative contained in an affordable housing plan if the City Council determines, based on substantial evidence, that the proposed alternative supports adopted Housing Element policies and goals and assists the City in meeting state housing requirements.</del>
17	12.230.070.E	<del>Findings – alternative proposing on-site affordable units...</del>
18	12.230.070.F	<del>Findings — alternative proposing off-site affordable units...</del>
19	12.230.070.G	<del>To ensure compliance with the approved Affordable Housing Plan, an affordable housing agreement acceptable to the Community Development DirectorCity Manager or designee shall be recorded... as determined by the City Manager or designee, and subject to final approval by the City Council</del>
20	12.230.080.B	<del>However, the decision-making bodyCity Council may modify the timing requirements for construction and occupancy of market-rate units to accommodate phasing schedules, model variations, or other factors, if the approval bodyCity Council determines this will provide greater public benefit.</del>
21	12.230.080.C.3	<del>... However, employees of the project applicant and project owner may purchase or rent affordable housing units if the units were designed and intended to be occupied by employees of the applicant or owner, with approval of the City Council. Officials, employees, or consultants of the City and members of City boards and commissions shall comply with all applicable laws, regulations, and policies relating to conflicts of interest as to their eligibility to develop, construct, sell, rent, lease, occupy, or purchase an affordable unit.</del>
22	12.230.080.C.5	<del>The Community Development DirectorCity Manager or designee may from time to time adopt guidelines for determining household income and affordable housing cost, determining buyer eligibility, monitoring, and relevant administrative provisions.</del>
23	12.230.080.C.5	<del>Officials, employees, or consultants of the City and members of City boards and commissions shall comply with all applicable laws, regulations, and policies relating to conflicts of interest as to their eligibility to develop, construct, sell, rent, lease, occupy, or purchase an affordable unit.</del>
24	21.230.100.D	<del>Change in Income. If, after moving into an affordable rental housing unit, a tenant's household income exceeds the limit for that unit, the tenant household may remain in the unit as long as his or her household income does not exceed 120 percent of the income limit, but the tenant's rent shall be increased to 30 percent of monthly income upon expiration of the tenant's lease...</del>

### **Affordable Housing Impact Fee Resolution Amendments**

Exhibit C	<del>Public Uses and Quasi-Public Uses, as defined in Section 12.230.020 of the Affordable Housing Ordinance Section 2-3, Land Use Framework, of the 2009 San Bruno General Plan, including, but not limited to, public schools, parks, playgrounds, hospitals, and administrative and services facilities government offices, fire and police facilities, transit stations, airports, and cemeteries.</del>
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**City Council Agenda Item  
Staff Report**

CITY OF SAN BRUNO

**DATE:** September 13, 2016

**TO:** Honorable Mayor and Members of the City Council

**FROM:** David Woltering, Community Development Director

**SUBJECT:** Waive First Reading and Adopt Ordinance Amending and Replacing Chapter 12.230 Establishing an Affordable Housing Program and Affordable Housing Impact Fees, to Title 12 (Land Use) of the San Bruno Municipal Code; and a Resolution Establishing Affordable Housing Impact Fees for Residential and Nonresidential Development Projects

**BACKGROUND**

San Bruno's adopted 2015 Housing Element Program includes policies and programs intended to increase the City's housing supply and address affordable housing needs. Program 3-J calls for the adoption of affordable housing impact fees on new commercial and residential development to help pay for the creation of new homes for lower income residents. The City Council action to consider adoption of the proposed affordable housing ordinance (Attachment 1) would establish residential impact fees for residential projects and commercial linkage fees for nonresidential projects, and the accompanying resolution (Attachment 2) would set the initial fee amounts to be included in the City's Master Fee Schedule. The City does not currently have any impact fees for new development, although the City is undertaking a comprehensive Development Impact Study later this year.

San Bruno's existing Below Market Rate (BMR) Housing ordinance requires all new residential development projects of ten units or more to provide 15% of the total units to be available to very low, low and moderate income households. However, the California Court decision in Palmer vs. City of Los Angeles invalidated affordable housing requirements for rental housing, limiting the effectiveness of the BMR ordinance. The draft ordinance under consideration would establish impact fees for new market rate rental residential projects and all new commercial development in the City, consistent with the Mitigation Fee Act (Gov't Code § 66000 et seq.), which establishes the procedures for adoption, expenditure and reporting of impact fees. The draft ordinance would restore the City's ability to impose affordable housing requirements on new rental housing projects and continue to require new for-sale housing developments to construct affordable units.

San Bruno participated with 13 other jurisdictions in San Mateo County in the countywide Grand Nexus Study, which analyzed the potential for local jurisdictions to adopt affordable housing impact fees. On October 27, 2015, the City Council received a

presentation describing the nexus study process, the legal requirements for adoption of impact fees, and the individual nexus studies that were prepared for each jurisdiction, tailored to local conditions and needs. The City Council directed staff to return with a report on San Bruno's draft Nexus Study and possible adoption of affordable housing impact fees.

On April 19, 2016, the City Council held a study session to review San Bruno's Residential Impact Fee Nexus Study for residential development projects and Commercial Linkage Fee Nexus Study for nonresidential development projects (together, the "Nexus Study"). The study session addressed the worsening affordable housing crisis since the Great Recession in 2009, and the severe constraints on the City's ability to address the crisis. Issues included soaring land costs, the dissolution of redevelopment agencies eliminating a significant revenues for affordable housing, cutbacks in federal and state funding for affordable housing, and the Palmer court decision. In addition, projected population and job growth is expected to place further pressure on housing affordability, creating a need for 660,000 new housing units in the San Francisco Bay Area by 2040, according to ABAG's Plan Bay Area. The study session reviewed a range of programs to address affordable housing needs, including a rent advisory policy and legalization of second units. The City Council indicated a continuing concern to address the need for affordable housing within San Bruno and directed staff to prepare a draft affordable housing ordinance that would enable the City to collect fees and/or promote the construction of affordable units in new development projects.

On August 16, 2016, the Planning Commission held a public hearing to review the draft affordable housing ordinance and impact fees. The Planning Commission recommended that the fees be set at a level high enough to encourage the construction of affordable units rather than paying the fees, but not so high that the fees might discourage developer investment. The Planning Commission adopted a resolution (Attachment 3) finding that the ordinance and impact fees are consistent with San Bruno's 2015 Housing Element, and recommending that the City Council adopt the ordinance and impact fees for residential and nonresidential development projects.

A number of Peninsula cities have already implemented housing impact fees, as shown in Table 1. Fee levels vary depending on land values, sale prices, rents and lease rates. The table shows the Peninsula cities that have adopted affordable housing impact fees. Cities closer to the center of Silicon Valley where housing prices and rents and commercial lease rates are significantly higher resulting in higher profitability, can charge higher fees than those further from the core area.

**Table 1. Affordable Housing Impact Fee Comparisons**

City	Date Adopted	Single Family	Condominium	Apartment	Office	Hotel	Retail
Cupertino	2015	\$15-\$17	\$20	\$25	\$20	\$10	\$10
Daly City	2014	\$14-\$18	\$22	\$25	N/A	N/A	N/A
East Palo Alto	2011	\$14-\$23	\$23-\$44	\$23	N/A	N/A	N/A

Menlo Park	2000	N/A	N/A	N/A	\$16	\$8	\$8
Mountain View	2015	N/A	N/A	\$15	\$25	\$2.50	\$2.50
Palo Alto	2002	\$95	\$50	\$50	\$35	\$30	\$20
Redwood City	2015	\$25	\$20	\$20	\$20	\$5	\$5
San Carlos	2010	\$24-44	\$21-\$42	\$24-\$43	N/A	N/A	N/A
Sunnyvale	2015	N/A	N/A	\$17	\$15	\$7.50	\$7.50

**DISCUSSION**

Currently, the BMR ordinance is the City’s tool for requiring affordable housing as part of new residential development projects. The proposed affordable housing ordinance, included in draft form in Attachment 1, would replace the BMR ordinance. The primary difference between the existing BMR ordinance and the proposed ordinance is that the proposed ordinance will allow the City to reestablish affordable housing requirements for rental housing development projects, which was invalidated by the Palmer court decision, and impose new affordable housing fees for commercial projects. The ordinance retains the BMR ordinance requirements for ownership residential development projects. A separate resolution (Attachment 2) will establish the specific fee amounts, how to calculate the fee, and what uses are exempt. The significant provisions of the proposed affordable housing ordinance are outlined below:

**General Requirements**

The proposed ordinance would impose affordable housing impact fees and rules for construction of affordable units, alternatives to comply with the ordinance, and the use of the fees, consistent with Housing Element and the Mitigation Fee Act. The ordinance will apply to residential ownership or rental developments of five (5) units or more, and all nonresidential developments throughout the City.

