

**CITY OF SAN MATEO
ORDINANCE NO. 2016-8**

**ADDING CHAPTER 23.61, "AFFORDABLE HOUSING COMMERCIAL LINKAGE FEE" TO
TITLE 23, OF THE SAN MATEO MUNICIPAL CODE**

WHEREAS, there is a shortage of affordable housing in the City of San Mateo as evidenced in the 2015-2023 Housing Element; and

WHEREAS, commercial development in the City of San Mateo brings additional workers to the City of San Mateo and therefore contributes to the need for affordable housing; and

WHEREAS, the City wishes to impose an affordable housing commercial linkage fee on commercial development to be contributed to the City's Affordable Housing Fund and used to fund the development of affordable housing in the City; and

WHEREAS, the City wishes to provide an option for developers to apply for a fee waiver when it can be demonstrated that a particular project will not add to the City's need for affordable housing; and

WHEREAS, the City of San Mateo wishes to exempt development that provides a public service, such as hospitals and schools, from payment of the affordable housing commercial linkage fee; and;

WHEREAS, the City Council has determined that the development of an area standard wage policy would enhance local job opportunities and increase wages of workers and residents in the City; and

WHEREAS, the City has determined that the payment by commercial development projects of "Area Standard Wages" which are defined as the general prevailing wage determinations for San Mateo County as made by the State of California Director of the Department of Industrial Relations, will increase certain households' ability to afford housing in the County, thereby reducing the impact of those commercial development projects on the need for affordable housing in the City; and

WHEREAS, the City has provided the notice required by Government Code sections 66016-66019 and 6062a;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN MATEO, CALIFORNIA, ORDAINS that:

Section 1. 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 the City of San Mateo 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 very low, lower, and moderate income households, as evidenced by the following findings in the City's 2015 – 2023 Housing Element:

(1) Average market rents increased 24-31% between 2010-2013.

(2) More than 55% of low income renters and owners are cost burdened by paying more than 30% of their income for their housing; and 90% of very low income renters and 60% of very low income owners pay more than 50% of their income for their housing

(3) Only 28.9% of the homes are affordable to purchase for median income households in the San Francisco, San Mateo County Division Metropolitan Statistical Area, which is the least affordable area in the state.

(b) As provided in the Housing Element of the General Plan, the City wishes to be a leader in providing resources to facilitate the development of housing, and especially affordable housing, within its borders as outlined in the Goal H.2 Encourage New Housing Construction, including H-2.2 which calls for maintaining the housing/jobs balance and H-2.3 which calls for the use of public funds for affordable housing to assist low and moderate income households, giving priority to very low income housing. H-2.4 encourages the promotion of the private development of affordable housing through its inclusionary program, as well as consideration of the adoption of a commercial linkage fee.

(c) Because commercial development attracts employees, of whom a quantifiable number will have very low, low, or moderate incomes, new commercial developments increase the demand for and exacerbate the shortage of housing available for people at those levels while also reducing the supply of land potentially available for housing development.

(d) Based on the findings above, the City desires to further the public health, safety and welfare by requiring commercial development projects in the City to mitigate their impact on the need for affordable housing in the City.

(e) The City may adopt an affordable housing commercial linkage fee under the authority of the California Constitution Article XI, Section 7, which provides: "A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws," and in accordance with the findings set forth in the ordinance codified in this Chapter.

Section 2. ADDING CHAPTER 23.61 TO TITLE 23.61 OF THE SAN MATEO MUNICIPAL CODE. Chapter 23.61 is added to Title 23 of the San Mateo Municipal Code to read as follows:

**Chapter 23.61
AFFORDABLE HOUSING COMMERCIAL LINKAGE FEE**

- 23.61.010 Purpose.**
- 23.61.020 Definitions.**
- 23.61.030 Affordable Housing Commercial Linkage Fee.**
- 23.61.040 Exemptions from Payment of Affordable Housing Commercial Linkage Fee.**
- 23.61.050 Alternatives to Payment of Affordable Housing Commercial Linkage Fee.**
- 23.61.060 Affordable Housing Fund.**
- 23.61.070 Waiver.**
- 23.61.080 Enforcement.**

23.61.010 PURPOSE. The purpose of this Chapter is to:

(a) Enhance the public welfare by imposing an affordable housing commercial linkage fee whereby developers of commercial development projects will mitigate the impacts of their projects on the need for affordable housing by contribution to the supply of housing for households with very low, low, and moderate incomes, and;

(b) Implement the Housing Element by creating a mechanism to provide benefits to the community from new commercial development in the form of affordable housing, thereby helping to meet the needs of all socio-economic elements of the community as provided in the Housing Element.

