



**City Council Agenda Item
Staff Report**

CITY OF SAN BRUNO

DATE: November 22, 2016
TO: Honorable Mayor and Members of the City Council
FROM: David Woltering, Community Development Director
SUBJECT: Waive Second 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

BACKGROUND

On November 9, 2016, the City Council held a public hearing, waived the first reading and introduced the attached ordinance amending and replacing Section 12.230 of the Municipal Code to establish an affordable housing program, including residential impact fees and commercial linkage fees. The ordinance is presented now for second reading and adoption. Should the Council waive the second reading and adopt the ordinance at this meeting, the ordinance would go into effect 60 days after the second reading on January 22, 2017.

A draft resolution stating the amount of the fees and method of calculation was also considered at the meeting on November 9th. The City Council determined that the recommended linkage fees for office and hotel development projects should be increased and directed staff to conduct further research including evaluating several fee scenarios. Staff will present the additional analysis and a modified fee resolution for City Council consideration at a Public Hearing on December 13, 2016.

The ordinance would replace the existing Below Market Rate (BMR) Housing program with more effective tools to help mitigate the impacts of nonresidential development and new market-rate housing on the need for affordable housing. 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.

The complete analysis of the proposed affordable housing ordinance and impact fee resolution is contained in the November 9, 2016 City Council staff report and attachments.

DISCUSSION

The City Council accepted all of staff's recommendations pertaining to the ordinance that were presented at the November 9, 2016 Public Hearing. The attached ordinance remains unchanged from the draft ordinance introduced by the City Council at the first reading on November 9, 2016.

Adoption of the ordinance at this meeting would occur before the City Council considers adoption of the resolution setting the fee amounts. Separating the two approvals is permitted by state law and will have no effect on either the ordinance or resolution adopted by the City Council. Staff recommends adoption of the ordinance now because it must be in effect before the fees set by the resolution can be imposed. Moving the approval process forward expeditiously will ensure that the fees are in place for several development applications that are anticipated in the next few months. If the City Council adopts the ordinance at this meeting and the fee resolution is adopted on December 13, 2016, the fees would take effect on February 11, 2017.

The adoption of an affordable housing ordinance 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 this approval were a project, it 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 contains no provisions modifying the physical design, development, or construction of residences or nonresidential structures (CEQA Guidelines Section 15061(b)(3)).

FISCAL IMPACT

The adoption of the ordinance does not set the specific dollar amounts of the impact fees. The fees will be established by a separate resolution to be considered at a future meeting. The exact amount of the fiscal impact is unknown due to the fact that it is dependent on the fee amounts 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.

ALTERNATIVES

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

RECOMMENDATION

Waive Second 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

DISTRIBUTION

None

ATTACHMENTS

1. Affordable Housing Ordinance and related information at:
www.sanbruno.ca.gov/gov/city_departments/commdev/housing/default.htm

DATE PREPARED

November 15, 2016

REVIEWED BY

_____ CM

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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.

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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.

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:

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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

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.

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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.

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

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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.

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- 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.
- 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

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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.

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.

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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.

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:

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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.

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

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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

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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.

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;

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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

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

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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 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.

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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 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

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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.

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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.

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.

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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 sixty (60) 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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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: _____

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NOES: COUNCILMEMBERS: _____

ABSENT: COUNCILMEMBERS: _____

City Clerk: _____



City Council Agenda Item Staff Report

CITY OF SAN BRUNO

DATE: November 22, 2016

TO: Honorable Mayor and City Council

FROM: Jimmy Tan, Public Services Director/City Engineer
Jim Burch, Deputy Public Services Director

SUBJECT: Waive Second Reading, and Adopt an Ordinance Adding Chapter 10.15 to the Municipal Code to Include Water Supply Cross-Connection and Backflow Prevention Standards

BACKGROUND:

A new ordinance adding Chapter 10.15 to the Municipal Code to include Water Supply Cross-Connection and Backflow Prevention Standards was introduced at the City Council meeting on October 25, 2016 for a first reading and public hearing. There were no public comments on the water supply cross-connection and backflow prevention standards at the City Council meeting.

Following the October 25, 2016 City Council meeting, staff received City Councilmember questions inquiring about the number of backflow devices citywide which require inspection, and the costs associated with those inspections. There are approximately 315 backflow devices installed throughout San Bruno out of nearly 12,000 water customers. The City works with San Mateo County Environmental Health Services to conduct inspections of approximately 50 of the 315 backflow devices annually. County annual costs are allocated to agencies based on the total number of service connections and not the number of backflow assemblies as the number of service connections relate more closely to the risk to the system and to the County's inspection costs. The cost for inspection services in 2015-16 was \$39,000 and staff anticipates expenditures of \$42,500 for similar work in 2016-17.