**Recommended Affordable Housing Impact Fees**

Staff recommends appropriate fee levels for each development type, based on the findings of the Nexus Study, which calculated a maximum justifiable fee level that would mitigate the entire impact of new development on the need for affordable housing and tested three lower impact fee scenarios to ensure the financial feasibility of new development. The recommended fees for residential developments are roughly equivalent to the City’s existing BMR ordinance’s in-lieu fees and are in line with comparable jurisdictions. The fees are intended to be high enough to encourage the construction of affordable units while still maintaining project feasibility. The ordinance provides for the establishment and adjustment from time to time of the affordable housing impact fees by resolution of the City Council. Staff recommends that the City adjust fee amounts each year consistent with an inflation index, such as the Engineering News Record (ENR), which is typically used for impact fees.

***Residential Impact Fees.*** While the Nexus Study justifies charging a fee on any new square footage, staff recommends a more conservative approach with a minimum

project size of five (5) or more residential units. This is a typical threshold, e.g., five of the seven cities that charge residential impact fees (see Table 1) set a threshold of five or more units. This also avoids burdening homeowners of two to four unit projects with additional costs. Staff recommends setting reasonable fees shown in the Table 2 below.

**Table 2. Recommended Residential Impact Fees**

Unit Type	Maximum Justified Fees	Recommended Reasonable Fees	Minimum Project Size
Single Family	\$27	\$25	5 or more net new units for residential projects
Condominium	\$51	\$20	
Apartment	\$56	\$20	

Developers of for-sale projects would be required to construct the required affordable units within the residential development, unless an alternative, such as payment of the residential impact fee, is approved. Rental developments would be required to pay the impact fee, unless an alternative, such as construction of affordable units onsite, is approved.

**Commercial Linkage Fees.** The commercial linkage fee would apply to all new commercial projects. Public uses such as hospitals and community facilities and quasi-public uses such as child care centers, community facilities, churches and schools would be exempted.

**Table 3. Recommended Commercial Linkage Fees**

Unit Type	Maximum Justified Fees	Recommended Reasonable Fees	Minimum Project Size
Office	\$196	\$5	All new commercial development
Retail	\$235	\$5	
Hotel	\$132	\$5	

The recommended linkage fees are considerably lower than the maximum justified fees identified in the Nexus Study because financial feasibility analysis determined that higher fees would decrease the viability of projects and inhibit new commercial development. The maximum justified fee is the amount that would generate sufficient funding to build all the units needed to mitigate the entire impact of new development on the need for affordable housing. In addition to the maximum justified fee, the Nexus Study studied effects of three lower fee scenarios on the feasibility of commercial projects. The Nexus Study demonstrated that charging the maximum fee would severely decrease financial feasibility and be a deterrent to new development. The analysis determined that a fee level of \$5 per square foot is the most that can be charged before a project becomes infeasible. The wide gap between the maximum feasible fee and the recommended financially feasible fee was found for all the jurisdictions that participated in the Grand Nexus Study. The recommended linkage fees are expected to have minimal effect on the viability of small commercial improvements.

It is intended that these fees be one of multiple tools or measures to address affordable housing needs in the community. The recommended fees are a starting point, which staff recommends should be reevaluated periodically. The Planning Commission discussed whether a higher linkage fees might be possible given the improved commercial real estate market. Staff believes that additional financial analysis is needed to ensure that a higher fee would maintain the viability of commercial development and to take into consideration other development fees the City is considering. In addition, the Nexus Study did not address tenant improvements that intensify commercial land resulting in a higher density of workers and potential impacts on the need for affordable housing. Therefore, staff has not proposed any fees to address this issue at this time. These fee adjustments could be analyzed during the overall Development Impact Fee Study that will be conducted this year, if the City Council wishes to explore them further.

**Mixed Use Projects:** Mixed residential/commercial projects would be subject to both the residential and commercial requirements in proportion to the square footage of each use in the project.

### **Affordable Unit Income Targeting**

The income levels and terms of affordability for affordable units are consistent with the requirements of the City's current BMR ordinance. Residential projects that are approved for construction of affordable units must provide a minimum of 15 percent of the total units in the residential project as affordable to very low, low or moderate income households.

- **For-Sale Residential Projects.** Six percent of total units must be for low income households and nine percent must be for low or moderate income households.
- **Rental Residential Projects.** Six percent of total units must be for very low income households and nine percent must be for very low or low income households.

For-sale affordable units must remain affordable for 45 years, and rental affordable units must remain affordable for 55 years. The term of affordability restarts with each transfer of the property.

### **Alternatives to Fee Payment**

The ordinance provides for alternatives methods of compliance with the fee requirements for each type of project, if approved by the City Council.

- **Rental Residential Projects.** Alternatives to payment of the residential impact fee for rental projects could include construction of onsite or off-site affordable housing, dedication of land, or other alternatives outlined in the ordinance.
- **For-sale Residential Projects.** Alternatives to construction of onsite affordable units for ownership projects could include, construction of affordable units off-site or payment of the residential impact fee, or other alternatives outlined in the ordinance.
- **Nonresidential Projects.** Alternatives to payment of the commercial linkage fee for nonresidential projects include construction of onsite or off-site affordable

housing, dedication of land, or other alternatives outlined in the ordinance.

### **Compliance Procedures**

Any project that involves the construction of affordable housing units must submit an affordable housing plan and enter into an affordable housing agreement, which must be considered by the decision-making authority for the project.

- **Affordable Housing Plan.** Developers must submit an affordable housing plan as part of the planning application demonstrating how they will meet the requirements of affordable housing ordinance, including unit types, sizes, amenities, and construction comparable to the market rate units.
- **Affordable Housing Agreement.** Developers must enter into an affordable housing agreement with the City to ensure compliance with the Affordable Housing Plan as a condition of approval of entitlements. The agreement must be executed and recorded prior to the issuance of a building permit.

### **Affordable Housing Fund**

The fees would be deposited in a separate fund and may be spent only for the purpose of developing workforce housing affordable to very low, low, and moderate income households. The City Council may adopt guidelines which prioritize how the money may be spent on renovating existing units, land purchase, or construction funding for new units. The fee must also meet the Mitigation Fee Act reporting requirements, including annual updates on collection and expenditure of fees, and identification of projects for funding. Every five years, specific findings must be made regarding unspent fees with estimates for future funding commitments.

### **Decision-Making Procedures**

The City Manager or her/his designee may approve the payment of a residential impact fees or commercial linkage fees. All other methods of compliance with the affordable housing ordinance, such as construction of affordable housing units must be approved by the City Council.

If the City Council adopts the affordable housing ordinance and resolution, the affordable housing impact fees would become effective 60 days following adoption, pursuant to Gov. Code § 66017. Projects that are deemed complete after the effective date of the ordinance would be subject to the ordinance requirements, and projects deemed complete prior to the effective date would not be subject to the ordinance.

### **FISCAL IMPACT**

The exact amount of the fiscal impact is unknown due to the fact that it is dependent on the amount and type of development projects that are brought forward. The proposed fee amounts could result in an apartment project of 100 units paying approximately \$2.4 million in residential impact fees, and a commercial project of 100,000 sq. ft. paying approximately \$500,000 in commercial linkage fees. Assuming full buildout of the Transit Corridors Plan area (not including potential development in other areas, such as

Bay Hill Office Park), the City could receive up to total of \$40 million in affordable housing impact fees over time.

#### **ALTERNATIVES**

1. Do not adopt the ordinance and provide direction to staff
2. Direct staff to revise the Affordable Housing Ordinance and impact fees and schedule for additional review and discussion at a future meeting

#### **RECOMMENDATION**

Waive First Reading and Adopt Ordinance Amending and Replacing Chapter 12.230, Establishing an Affordable Housing Program and Affordable Housing Impact Fees, to Title 12 (Land Use) of the San Bruno Municipal Code; and a Resolution Establishing Affordable Housing Impact Fees for Residential and Nonresidential Development Projects

#### **DISTRIBUTION**

None

#### **ATTACHMENTS**

1. Draft Affordable Housing Ordinance
2. Resolution Establishing Affordable Housing Impact Fee Amounts
3. Planning Commission Resolution Recommending Adoption
4. Planning Commission Minutes (8/16/16)

RELATED DOCUMENTS AVAILABLE ON THE WEBSITE AT  
[WWW.SANBRUNO.CA.GOV](http://WWW.SANBRUNO.CA.GOV) AND PROVIDED UNDER SEPARATE COVER

1. Residential Impact Fee Nexus Study for San Bruno – October 2015
2. Commercial Linkage Fee Nexus Study for San Bruno – October 2015

#### **DATE PREPARED**

August 30, 2016

#### **REVIEWED BY**

\_\_\_\_\_ CM

ATTACHMENT 1

DRAFT - ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF SAN BRUNO AMENDING AND REPLACING  
CHAPTER 12.230, THEREBY UPDATING AND ESTABLISHING AN AFFORDABLE  
HOUSING PROGRAM AND AFFORDABLE HOUSING IMPACT FEES, IN TITLE 12 (LAND  
USE) OF THE SAN BRUNO MUNICIPAL CODE**

**Section 1.** Chapter 12.230 of Title 12 of the City of San Bruno Municipal Code is hereby repealed in its entirety.

**Section 2.** City Council makes the following findings:

**A.** The provision of safe and stable housing for households at all income levels is essential for the public welfare of the city. Housing in San Bruno has become steadily more expensive and housing costs have gone up faster than incomes. Federal and state government programs do not provide enough affordable housing to satisfy the needs of very low, low, or moderate income households. As a result, there is a severe shortage of adequate, affordable housing for extremely low, very low, lower, and moderate income households, as evidenced by the following findings in the City's 2015-2023 Housing Element:

1. Almost half of San Bruno's households are lower income (see Housing Element Figure 2.3-2).

2. Households of any size earning less than the median income cannot afford the average home purchase price or the average rents in San Bruno.