23.61.020 DEFINITIONS. The following words and terms as used in this Chapter shall have the following meaning:

- (a) "Affordable housing commercial linkage fee" means the fee paid by developers of commercial development projects to mitigate the impacts that such developments have on the demand for affordable housing in the City.
- (b) "Affordable housing fund" means a fund or account designated by the City to maintain and account for all monies received pursuant to this Chapter.
- (c) "Affordable ownership cost" means the maximum sales prices for units adjusted by bedroom type and income level as approved annually by the City Council for the City's Below Market Rate Housing Program.
- (d) "Affordable rent" means the maximum rents adjusted by bedroom type and income level as approved annually by the City Council for the City's Below Market Rate Housing Program.
- (e) "Affordable unit" means a dwelling unit which a developer proposes as an alternative to payment of the affordable housing commercial linkage fee, as defined in this Chapter and which is required to be rented at an affordable rent or sold at an affordable ownership cost to very low, low or moderate income households.
- (f) "Building permit" includes full structural building permits as well as partial permits such as foundation-only permits.
- (g) "Commercial development project" means an application for a planning permit or building permit that includes the new construction of gross square feet of commercial space or the conversion of a commercial use to a nonresidential use.
- (h) "Commercial use" means an office including medical and research and development uses, hotel, retail including personal services, or restaurant development.
- (i) "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 commercial development project.
- (j) "Developer" means the person(s) or legal entity(ies), who also may be the property owner, who is seeking real property development permits or approvals from the City or developing a particular project in the City.
- (k) "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.
- (l) "Low income households" means households with incomes no greater than the maximum income for low income households, defined by the State of California Health and Safety Code Section 50079.5 and as published annually by the City for each household size, based on the California Department of Housing and Community Development (HCD) income limits for San Mateo County.
- (m) "Market rate unit" means a new dwelling unit in a residential development project that is not an affordable unit.
- (n) "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 California Department of Housing and Community Development (HCD).
- (o) "Moderate income households" means households with incomes no greater than the maximum income for moderate income households, defined by the State of California Health and Safety Code Section 50093 and as published annually by the City for each household size, based on the California Department of Housing and Community Development (HCD) income limits for San Mateo County.

- (p) "Planning permit" means any discretionary approval of a commercial development project, including, without limitation, a general or specific plan adoption or amendment, rezoning, tentative map, parcel map, conditional use permit, variances, or design review.
- (q) "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.
- (r) "Very low income households" means households with incomes no greater than the maximum income for very low income households, defined by the State of California Health and Safety Code Section 50105 and as published annually by the City for each household size, the California Department of Housing and Community Development (HCD) income limits for San Mateo County.

23.61.030 AFFORDABLE HOUSING COMMERCIAL LINKAGE FEE.

(a) An affordable housing commercial linkage fee is hereby imposed on all developers of commercial development projects. The amount of the affordable housing commercial linkage fee shall be established, from time to time, by resolution of the City Council. Fees shall not exceed the cost of mitigating the impact of commercial development projects on the need for affordable housing in the City.

(b) Payment of the affordable housing commercial linkage fee shall be done at the issuance of the building permit for the development. The fee shall be calculated based on the fee schedule in effect at the time the building permit is issued.

(c) Commercial development projects where the developer voluntarily enters into an "Area Standard Wage Participation Agreement" with the City will be entitled to a reduction of the Commercial Linkage Fee that would otherwise be applicable to the development project. The amount of the reduction and terms of the agreement will be established by resolution of the City Council.

23.61.040 EXEMPTIONS FROM PAYMENT OF AFFORDABLE HOUSING COMMERCIAL LINKAGE FEE.

(a) The affordable housing commercial linkage fee shall not apply to developers of commercial development projects adding 5,000 square feet or less of net new square footage.

(b) The affordable housing commercial linkage fee shall not apply to projects that fall within one or more of the following categories:

- (1) Schools, places of public assembly, recreational facilities, hospitals, cultural institutions, childcare facilities, nursing homes, rest homes, residential care facilities, and skilled nursing facilities.
- (2) 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.
- (3) 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.
- (4) Development projects on property eligible for the California Property Tax Welfare Exemption that is a) used exclusively for charitable purposes and b) owned or held in trust by a nonprofit corporation operating for charitable purposes with a current tax-exempt letter from the Internal Revenue Service or the Franchise Tax Board.

23.61.050 ALTERNATIVES TO PAYMENT OF AFFORDABLE HOUSING COMMERCIAL LINKAGE FEE.

(a) As an alternative to compliance with the basic provisions included in Section 23.61.030 of this Chapter, developers of commercial development projects may propose the construction of affordable units on site or an alternative mitigation program proposed by the developer and the community development director, 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.

(1) The City Council shall adopt, by resolution, the percentage of affordable units needed to mitigate the impact of commercial development projects on the need for affordable housing.

(2) Any affordable rental or for-sale units proposed as an alternative to the payment of the affordable housing commercial linkage fee shall be subject to the requirements described in the City's below market rate housing program.