The State of California and San Mateo County Environmental Health Services require water purveyors such as the City of San Bruno to protect their public water supply systems from potential and actual contamination. To prevent contamination, backflow prevention assembly devices are installed where the public water system connects to the customer's residence or business. While modern plumbing fixtures have some built-in backflow protection measures such as air gaps in toilet fill valves, dishwashers, and other appliances, a certified backflow device is usually necessary for businesses and manufacturing facilities. Backflow devices have internal check valves that close if the water pressure from the City's supply lines should drop, which then prevents potentially contaminated water from flowing back into the City's system from the property. For example, a backflow assembly system would prevent water from swimming pools, irrigation, restaurants, and fire sprinkler systems that may contain contaminants to enter the City's drinking water system. Backflow devices need to be routinely inspected, and repaired or replaced if needed, to prevent a device failure, which could allow contaminants from the property into the drinking water system.

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The conditions likely to create a backflow event are common, such as a property owner or worker draining down a house or building to make a plumbing repair; a broken water main or distribution pipe; power outages; fire fighters using large quantities of water to extinguish a fire, or; any piece of equipment or process creating water pressures greater than the pressure in water distribution system. A single failed cross connection can contaminate the entire water supply in a distribution zone. If the City's water system were to become contaminated, the water in the area would need to be isolated, and the affected zone would be flushed out, treated, and tested. It can take crews several days or weeks to complete repairs, and then test and treat the water after an incident. During a repair, water service would be limited or halted dependent on the severity of the contamination. Water service would only be restored to the area after the Department of Health certifies the water to be safe.

The City initially determines when a cross connection backflow device is required when a property owner requests a building permit. The City's determination is primarily based on the operations of the facility and if the building requires a separate water line for fire sprinklers or irrigation. In general, cross-connection devices are required at most commercial, industrial, or manufacturing facilities that use chemicals, or generate potentially toxic or hazardous waste, as well as at large multi-unit residential buildings. Examples of facilities required to install cross-connection devices include nail salons, dry cleaners, medical and dental facilities, schools, prisons, restaurants, hotels, cemeteries, mortuaries, and properties with swimming pools.

The State Water Resources Control Board requires water agencies to complete annual inspections of every backflow device in their systems. At the May 10, 1976 City Council meeting, the City Council approved an agreement with between the City of San Bruno and San Mateo County for County inspectors to complete annual cross-connection inspection services and submit reports to the State. The contract remains in effect until either the City or County choose to terminate it. All inspection activities by the County, including enforcement and compliance, are coordinated and approved by City staff. If County inspectors determine that a backflow device needs to be repaired or replaced, the property owner is responsible to complete any repairs, which can range from \$3,000 to \$10,000 depending on the type of system.

While the City is complying with State backflow inspection, reporting, and enforcement requirements, none of these practices are currently codified in the Municipal Code. In June 2016, the California Water Resources Control Board updated the State Code of Regulations to encourage local water agencies adopt "operating rules or ordinances to implement the cross-connection program." Such an ordinance should designate the agency as the administrative and enforcement authority; explain and specify the provisions of an agency's backflow protection system; inspection, testing, maintenance record and reporting procedures; and how property owners are to test and maintain their backflow devices.

DISCUSSION:

Staff proposes a Cross-Connection Ordinance adding Chapter 10.15 to the San Bruno Municipal Code (Water Municipal Services). The purpose of the Ordinance is to protect the water supply from cross-connection and back flow contamination and incorporates all of the

elements to comply with the California Code of Regulations and to ensure the safety of the City's water supply. The principal provision designates the City of San Bruno as the program's Administrative Authority. San Mateo County Environmental Health Services Division will continue to inspect backflow prevention and cross-contamination devices and work with property owners to achieve compliance. The new ordinance provides the City with specific enforcement authority, including the ability to issue warnings, fines, and ultimately discontinuing water service if necessary to achieve compliance and avoid contamination.

The ordinance will not tangibly affect the City's practices, and the cross-connection program will continue operating as it is currently. City staff will continue reviewing development permit applications to determine if a backflow device is required. San Mateo County engineers will continue annual inspections and submit reports to the State. Property owners will still be responsible to maintain and repair their systems as needed by a certified cross-connection contractor.

During preparation of this Ordinance, staff learned that in 1976, the City Council adopted an ordinance (Ordinance No. 1268, attached for reference) regarding cross-connection devices, but the ordinance was never codified, for unknown reasons. Because that ordinance is now outdated and was never codified, the proposed ordinance will be considered a new addition to the Municipal Code.

The Cross-Connection Ordinance will take effect 30 days from the date of adoption by the City Council. The ordinance will be incorporated into the Municipal Code during the semi-annual supplemental update in April 2017, as the October 2016 supplemental was already published.

FISCAL IMPACT:

There is no new budget impact by adopting this ordinance. The City will continue reimbursing the County for annual inspections in an anticipated amount of \$42,500 which is funded from the 2016-17 Water Division Operating Budget.

ALTERNATIVES:

1. Provide policy direction on recommendations to the Ordinance or the cross-connection backflow program and direct that the proposed Ordinance be revised before introduction.
2. Do not introduce the Ordinance. The City would be out of compliance with Title 17 of the California Code of Regulations.

RECOMMENDATION:

Waive second reading, and adopt an Ordinance Adding Chapter 10.15 to the Municipal Code to include water supply cross-connection and backflow prevention standards.

ATTACHMENTS:

1. Proposed Ordinance
2. San Mateo County Environmental Health Services Cross-Connection Control Program Description

REVIEWED BY:

_____ CM
_____ ACM
_____ CA