3. More than 90 percent of San Bruno renter households and two thirds of owner households earning under \$35,000 annually are overpaying for housing. Over half the households earning between \$35,000 and \$75,000 per year are overpaying as well. Without choices and availability of affordable housing in San Bruno, lower income people may choose to live elsewhere and commute to work. Or, lower income households may live in overcrowded homes, and have limited money to dedicate towards other necessities such as food, transportation and medical care.

**B.** As provided in the Housing Element of the General Plan, the City aims to meet the housing needs of the citizens of San Bruno, including the creation and retention of housing for lower income households and households with special needs, given the limitations imposed by current political, economic, and social conditions, and availability of State and federal funding.

1. Housing Element Goal 5 is to ensure the continued availability of affordable housing for very-low, low, and moderate income households, seniors, persons with disabilities, single-parent households, large families, and other special needs groups.

2. Housing Element Goal 2 is to accommodate regional housing needs through a community-wide variety of residential uses by size, type, tenure, affordability, and location.

3. Housing Element Goal 3 is to expand the variety of construction and financing techniques available to achieve new affordable housing and maintain it over time. Housing Element Program 3-J calls for the City to adopt an Affordable Housing Impact Fee, including an implementation action to participate in a countywide nexus study to estimate the increase in demand for affordable housing associated with new residential and nonresidential development and to determine permissible and reasonable impact fees for both residential and nonresidential development based on local conditions that will not discourage development.

## ATTACHMENT 1

**C.** The City adopted the Below Market Rate (BMR) Housing Ordinance establishing inclusionary housing requirements for new construction for for-sale and rental development projects in 2008. The 2009 Palmer vs the City of Los Angeles court decision invalidated inclusionary requirements for rental developments, but not for for-sale developments.

**D.** Because the City's first preference is for the actual construction of new affordable units to ensure that affordable housing is actually provided within residential projects, the City intends to retain the BMR requirements for "for-sale" units.

**E.** New residents of market rate housing purchase goods and utilize services in the community, increasing local employment and attracting employees, of whom a quantifiable number will have very low, low, or moderate incomes and cannot afford market-rate housing.

**F.** New housing construction that does not include affordable units aggravates the existing shortage of affordable housing by absorbing the supply of available residential land.

**G.** Because nonresidential development also attracts employees, of whom a quantifiable number will have very low, low, or moderate incomes, new nonresidential developments similarly increase the demand for and exacerbate the shortage of housing available for people at these income levels while also reducing the supply of land potentially available for housing development.

**H.** Based on the findings above and the findings from the Residential Impact Fee and Commercial Linkage Fee Nexus Studies prepared for San Bruno, dated October 2015, the City desires to further the public health, safety and welfare by requiring residential and nonresidential development projects in the City to help mitigate their impact on the need for affordable housing in the City.

**Section 3.** A replacement Chapter 12.230 (Affordable Housing Program) is hereby added to Title 12 (Land Use) of the San Bruno Municipal Code to achieve the purpose in Section 12.230.010 of this Chapter, based on the Findings in Section 2 of this Chapter, to read as follows:

### CHAPTER 12.230 AFFORDABLE HOUSING PROGRAM

Sections:

- 12.230.010 Purpose
- 12.230.020 Definitions
- 12.230.030 Affordable Housing Requirements
- 12.230.040 Affordable Housing Impact Fees
- 12.230.050 Exemptions
- 12.230.060 Alternatives
- 12.230.070 Compliance Procedures
- 12.230.080 Affordable Housing Unit Standards
- 12.230.090 Owner-Occupied Units
- 12.230.100 Rental Units
- 12.230.110 Administrative Relief
- 12.230.120 Affordable Housing Fund
- 12.230.130 Enforcement

## ATTACHMENT 1

### 12.230.010 Purpose

The purpose of this Chapter is to:

A. Encourage the development and availability of housing affordable to a broad range of Households with varying income levels within the City as mandated by State Law, California Government Code Sections 65580 et seq.

B. Promote Housing Element Goal 2 to accommodate regional housing needs through a community-wide variety of residential uses by size, type, tenure, affordability, and location.

C. Implement the Housing Element by creating a mechanism to provide benefits to the community from new development in the form of affordable housing, thereby, helping to meet the housing needs of all socioeconomic segments of the community as provided in the Housing Element.

D. Promote Housing Element Goal 5 to ensure the continued availability of affordable housing for very low, low, and moderate income households, seniors, and persons with disabilities, single-parent households, large families, and other special needs groups.

E. Implement Housing Element Program 3-J to adopt permissible and reasonable impact fees for both residential and nonresidential development based on impact fee nexus studies.

F. Implement Housing Element Program 5-A to support the Affordable Housing Ordinance (BMR Program, adopted in 2008) and to modify the BMR program as appropriate to maximize efforts to achieve affordable housing objectives in San Bruno.

G. Enhance the public welfare by imposing affordable housing impact fees for residential and nonresidential development projects whereby developers of residential and nonresidential development projects will help mitigate the impacts of their projects on the need for affordable housing by contributing to the supply of housing for households with very low, low, and moderate incomes.

### 12.230.020 Definitions

As used in this Chapter, the following terms shall have the following meanings:

A. "Affordable housing agreement" means a written agreement between the City and the developer as provided in Section 12.230.070 of this Chapter.

B. "Affordable housing fund" means a fund for the deposit of fees established under this Chapter as provided in Section 12.230.120 of this Chapter.

C. "Affordable housing impact fee" means the fee paid by developers of residential or nonresidential development projects to help mitigate the impacts that such developments have on the demand for affordable housing in the City and to support affordable housing development and operation.

D. "Affordable housing plan" means a plan required for any residential or nonresidential development project which includes the provision of affordable housing units that demonstrates how the project complies with Section 12.230.070 of this Chapter.

E. "Affordable housing unit" means a dwelling unit that shall be offered at an affordable rent or affordable ownership cost to very low, low and moderate income households.

## ATTACHMENT 1

F. "Affordable ownership cost" means the sales price of a for-sale affordable unit resulting in projected average monthly housing payments, during the first calendar year of a household's occupancy, including interest, principal, mortgage insurance, property taxes, homeowners insurance, homeowners' association dues, if any, and a reasonable allowance for utilities, property maintenance, and repairs, not exceeding the sales prices specified by Section 50052.5 of the California Health and Safety Code and California Code of Regulations Title 25, Sections 6910-6924.

G. "Affordable rent" means the total monthly housing expenses for a rental affordable unit not exceeding the rents specified by Section 50053 of the California Health and Safety Code and California Code of Regulations Title 25, Sections 6910-6924. As used in this Chapter, "affordable rent" shall include the total of monthly payments by the tenant for all of the following: (1) use and occupancy of the affordable unit and land and all facilities associated with the affordable unit, including but not limited to parking, bicycle storage, storage lockers, and use of all common areas; (2) any additional separately charged fees or service charges assessed by the owner, other than security deposits; (3) an allowance for utilities paid by the tenant as established by the San Mateo County Housing Authority, including garbage collection, sewer, water, electricity, gas, and other heating, cooking, and refrigeration fuel, but not telephone service or cable TV; and (4) any other interest, taxes, fees or charges for use of the land or affordable unit or associated facilities and assessed by a public or private entity other than the owner, and paid by the tenant.

H. "Building permit" includes full structural building permits as well as partial permits such as foundation-only permits

I. "City" means the City of San Bruno.

J. "City Council" means the City Council of the City of San Bruno.

K. "City Manager" means the City Manager of the City or his or her designee.

L. "Commercial linkage fee" means a fee or charge imposed on commercial developers to pay for the development's impact on the need for affordable housing. The fee is based on projected household incomes of new employees that will work in newly created space.

M. "Decision-making body" means the City staff person or body authorized to approve or deny an application for a planning or building permit for a residential or nonresidential development project.

N. "Developer" means the person(s) or legal entity(ies), who also may be the property owner seeking real property development permits or approvals from the City or developing a particular project in the City.

O. "For-sale unit" means a residential dwelling unit that may be sold individually in conformance with the Subdivision Map Act. For-sale units also include units that are converted from rental units to for-sale units.

P. "Household" means one person living alone or two or more persons sharing residency in one dwelling unit.

Q. "Inclusionary unit" has the same meaning as affordable housing unit.

R. "Low income households" means households with incomes no greater than the maximum income for low income households, as published annually by the City for each household size, based on United States Department of Housing and Urban Development (HUD) and the California Department of Housing and Community Development (HCD) income limits for San Mateo County.