(b) If the developer seeks an alternative to the payment of the affordable housing commercial linkage fee, then the application for the first approval of a commercial development project for which the alternative is sought, shall include an "affordable housing plan" that describes how the alternative will comply with the provisions of this Chapter. No affordable housing plan is required if the developer proposes only to pay the affordable housing commercial linkage fee.

(1) Development projects requesting an alternative to payment of the affordable housing commercial linkage fee require that an affordable housing plan be submitted in conformance with this Chapter prior to the application being deemed complete.

(2) The affordable housing plan shall be processed concurrently with all other permits required for the commercial development project. Before approving the affordable housing plan, the decision-making body shall find that the affordable housing plan conforms to this Chapter. A condition shall be attached to the first approval of any commercial development project to require recordation of an affordable housing agreement, as described in this subsection, prior to the approval of any final or parcel map or building permit for the development project.

(3) The approved affordable housing plan may be amended prior to issuance of any building permit for the commercial development project. A request for a minor modification of an approved housing plan may be granted by the community development director if the modification is substantially in compliance with the original affordable housing plan and conditions of approval. Other modifications to the affordable housing plan shall be processed in the same manner as the original plan.

(4) If required to ensure compliance with the approved affordable housing plan, affordable housing agreements, acceptable to the community development director or designee, shall be recorded against the commercial development project prior to approval of any final or parcel map or issuance of any building permit, whichever occurs first. The affordable housing agreement shall specify the number, type, location, size, and phasing of all affordable units, provisions for income certification, and screening of potential purchasers or renters of units, and resale control mechanisms, consistent with the approved affordable housing plan, as determined by the community development director or designee.

(c) The decision-making body may approve, or conditionally approve, an affordable housing plan that proposes on-site construction of affordable units if the decision-making body determines, based on substantial evidence, that:

(1) The proposed affordable units comply with the City's Below Market Rate standards adopted by City Council resolution, including that the affordable units be made available for occupancy concurrently with the market-rate units, and;

(2) The affordable units will mitigate the impact of the project on the need for affordable housing as adopted by City Council Resolution.

(d) If a developer proposes off-site affordable housing units or any other alternative in the affordable housing plan, the decision-making body may approve such a proposal if it finds that the proposal satisfies all of the following conditions:

- (1) Financing or a viable financing plan, , is in place for the proposed affordable housing units, and;
- (2) The proposed location is suitable for the proposed affordable housing, is consistent with the Housing Element, general plan, and zoning,
- (3) The offsite units will be available for occupancy concurrently or prior to the commercial development project.

23.61.060 AFFORDABLE HOUSING FUND.

- (a) All affordable housing commercial linkage 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 monies in the Fund shall be expended exclusively to provide housing affordable to 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.

23.61.070 WAIVER.

- (a) As part of an application for the first approval of a commercial development project, a developer may request that the requirements of this Chapter be waived or modified by the decision-making body, 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.
 - (1) Any request for a waiver or modification shall be submitted concurrently 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 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.

23.61.080 ENFORCEMENT.

- (a) Payment of the affordable housing commercial linkage fee is the obligation of the developer for a commercial 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 commercial 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 3. SEVERABILITY. In the event any section, clause or provision of this Ordinance shall be determined invalid or unconstitutional, such section, clause or provision shall be deemed severable and all other sections or portions hereof shall remain in full force and effect. It is the intent of the City Council that it would have adopted all other portions of this Ordinance irrespective of any such portion declared to be invalid or unconstitutional.

Section 4. ENVIRONMENTAL DETERMINATION. In accordance with California Environmental Quality Act (CEQA) Guidelines section 15378(b)(5), this action is categorically exempt from (CEQA) as an administrative activity that will not result in a potentially significant physical impact on the environment.

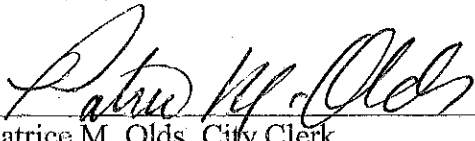
Section 5. PUBLICATION. This Ordinance shall be published in summary in a newspaper of general circulation, posted in the City Clerk's Office, and posted on the City's website, all in accord with Section 2.15 of the City Charter.

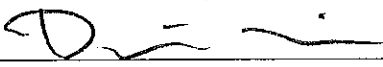
Section 6. LEGISLATIVE HISTORY AND EFFECTIVE DATE. This Ordinance was introduced on August 15, 2016 and adopted on September 6, 2016, and shall be effective sixty days after its date of adoption.

The foregoing ordinance was adopted by the City Council of the City of San Mateo, State of California by the following vote:

AYES: Council Members, Lim, Bonilla, Freschet and Papan
NOES: None
ABSENT: Goethals

ATTEST:


Patrice M. Olds, City Clerk


David Lim, Deputy Mayor