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S. "Market-rate unit" means a new dwelling unit in a residential development project that is not an affordable unit.

T. "Median income" means the median income applicable to San Mateo County, as published annually by the City for each household size, based on median income data for San Mateo County published by the United States Department of Housing and Urban Development (HUD) and the California Department of Housing and Community Development (HCD).

U. "Moderate income households" means households with incomes no greater than the maximum income for moderate income households, as published annually by the City for each household size, based on United States Department of Housing and Urban Development (HUD) and the California Department of Housing and Community Development (HCD) income limits for San Mateo County.

V. "Nonresidential development project" means an application for a planning permit or building permit that includes the new construction of gross square feet of nonresidential space or the conversion of a residential use to a nonresidential use.

W. "Planning permit" means any discretionary approval of a residential or nonresidential development project, including, but not limited to, a general or specific plan adoption or amendment, rezoning, tentative map, conditional use permit, variances, or design review.

X. "Public/Quasi-Public Use" means the San Bruno General Plan land use designation, which permits a variety of public and quasi-public uses, including: government offices, fire and police facilities, transit stations, and cemeteries.

Y. "Rental unit" means a dwelling unit that is intended to be offered for rent or lease and that cannot be sold individually in conformance with the Subdivision Map Act.

Z. "Residential impact fee" means a fee or charge imposed on residential development to pay for a development's impact on the need for affordable housing. The fee is based on the projected incomes of new employees associated with the new market rate developments.

AA. "Residential development project" means an application for a planning permit or building permit at one location to create one or more additional dwelling units, convert nonresidential uses to dwelling units, subdivide a parcel to create one or more separately transferable parcels intended for residential development, or implement a condominium conversion, including development constructed at one time and in phases. "One location" includes all adjacent parcels of land under common ownership or control, the property lines of which are contiguous at any point, or the property lines of which are separated only by a public or private street, road, or other public or private right-of-way, or separated only by the lands owned or controlled by the developer.

BB. "Very low income households" means households with incomes no greater than the maximum income for very low income households, as published annually by the City for each household size, based on United States Department of Housing and Urban Development (HUD) and the California Department of Housing and Community Development (HCD) income limits for San Mateo County.

### **12.230.030 Affordable Housing Requirements**

A. For-sale residential development projects. All new for-sale residential development projects of five (5) or more units shall either include at least fifteen percent (15%) of the total units as affordable housing units restricted for occupancy by low and moderate

## ATTACHMENT 1

income households, or, if approved by the City Manager and subject to final approval by the City Council, pay the impact fee required under Section 12.230.040 of this Chapter.

1. For purposes of this Chapter, the number of units in a residential development whose development includes the demolition or removal of existing residential units and the construction of new residential units shall be the difference between the new units constructed and the existing units demolished or removed.

2. Total units shall not include any units granted pursuant to density bonuses provided under state density bonus law.

3. For "for-sale" residential development projects, forty percent (40%) of the affordable housing units (or six percent (6%) of the total development) shall be restricted to occupancy by Low Income Households, and sixty percent (60%) of the affordable housing units (or nine percent (9%) of the total development) shall be restricted to occupancy by Moderate Income Households.

4. In determining the number of affordable housing units required, any decimal fraction of less than 0.5 shall be rounded down to the nearest whole number, and any decimal fraction of 0.5 or more shall be rounded up to the nearest whole number.

5. In determining the number of affordable housing units required for decimal fractions of less than 0.5, the Developer shall be required to pay the partial unit payment set forth in Subsection 12.230.040.C below.

**B.** Rental residential development projects. A residential impact fee is hereby imposed on all developers of rental residential development projects as required under Section 12.230.040 of this Chapter, unless an alternative is proposed by the developer and approved by the City Manager. No application for a rezoning, tentative map, conditional use permit, design review, or building permit shall be approved, nor shall any such rental project be constructed or condominium conversion approved without compliance with this Chapter.

**C.** Nonresidential development projects. A Commercial Linkage Fee is hereby imposed on all developers of nonresidential development projects, as required under Section 12.230.040 of this Chapter, unless an alternative is proposed by the developer and approved by the City Manager.

**D.** Mixed-use development projects. Mixed use developments must comply with the requirements for nonresidential developments in the nonresidential portion of the development and must comply with the requirements for residential developments for the residential portion of the development.

### **12.230.040 Affordable Housing Impact Fees**

**A.** Affordable Housing Impact Fees are hereby established for all residential and nonresidential development projects, including residential impact fees for residential development projects and Commercial Linkage Fees for nonresidential development projects. The amount of the affordable housing impact fees shall be established and adjusted from time to time by resolution of the City Council. The impact fees shall not exceed the cost of mitigating the impact of residential or nonresidential development projects on the need for affordable housing in the City.

1. Residential Impact Fees for Rental Residential Projects. As provided in Section 12.230.030.B, all rental residential projects of five (5) or more units shall pay a Residential Impact Fee, unless an alternative is proposed by the developer and approved by the City Manager and subject to final approval by the City Council.

## ATTACHMENT 1

2. Commercial Linkage Fees. As provided in Section 12.230.030, all nonresidential development projects shall pay a Commercial Linkage Fee, unless an alternative is proposed by the developer and approved by the City Manager.

3. Residential Impact Fees for "For Sale Residential Projects." As provided in Section 12.230.030, and with the approval of the City Manager, for-sale residential projects may pay a Residential Impact Fee rather than provide onsite units.

**B.** Payment of the impact fees shall be due at the issuance of the building permit for the development. The fees shall be calculated based on the fee schedule in effect at the time the building permit is issued.

### 12.230.050 Exemptions

The requirements of this Chapter do not apply to:

**A.** Residential development projects of four (4) or fewer new housing units, the creation of four or fewer parcels, provided that no more than four dwelling units are allowed; or accessory dwellings created under Section 12.92.031 of the San Bruno Municipal Code.

**B.** Replacement construction that results in a net increase of four (4) or fewer new housing units.

**C.** Residential developments that already have more deed-restricted units that are affordable to very low, low and moderate income households than this Chapter requires, for the period required under this Chapter.

**D.** Residential or nonresidential development projects which fall within one or more of the following categories:

1. Residential or nonresidential development projects located on property owned by the state of California, the United States of America, or any of its agencies and used exclusively for governmental or educational purposes.

2. Any structure proposed to repair or replace a building that was damaged or destroyed by fire or other calamity, so long as the square footage and use of the building remains the same, and construction of the replacement building begins within one year of the damage's occurrence.

3. Residential or nonresidential development projects to the extent they have received a vested right to proceed without payment of Affordable Housing Impact Fees pursuant to state law, including those that are the subject of development agreements currently in effect with the City, if such development agreements were approved prior to the effective date of this Chapter and where such agreements expressly preclude the city from requiring payment of the Affordable Housing Impact Fee.

4. Residential or nonresidential development projects for which applications have been deemed complete prior to September 1, 2016.

5. Other uses that may be specified by resolution of the City Council.

### 12.230.060 Alternatives

**A.** Notwithstanding any contrary provisions of this Chapter, the City may determine that alternatives to the requirements in Section 12.230.030 of this Chapter as proposed by the developer in the affordable housing plan required by Section 12.230.070 of this Chapter, provided that the decision making body makes the findings in Section 12.230.070.E.

## ATTACHMENT 1

**B.** For-sale residential projects. As an alternative to construction of affordable housing units on-site or payment of an Residential Impact Fee, if approved by the City Manager, developers of for-sale residential development projects may propose to mitigate affordable housing impacts of such housing through alternative means, including but not limited to:

1. Provision of affordable units off site.
2. Dedication of land to the City suitable for construction of affordable units.
3. Purchase of existing units for conversion to affordable units.
4. Acquisition and rehabilitation of affordable units.
5. Increase in the total number of affordable housing bedrooms.
6. Provision of greater level of affordability.
7. Construction of second dwelling units.

**C.** The City Council may approve alternatives to the payment of Residential Impact Fees where the proposed alternative supports adopted Housing Element policies and goals and assists the City in meeting its state housing requirements.

**D.** Rental residential development projects. As an alternative to payment of housing impact fees, developers of rental residential development projects may propose to help mitigate the affordable housing impacts of such developments through an alternative mitigation program, including but not limited to:

1. Construction of affordable housing units on site or through an alternative mitigation program, such as the provision of off-site affordable units, donation of land for the construction of affordable units, or purchase of existing units for conversion to affordable units.

2. For rental residential developments proposing this alternative, six percent (6%) of the total development shall be restricted to occupancy by very low income households, and nine percent (9%) of the total development shall be restricted to occupancy by low and moderate income households.

3. If a developer proposes to provide affordable rental units, then, to ensure compliance with the Costa-Hawkins Rental Housing Act (Chapter 2.7 of Title 5 of Part 4 of Division 3 of the Civil Code), the City may only approve such a proposal if, as required by Civil Code Sections 1954.52(b) and 1954.53(a)(2), the developer agrees in a contract with the City to limit rents in accordance with Section 12.260.070 of this Chapter in consideration for a direct financial contribution from the City or a form of assistance specified in the State's Density Bonus Law (Chapter 4.3, commencing with Section 65915, of Division 1 of Title 7 of the Government Code). The developer may request that the City waive the Residential Impact Fee as a direct financial contribution to the rental residential development project.

**E.** Nonresidential development projects. As an alternative to payment of the Commercial Linkage Fees, developers of nonresidential development projects may propose to mitigate the affordable housing impacts of such development through the construction of affordable housing units on site or through an alternative mitigation program, as provided in subsections B or D of this section.

1. The City Council may adopt by resolution the percentage of affordable units needed to help mitigate the impact of nonresidential development projects on the need for affordable housing.

**F.** Any affordable rental or for-sale units proposed as an alternative shall be subject to the requirements described in Section 12.230.080 of this Chapter.

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### 12.230.070 Compliance Procedures

**A.** General. Approval of an Affordable Housing Plan and execution, recordation and implementation of an Affordable Housing Agreement shall be conditions of any approval of a residential or nonresidential development project, which includes the provision of affordable housing units as provided in Section 12.230.030 or 12.230.060. No Affordable Housing Plan is required if the developer proposes only to pay the Residential Impact Fee or commercial linkage fee.

**B.** Affordable Housing Plan. No application for approval of a residential or nonresidential development project which includes the provision of affordable housing units may be deemed complete until an Affordable Housing Plan containing all the elements identified below is submitted to the Community Development Department. The Affordable Housing Plan shall include:

1. The number, location, number of bedrooms and size of the proposed market rate and affordable housing units and the basis for calculating the number of affordable housing units;

2. The City may approve an increase in the number of units per acre in a residential development if the increase is consistent with state density bonus law per Section 65915 of the State Government Code. If the applicant is proposing to apply for a density bonus, the Affordable Housing Plan must include an analysis of the density bonus request;

3. A site plan depicting the proposed location of the initial affordable housing units;

4. A floor plan depicting the proposed location of the initial affordable housing units within a residential development;

5. The income levels to which each affordable housing unit will be made affordable;

6. The mechanisms that will be used to assure that the units remain affordable for the desired term, such as resale and rental restrictions, deeds of trust, and City's option to purchase and other documents;

7. For a phased residential development, a phasing plan that provides for the timely development of affordable housing units in each proposed phase of development;

8. The conceptual plan for initial sales or rental by Developer of the affordable housing units; and

9. Any proposed Alternative as provided in Section 12.230.060 along with information necessary to support the findings required in Section 12.230.060.B. for approval of such alternatives.

10. The City Manager may request additional information as reasonably needed to assist with evaluation of the Affordable Housing Plan under the standards of this Chapter.

**C.** The Affordable Housing Plan shall be processed concurrently with all other permits required for the residential or nonresidential development project. Before approving the Affordable Housing Plan, the City Council shall find that the Affordable Housing Plan conforms to this Chapter. A condition shall be attached to the first approval of any residential or nonresidential development project to require recordation of an affordable housing agreement,

## ATTACHMENT 1

as described in this subsection, prior to the approval of any final or building permit for the residential or nonresidential development project.

**D.** Findings - on-site affordable units. The City Council may approve or conditionally approve an affordable housing plan that proposes on-site construction of affordable units if the City Council determines, based on substantial evidence, that:

1. The proposed affordable units comply with the standards in Section 12.230.080, including without limitation compliance with Section 12.230.080.B requiring that the affordable units be made available for occupancy concurrently with the market-rate units; and

2. The affordable units will help mitigate the impact of the project on the need for affordable housing.

**E.** Findings - off-site affordable units. If a developer proposes off-site affordable housing units or any other alternative in the Affordable Housing Plan, the City Manager may approve, conditionally approve or reject any alternative proposed by a developer subject to final approval by the City Council in its discretion. Any approval or conditional approval shall be based on a finding that:

1. Financing or a viable financing plan, which may include public funding sources, is in place for the proposed affordable housing units;

2. The proposed location is suitable for the proposed affordable housing, is consistent with the Housing Element, General Plan, and Zoning Ordinance, and will not tend to cause residential segregation; and

3. The net cost of the alternative is at least equal to the net cost to provide affordable housing units;

4. The alternative does not detract from the City's program to meet its housing goals and obligations under California Housing Law (Government Code Section 65580 and following) and California Community Redevelopment Law (Health and Safety Code Section 33000 and following).

**F.** Affordable Housing Agreement. To ensure compliance with the approved Affordable Housing Plan, an affordable housing agreement acceptable to the Community Development Director or designee shall be recorded against the residential or nonresidential development project prior to approval of any final, or issuance of any building permit, whichever occurs first. The affordable housing agreement shall specify the number, type, location, size, phasing, and terms of affordability of all affordable units, provisions for income certification and screening of potential purchasers or renters of units, and resale control mechanisms, including the financing of ongoing administrative and monitoring costs, consistent with the approved Affordable Housing Plan, as determined by the City Manager or designee, and subject to final approval by the City Council.

**G.** The City Manager may adopt affordable housing guidelines consistent with this Chapter and the Housing Element for the purpose of carrying out the administration of this Chapter and may update those guidelines periodically as required.

### **12.230.080 Affordable Housing Unit Standards**

**A.** All affordable units provided pursuant to Sections 12.230.030 and 12.230.060 shall be comparable to the overall quality of construction to market-rate units in the same housing development as follows:

## ATTACHMENT 1

1. The exterior appearance of the affordable units shall be compatible with that of market-rate units.

2. Interior finishes and amenities may not differ from those provided in the base model market rate units.

3. The number of bedrooms in the affordable units shall be comparable to the average number of bedrooms in the market-rate units, and the affordable units shall be reasonably dispersed within the residential development, with unit locations comparable to those of the market-rate units, subject to review and approval by the Community Development Director.

4. The affordable units shall have the same amenities as the market rate units, including the same access to and enjoyment of common open space, parking, storage, and other facilities in the residential development, provided at an affordable rent as defined in Section 12.230.010 or at affordable ownership cost as defined in Section 12.230.010.

**B.** Affordable units provided pursuant to Sections 12.230.030 and 12.230.060 shall be made available for occupancy concurrently with the market-rate units. For the purposes of this subsection, "concurrently" means that the City may not issue building permits for more percent (50%) of the market-rate units until it has issued building permits for all of the affordable units, and the City may not approve any final inspections or certificates of occupancy for more than fifty percent (50%) of the market-rate units until it has issued final inspections or certificates of occupancy for all of the affordable units.

**C.** All affordable units provided pursuant to Sections 12.230.030 and 12.230.060 shall be subject to a resale restriction, deed of trust, and/ or regulatory agreement recorded against the property for execution by the City Manager, in a form approved by the City Attorney, to ensure the continued affordability of the affordable units.

1. Affordable housing units produced under this Chapter shall be legally restricted to occupancy by Households of the income levels for which the units were designated for a period of not less than fifty-five (55) years for rental units and forty-five (45) years for owner-occupied units.

2. To the extent permitted by state and federal law, preferences will be given to those Households where at least one member in the Household lives or works in San Bruno or works for a school district serving the residents living in the City, except for those deemed ineligible due to conflict of interest noted below.

3. Conflict of Interest. The following individuals are ineligible to purchase or rent certain affordable housing units: (i) Elected or appointed City officials (including their spouse and dependents) who participated in the approval process for a project that included the affordable housing units (ii) the project applicant and its officers and employees (and their spouse and dependents), and (iii) the project owner and its officers and employees (and their spouse and dependents).

4. Any household that occupies an affordable unit must occupy that unit as its principal residence, unless otherwise approved in writing for rental to a third party for a limited period of time due to household hardship, as determined by the City.

5. No household may begin occupancy of an affordable unit until the household has been determined to be eligible to occupy that unit by the community development director or designee. The Community Development Director may from time to time adopt guidelines for determining household income and affordable housing cost, determining buyer eligibility, monitoring, and relevant administrative provisions.

## ATTACHMENT 1

6. Officials, employees, or consultants of the City and members of City boards and commissions shall comply with all applicable laws, regulations, and policies relating to conflicts of interest as to their eligibility to develop, construct, sell, rent, lease, occupy, or purchase an affordable unit.

### **12.230.090 Affordable Owner-Occupied Units**

**A.** Sale to Eligible Households. Owner-occupied units will be offered to eligible households at a sales price set so that the eligible household will pay an affordable ownership cost. The developer shall certify each prospective purchaser's Income to the City or City's designee and obtain approval of the household prior to close of escrow. The developer must obtain and review documents that demonstrate the prospective owner's total income and assets and submit such information on a form approved by the City.

**B.** Initial Sales Price. The initial sales price of the affordable housing unit shall be set by the City so that the eligible household will pay an affordable ownership Cost. The City shall respond to a written request by developer and provide developer with a good-faith estimate of the initial sales price during pre-development.

**C.** Deed Restrictions. Deed restrictions provided by the City, recorded against title to the affordable housing unit, and secured by a deed of trust shall be required as condition of sale for all owner-occupied affordable housing units and will include, but are not limited to, the City's or its designee's option to purchase, resale restrictions, occupancy requirements, payment of penalty for any default, and procedures and policies regarding changes in title. Deed restrictions must be approved by the City Attorney prior to close of escrow.

**D.** Administration. The Developer or subsequent seller shall pay all administrative costs associated with the sale of the for sale affordable housing units, including for buyer review and qualification, and the review and processing of documents associated with the transaction.

### **12.230.100 Affordable Rental Units**

**A.** Non-Discrimination. When selecting tenants, the owners of Affordable housing units shall comply with all fair-housing laws, rules, regulations, and guidelines. The owner shall apply the same rental terms and conditions to tenants of affordable housing units as are applied to all other tenants, except as required to comply with this Chapter or with other applicable government programs.

**B.** Annual Report. The owner shall submit an annual report summarizing the occupancy of each affordable housing unit for the year, demonstrating the income-eligibility of the tenant. The City Manager may require additional information to confirm household income and rental price of the unit if he or she deems necessary. The City Council may establish and charge the owner or operator of the rental residential development an annual fee to cover the costs of this monitoring. The fee will be added to the Master Fee Schedule by City Council resolution.

**C.** Periodic Audit. The City shall have the right to periodically audit the information supplied to the City for the annual report if deemed necessary to ensure compliance with this Chapter. In addition, owners of affordable housing units shall cooperate with any audits conducted by the City, State agencies, Federal agencies, or their designees.

**D.** Change in Income. If, after moving into an affordable housing unit, a tenant's household income exceeds the limit for that unit, the tenant household may remain in the unit as long as his or her household income does not exceed 120 percent of the income limit. Once the tenant's income exceeds 120 percent of the income limit, the tenant shall be given one year's

## ATTACHMENT 1

notice to vacate the unit, or the next available market rate unit in the residential development shall be offered as an affordable housing unit. The owners of the residential development are responsible for notifying the City of such changes in income and documenting the process by which the existing tenant will be removed or the next available unit shall be offered as an affordable housing unit.

### **12.230.110 Administrative Relief**

**A.** As part of an application for the first approval of a residential or nonresidential development project, a developer may request that the requirements of this Chapter be waived or modified by the City Council, based upon a showing that applying the requirements of this Chapter would result in an unconstitutional taking of property or would result in any other unconstitutional result, or because there is no reasonable relationship between the impact of the development and the need for affordable housing. concurrently

1. Any request for a waiver or modification shall be submitted with the project application. The developer shall set forth in detail the factual and legal basis for the claim, including all supporting technical documentation.

2. Any request for a waiver or modification based on this Section shall be reviewed and considered at the same time as the project application. The City Council may from time to time establish by resolution a processing fee for review of any request for a waiver or modification.

**B.** The waiver or modification may be approved only to the extent necessary to avoid an unconstitutional result, based upon legal advice provided by or at the behest of the City Attorney, after adoption of written findings, based on legal analysis and the evidence. If a waiver or modification is granted, any change in the project shall invalidate the waiver or modification, and a new application shall be required for a waiver or modification pursuant to this Section.

### **12.230.120 Affordable Housing Fund**

**A.** There is hereby established in the City of San Bruno a separate "Affordable Housing Fund," pursuant to Section 66006 of the California Government Code. All Affordable Housing Impact Fees or other funds collected under this Chapter shall be deposited into the City's Affordable Housing Fund.

**B.** The monies in the Affordable Housing Fund and all earnings from investment of the moneys in the Fund shall be expended exclusively to provide housing affordable to extremely low income, very low income, lower income, and moderate income households in the City, consistent with the goals and policies contained in the City's Housing Element and the purposes for which the fees were collected, and for administration and compliance monitoring of the affordable housing program.

**C.** The City Council may, from time to time, adopt guidelines for expenditure of monies in the affordable housing fund.

### **12.230.130 Enforcement**

**A.** Payment of the Affordable Housing Impact Fee is the obligation of the developer for a residential or nonresidential development project. 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 or development approval.

**ATTACHMENT 1**

**B.** The City Attorney shall be authorized to enforce the provisions of this Chapter and all affordable housing agreements, regulatory agreements, and all other covenants or restrictions placed on affordable units, by civil action and any other proceeding or method permitted by law.

**C.** Failure of any official or agency to fulfill the requirements of this Chapter shall not excuse any developer or owner from the requirements of this Chapter. No permit, license, map, or other approval or entitlement for a residential development shall be issued, including without limitation a final inspection or certificate of occupancy, until all applicable requirements of this Chapter have been satisfied.

**D.** The remedies provided for in this Section shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.

**Section 4.** Adoption of this ordinance is found to be categorically exempt from the California Environmental Quality Act because the adoption of this resolution is not a project, in that it is a government funding mechanism which does not involve any commitment to any specific project (CEQA Guidelines Section 15378(b)(4)), and because it can be seen with certainty that there is no possibility that the fees may have a significant effect on the environment, in that this ordinance contains no provisions modifying the physical design, development, or construction of residences or nonresidential structures CEQA Guidelines Section 15061(b)(3)).

**Section 5.** If any section, subsection, sentence, clause or phrase of the ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it should have adopted the ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

**Section 6.** The City Clerk shall publish this ordinance in accordance with applicable law.

**Section 7.** Effective date. This ordinance shall take effect thirty (30) days from the date of its passage. Before expiration of fifteen (15) days after its passage, this ordinance shall be published in the San Mateo Daily Journal, a newspaper of general circulation published and printed in the County of San Mateo and circulated in the City of San Bruno.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM

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

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**ATTACHMENT 1**

I hereby certify that the foregoing Ordinance No. \_\_\_\_\_ was introduced on \_\_\_\_\_, and adopted at a regular meeting of the San Bruno City Council on \_\_\_\_\_, by the following vote:

AYES: COUNCILMEMBERS: \_\_\_\_\_

NOES: COUNCILMEMBERS: \_\_\_\_\_

ABSENT: COUNCILMEMBERS: \_\_\_\_\_

City Clerk: \_\_\_\_\_

ATTACHMENT 2

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN BRUNO  
ESTABLISHING AFFORDABLE HOUSING IMPACT FEES FOR RESIDENTIAL AND  
NONRESIDENTIAL DEVELOPMENT PROJECTS AND ESTABLISHING A  
STANDARDIZED LIST OF USES AND EXEMPTIONS WITH RESPECT TO THE  
PAYMENT OF NONRESIDENTIAL HOUSING IMPACT FEES**

**WHEREAS**, on April 14, 2015 the City Council of the City of San Bruno adopted its 2015-2023 Housing Element which contemplates, among other things, an ordinance to adopt affordable housing impact fees as a mechanism to increase the supply of affordable housing in the City, pursuant to Housing Element Programs 3-J and 5-J;

**WHEREAS**, to implement the affordable housing goals, policies and programs of the City's 2015-2023 Housing Element, the City Council has considered and introduced on this same date an affordable housing ordinance that, among other things, authorizes the imposition of affordable housing impact fees for certain residential and nonresidential development projects to mitigate the impact of such projects on the need for affordable housing in the City (the "Affordable Housing Ordinance");

**WHEREAS**, to ensure that future development projects mitigate their impact on the need for affordable housing in San Bruno, and to ensure that any adopted housing impact fees do not exceed the actual affordable housing impacts attributable to the development projects to which the fees relate, the City agreed to participate in the preparation of a nexus study through the countywide 21 Elements collaboration project;

**WHEREAS**, the City has received and considered reports from Strategic Economics and Vernazza Wolfe Associates, Inc. dated October 2015 entitled "Residential Impact Fee Nexus Study" and "Commercial Linkage Fee Nexus Study" (together, the "Nexus Study");

**WHEREAS**, the Nexus Study uses widely applied, appropriate methodology to determine the maximum amount needed to fully mitigate the need for affordable housing created by residential and nonresidential development;

**WHEREAS**, to ensure that development projects remain economically feasible, the recommended housing impact fees as shown in the attached Exhibits A and B do not exceed the justified fees needed to mitigate the actual affordable housing impacts attributable to the development projects to which the fees relate, as determined by the Nexus Study;

**WHEREAS**, the Affordable Housing Ordinance authorizes the City Council to adopt by resolution affordable housing impact fees for residential and nonresidential development, and the City Council desires to do so;

**WHEREAS**, the Affordable Housing Ordinance authorizes the City Council to adopt by resolution a standardized list of specific uses that shall be exempt from the payment of housing impact fees, and the City Council desires to do so;

## ATTACHMENT 2

**WHEREAS**, the Affordable Housing Ordinance authorizes the City Council to adopt by resolution the percentage of affordable units needed to fully mitigate the impact of residential or nonresidential development projects on the need for affordable housing, and the City Council desires to do so;

**WHEREAS**, the Affordable Housing Ordinance authorizes the City Council to adopt by resolution a fee for processing applications for waivers from or modifications to the housing impact fees, and the City Council desires to do so;

**WHEREAS**, at least ten 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 service for which the fee or service charge is levied and the revenue sources anticipated to provide the service, including general fund revenues, in accordance with Government Code Section 66019;

**WHEREAS**, at least fourteen days prior to the date this resolution is being heard, notice was provided to any persons or organizations who had requested notice, in accordance with Government Code Section 66019;

**WHEREAS**, notice of the hearing on the proposed fee was published twice in the manner set forth in Government Code Section 6062a as required by Government Code Sections 66004 and 66018; and

**WHEREAS**, the City Council has reviewed the information contained in this Resolution and the accompanying staff report and any attachments at a meeting held on September 13, 2016.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of San Bruno as follows:

1. The foregoing recitals are true and correct and incorporated into this Resolution by this reference.
2. The findings of the Nexus Study have been considered and are hereby incorporated into this Resolution by this reference.
3. The facts and substantial evidence in the record establish that there is a reasonable relationship between the need for affordable housing and the impacts of the development described in the Nexus Study for which the corresponding fee is charged, and that there is also a reasonable relationship between the use of the affordable housing impact fee and the type of development for which the fee is charged, as is described in more detail in the Nexus Study.
4. The Nexus Study sets forth cost estimates, in 2015 dollars, that are reasonable for constructing affordable housing, and the fees expected to be generated by new development will not exceed these costs.

**ATTACHMENT 2**

5. The City Council hereby adopts those affordable housing impact fees for residential development projects shown on Exhibit "A", attached hereto and incorporated by reference herein.

6. The City Council hereby adopts those affordable housing impact fees for nonresidential development projects shown on Exhibit "B", attached hereto and incorporated by reference herein.

7. All housing impact fees collected shall be deposited into the City's Affordable Housing Fund to be used to increase and preserve the supply of housing affordable to households of extremely low, very low, low, and moderate incomes (including necessary administrative costs).

8. The City Council hereby adopts the "Land Use Exemptions" set forth in Exhibit "C", attached hereto and incorporated by reference herein.

9. The City Council may review affordable housing impact fees from time to time. For any annual period during which the City Council does not review the housing impact fee, fee amounts shall be adjusted once by the Community Development Director based on the percentage increase in the Engineering News-Record Construction Cost Index for San Francisco, California.

10. The City Council hereby determines that the following percentages of affordable units will mitigate the impacts of residential development on the need for affordable housing:

<b>Required Affordable Units per Residential Project*</b>			
	Single Family	Condominium	Apartment
<b>Very Low Income</b>	-	-	6%
<b>Low Income</b>	6%	6%	9%
<b>Moderate Income</b>	9%	9%	-
<b>TOTAL</b>	15%	15%	15%

\*Definitions of project types and affordability categories are contained in the Nexus Study.

11. The City Council further determines that the following number of affordable units will mitigate the impacts of nonresidential development on the need for affordable housing:

<b>Required Affordable Units per 100,000 sf in a Nonresidential Project*</b>			
	Hotel	Retail, etc.	Office, R&D, Medical
<b>Very Low Income</b>	1	1	1
<b>Low Income</b>	1	1	1
<b>Moderate Income</b>	1	1	1
<b>TOTAL</b>	3	3	3

**ATTACHMENT 2**

\*Definitions of project types and affordability categories are contained in the Nexus Study.

12. The City Council hereby adopts a fee for processing applications for waivers from or modifications as shown on Exhibit "D", attached hereto and incorporated by reference herein.

13. The City Council finds that all of the housing impact fees adopted pursuant to this Resolution do not exceed the actual affordable housing impacts of the development projects to which those housing impact fees relate, as further set forth in the Nexus Study.

14. Adoption of this Resolution is exempt from the California Environmental Quality Act because the adoption of this resolution is not a project, in that it is a government funding mechanism which does not involve any commitment to any specific project (CEQA Guidelines Section 15378(b)(4)), and because it can be seen with certainty that there is no possibility that the fees may have a significant effect on the environment, in that this resolution contains no provisions modifying the physical design, development, or construction of residences or nonresidential structures (CEQA Guidelines Section 15061(b)(3)).

15. This Resolution shall take effect on MMM DD, 2016, but only if the Affordable Housing Ordinance is adopted and effective prior to that date.

**THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED** by the City Council of the City of San Bruno, at a regular meeting of said City Council held on \_\_\_\_\_, 2016, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of San Bruno

ATTEST: \_\_\_\_\_  
City Clerk of the City of San Bruno

ATTACHMENT 2

EXHIBIT "A"

**Housing Impact Fees for Residential Development Projects**

\*Residential impact fees for residential projects shall be calculated using the net new square footage of Residential Floor Area for the dwelling unit to which the housing impact fee relates.

As used in the Nexus Study, "Residential Floor Area" for Single-Family Detached Homes, Townhomes, Duplexes, and Triplexes includes all horizontal areas of the several floors of such buildings measured from the exterior faces of exterior walls or from the center line of party walls separating two (2) buildings, minus the horizontal areas of such buildings used exclusively for parking.

As used in the Nexus Study, "Residential Floor Area" for Apartments and Condominiums includes all horizontal areas of the several floors of such buildings measured from the exterior faces of exterior walls or from the center line of party walls separating two (2) buildings, minus the horizontal areas of such buildings used exclusively for parking, elevators, stairwells or stairs between floors, hallways, and between-unit circulation.

Fees shall be paid that are in effect at the time of issuance of the building permit for the residential development, based on the effective rate at the time of building permit issuance.

<b>Type of Residential Unit</b>	<b>Fee per Square Foot of Net New Residential Floor Area</b>
Single-Family Detached Home	<b>\$25.00</b>
Apartments and Condominiums	<b>\$20.00</b>

ATTACHMENT 2

EXHIBIT "B"

**Commercial Linkage Fees for Nonresidential Development Projects**

\*All commercial linkage fees for nonresidential projects, including new construction and conversion of a residential use to a nonresidential use shall be calculated using the gross floor area of net new nonresidential space, excluding structured parking.

<b>Nonresidential Use</b>	<b>Fee per Square Foot of Net New Gross Floor Area</b>
Hotel	<b>\$5.00</b>
Retail, Restaurants and Services	<b>\$5.00</b>
Office, Medical Office and Research and Development Uses	<b>\$5.00</b>

## ATTACHMENT 2

### EXHIBIT "C"

#### LAND USE EXEMPTIONS

In accordance with Section 12.230.050 of the Affordable Housing Ordinance, the following specific nonresidential uses are exempt from the payment of the housing impact fee:

1. Public Uses and Quasi-Public Uses, as defined in Section 12.230.020 of the Affordable Housing Ordinance, including, but not limited to, public schools, parks, playgrounds, hospitals, and administrative and service facilities;
2. Open Space Uses, as defined by Section 12.96.170 of the San Bruno Zoning Code, including, but not limited to, public and private parks, schools and cemeteries;
3. Child Care Centers, including Family Child Care Homes;
4. Recreational facilities for public use and enjoyment within commercial or industrial developments;
5. Housing for the elderly, nursing homes, rest homes, and residential care facilities, as defined by Section 12.80 of the San Bruno Zoning Code; and
6. Public and private schools.

**ATTACHMENT 2**

**EXHIBIT "D"**

**FEE FOR WAIVERS AND MODIFICATIONS**

Waivers and Modifications of Requirements of Affordable Housing Ordinance:

Initial Deposit of \$1,000

To be charged on a cost recovery basis, where the staff charges their time and other costs against the initial deposit, recovering the actual cost of project review.

ATTACHMENT 3

RESOLUTION NO. 2016-10

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN BRUNO  
RECOMMENDING THAT THE CITY COUNCIL ADOPT AN AFFORDABLE HOUSING  
ORDINANCE AND HOUSING IMPACT FEES FOR RESIDENTIAL AND  
NONRESIDENTIAL DEVELOPMENT PROJECTS**

**WHEREAS**, on April 14, 2015 the Planning Commission of the City of San Bruno adopted its 2015-2023 Housing Element which contemplates, among other things, an ordinance to provide a mechanism to increase the supply of affordable housing in the City pursuant to Housing Element Programs 3-J and 5-J;

**WHEREAS**, high land costs, the dissolution of the redevelopment agencies, cutbacks in federal and state funding for affordable housing and court cases that restrict the ability of cities to require affordable housing in new development have resulted in fewer people being able to afford to either live or continue to live in San Bruno and severely constrained the City's ability to address the City's affordable housing needs through its existing Below Market Rate (BMR) Housing ordinance, adopted in 2008;

**WHEREAS**, to ensure that future development projects mitigate their impact on the need for affordable housing in San Bruno, and to ensure that any adopted housing impact fees do not exceed the actual affordable housing impacts attributable to the development projects to which the fees relate, the City participated in the preparation of a nexus study through the San Mateo County-wide 21 Elements collaboration project;

**WHEREAS**, the City has received and considered reports from Strategic Economics and Vernazza Wolfe Associates, Inc. dated October 2015 entitled "Residential Impact Fee Nexus Study" and "Commercial Linkage Fee Nexus Study" (together, the "Nexus Study");

**WHEREAS**, on April 19, 2016, the City Council held a Study Session to review the draft Nexus Study reports and directed City staff to prepare an affordable housing ordinance (the "Affordable Housing Ordinance") to replace the existing BMR ordinance and to propose reasonable impact fees for residential and nonresidential development;

**WHEREAS**, the Affordable Housing Ordinance would authorize the City Council to adopt by resolution housing impact fees for residential and nonresidential development projects to help mitigate the impact of such projects on the need for affordable housing in the City, a list of uses that shall be exempt from the payment of affordable housing impact fees, the percentage of affordable units needed to fully mitigate the impact of residential or nonresidential development projects on the need for affordable housing, and a fee for processing applications for waivers from or modifications to the housing impact fees;

**WHEREAS**, the adoption of the Affordable Housing Ordinance and impact fees is not a project under the California Environmental Quality Act (CEQA) because it is a government funding mechanism which does not involve any commitment to any specific project (CEQA Guidelines Section 15378(b)(4)), and because it can be seen with certainty that there is no possibility that the fees may have a significant effect on the environment, in that impact fees contain no provisions modifying the physical design, development, or construction of residences or nonresidential structures (CEQA Guidelines Section 15061(b)(3)); and

**WHEREAS**, on August 16, 2016, the Planning Commission held a duly noticed public hearing to consider the draft Affordable Housing Ordinance and affordable housing impact fees, the accompanying staff report and attachments, to take public testimony, and to make a recommendation on this matter to the City Council.

**NOW, THEREFORE, BE IT RESOLVED** by the Planning Commission of the City of San Bruno as follows:

1. The Planning Commission has reviewed and considered the findings of the Residential Impact Fee Nexus Study, Commercial Linkage Fee Nexus Study, the proposed Affordable Housing Ordinance, and the impact fees for residential and nonresidential projects.
2. The Planning Commission determined that the Affordable Housing Ordinance and impact fees are consistent with the City of San Bruno's 2015 Housing Element of the General Plan.
3. The Planning Commission recommends that the City Council adopt the Affordable Housing Ordinance subject to minor changes to effectuate the intent of the ordinance and the Housing Element, and appropriate affordable housing impact fees for residential and nonresidential development projects, shown in Exhibit 1.
4. The Planning Commission recommends that the City Council repeal the existing Below Market Rate Housing Ordinance upon adoption of this Affordable Housing Ordinance.
5. The Planning Commission directs the Secretary of the City of San Bruno Planning Commission to forward to the City Council a certified copy of this resolution together with an attested copy.

8/18/16

Dated:

*Mary Lou Johnson*  
Planning Commission Chair

**ATTEST:**

*David Woltering*  
Planning Commission Secretary

**APPROVED AS TO FORM:**

*Maura Joffe*  
City Attorney

I, David Woltering, Planning Commission Secretary, do hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the Planning Commission of the City of San Bruno on this 16<sup>th</sup> day of August 2016, by the following vote:

AYES: Mary Lou Johnson, Perry Peterson, Joe Sammut, Sujendra Mishra

NOES: None

ABSENT: Rick Biasotti, Marie Kayal, Kevin Chase

## EXHIBIT 1

### Recommended Affordable Housing Impact Fees

The Planning Commission recommends the affordable housing impact fees shown in the table below as appropriate fee levels for consideration by the City Council.

Development Type	Recommended Fees (per square foot)	Minimum Project Size
Single Family	\$25	5 or more net new units for residential projects
Condominium	\$20	
Apartment	\$20	
Office	\$5	All new commercial development
Retail	\$5	
Hotel	\$5	

ATTACHMENT 4

*"The City With a Heart"*

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Rick Biasotti, *Chair*  
Marie Kayal, *Vice Chair*  
Kevin Chase  
Mary Lou Johnson  
Sujendra Mishra  
Perry Petersen  
Joe Sammut

**DRAFT MINUTES  
PLANNING COMMISSION MEETING**

**August 16, 2016**

**7:00 p.m.**

**Meeting location: Senior Center, 1555 Crystal Springs Road, San Bruno**

**CALL TO ORDER at 7:06 pm.**

**ROLL CALL**

	<u>Present</u>	<u>Absent</u>
Chair Biasotti		X
Vice Chair Kayal		X
Commissioner Chase	X arrived 7:15	
Commissioner Johnson	X	
Commissioner Mishra	X	
Commissioner Petersen	X	
Commissioner Sammut	X	

**STAFF PRESENT:**

Planning Division:

Community Development Director: David Woltering  
Senior Planner: Michael Smith  
Long Range Planning Manager: Mark Sullivan  
Contract Assistant Planner: Matt Jones

**ROLL CALL**

**PLEDGE OF ALLEGIANCE:** Miriam Schalit

- 1. APPROVAL OF MINUTES** – None
- 2. COMMUNICATION** – Introduced new Associate Planner Megan Wooley-Ousdahl, AICP.

3. PUBLIC COMMENT – None

4. ANNOUNCEMENT OF CONFLICT OF INTEREST – None

5. PUBLIC HEARINGS:

**D. Affordable Housing Ordinance and Impact Fees (City-wide)**

Receive report, provide feedback to staff and take public testimony on Residential Impact Fee and Commercial Linkage Fee Nexus Studies demonstrating the impact of new housing or jobs on the need for affordable housing in San Bruno and proposing permissible and reasonable fee levels, and make a recommendation to the City Council regarding adoption of an affordable housing ordinance to replace Chapter 12.230 of the San Bruno Municipal Code and impact fees.

*Long Range Planning Manager Sullivan:* Presented Staff Report.

Questions for Staff

*Commissioner Mishra:* Concerned that if the intent of ordinance is to build more affordable housing, the housing impact fee shouldn't be on the lower end of the range, it should be as high as the market will allow so that developers would build housing. Creating "zones" of low income housing should be avoided.

*Long Range Planning Manager Sullivan:* The Nexus study calculated the maximum justifiable fee. A project must be economically feasible for a developer to proceed. The fee should be enough to help meet the need but not too much to discourage development in the City.

*Community Development Direct Woltering.* The City can require construction of affordable units in for-sale housing developments. The intent is to include and scatter affordable units, not cluster in one project, in one area. The challenge is in rental housing developments, since the Palmer court decision invalidated the City's current affordable housing requirements for rental housing. The recommended fee is initially set a little lower. The intent is to reevaluate the fees during the development impact fee study later this year, which will study potential impact fees needed for other purposes, such as traffic.

*Commissioner Johnson:* Asked staff to address the pro and cons of having higher impact fees.

*Long Range Planning Manager Sullivan:* Projects become economically infeasible as the fee is too high and could potentially deter development.

*Commissioner Petersen:* Asked if the report considers what the effects of the recommended fees are on the City, by comparison to other nearby cities. He would support lower impact fees, because they would be passed on to the consumer, and consider increasing the fee in the future. He is concerned that having higher impact fees would drive away developers, at which point it would be difficult to get them back.

*Commissioner Johnson:* Supports Commissioner Petersen's comments, because when a fees is raised, someone absorbs it in the end – typically the consumer. Commissioner Johnson stated

that Commissioner Chase was not feeling well and left the meeting early. She read a note from Commissioner Chase stating that he is in support of recommending to the City Council adoption of the ordinance and recommended fees.

*Director Woltering:* The next steps would be for the City Council to receive the Commission's recommendation on adoption of this program and fees.

*Commissioner Petersen:* Developers are not opposed to impact fees, but also they research to see if the fees are reasonable.

*Long Range Planning Manager Sullivan:* The fees being proposed are roughly equivalent to the BMR fees already established. The commercial fee proposed at \$5 per square foot is at the low end of the range for the area.

Public Comment - None

### **Motion to adopt resolution 2016-10 to forward to the City Council**

**Commissioners Petersen/Mishra**

**Roll Call Vote: 5-0**

AYES:	Commissioners Sammut, Johnson, Mishra, and Petersen
NOES:	None
ABSTAIN:	None
*	

## **6. DISCUSSION**

### **A. CITY STAFF DISCUSSION:**

Director Woltering: Staff is requesting volunteers for the September ARC meeting – Commissioners Chase, Johnson, and Biasotti identified.

### **B. PLANNING COMMISSION DISCUSSION:**

*Commissioner Petersen:* Asked for a status of The Plaza at 406-418 San Mateo Avenue. Will there be a provision in the permit for setting benchmarks at neighboring properties to monitor the elevations.

Director Woltering: Staff is working with the applicant's representative for issuance of the Shoring and De-watering permit. Staff anticipates issuing that permit by the end of the month. Staff is working on a traffic control plan and pedestrian safety around that site. There will be benchmarks established on adjoining properties.

## **8. ADJOURNMENT**

Meeting was adjourned at 9:43 pm