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| **Date:** | | April 7, 2016 |
| **Board Meeting Date:** | | May 24, 2016 |
| **Special Notice / Hearing:** | | None |
| **Vote Required:** | | 3/5ths |
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| **To:** | Honorable Board of Supervisors | |
| **From:** | |  | | --- | | John Maltbie, County Manager | | |

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| **Subject:** | Affordable Housing Impact Fee Ordinance and Resolution |

**RECOMMENDATION:**

Introduce an Ordinance establishing an Affordable Housing Impact Fee on Residential and Non-Residential Development Projects in the unincorporated areas of the County, and receive information on a proposed resolution setting affordable housing impact fees for Residential and Non-Residential Development Projects

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**BACKGROUND:**

On March 29, 2016, your Board held a study session on the potential imposition of an Affordable Housing Impact Fee on new development in the unincorporated County. At that session, your Board reviewed the County’s Residential and Commercial Nexus Studies, which established a link between residential and non-residential development and the accompanying need for affordable housing. Your Board also viewed initial information on potential mechanisms for imposing an affordable housing impact fee, and possible fee levels for different types of development. Following this study session, the Board appointed Supervisors Horsley and Slocum to an ad hoc advisory subcommittee to work with staff to refine a proposal establishing impact fees for residential and non-residential development projects. The subcommittee met twice, and directed staff to prepare a draft Ordinance that would impose impact fees on new residential and non-residential development projects in the unincorporated areas of San Mateo County, with the proceeds dedicated to produce affordable housing for persons of extremely low, very low, low and moderate incomes.

**DISCUSSION:**

Housing Affordability Crisis

San Mateo County is committed to helping provide housing for all residents, at all income levels. Like the greater Bay Area, the County is experiencing rapidly rising housing costs, driven by job growth that has far outpaced the development of new housing. This “jobs-housing gap,” the gap between new worker demand for housing and the available residential stock, has driven rents and housing prices to unprecedented levels, making housing unaffordable for most lower-income workers.

One strategy to help provide needed affordable housing for residents is an affordable housing impact fee, which imposes fees on new development to ensure that such new development helps directly address its contribution to the need for affordable housing.

Countywide Nexus Study

As discussed at the recent study session, under California Law, the County can levy impact fees on new development, provided that there is a rational and proportional link between the fee, and the impact the fee is addressing. In order to impose such a fee, the County must determine the amount of the impact, and the consequent fee that is legally justifiable based on that impact. To that end, as discussed during the study session, over the past two years San Mateo County participated in a unique, multijurisdictional Nexus Study exploring the impact of new development on the need for affordable housing in jurisdictions throughout the County. The County’s portion of that study examined the impact of both residential and non-residential development on the County’s need for affordable housing, and established both the maximum *legal* fee that could be imposed on new development, based on the impact, and, importantly, the level of fee that could be *feasibly* imposed without deterring new development.

Rationale for Impact Fee

As described in the Nexus Study, the basic rationale for imposing a housing impact fee is that all new development, whether it is residential or non-residential, contributes to a need for affordable housing.

In the case of non-residential development, this connection is straightforward: new non-residential development (commercial, office, hotel, etc.) directly creates new jobs. Workers working in and providing services to this new development need housing, and many of them work in jobs that pay wages too low to afford market-rate development. Estimates find that at least half of newly created jobs in the County pay wages too low to afford market rate rents and home prices. New commercial, office, and other non-residential development creates a need for housing for new lower-income workers, but does not contribute to addressing this need.

In the case of market-rate residential development, the rationale is essentially the same, but slightly more complicated. Each new market-rate housing unit does directly provide new housing for upper-income level households, thereby addressing some housing need. However, each housing unit, and the new residents in it, also create a need for new workers in the community: house cleaners, painters, landscapers, maintenance workers, service workers, teachers, mechanics, and the entire array of other workers who provide needed services for any household in any community. These workers are typically at wage levels too low to afford market-rate housing. Estimates state that each new market-rate housing unit creates, in aggregate, a need for approximately one new lower-wage job. Thus each new market-rate unit also contributes to a need for affordable housing for workers in the community, and does not contribute to addressing this need.

Feasibility of Fees

As noted above, the Nexus Study, based on analysis of development costs, market conditions, affordable housing needs, existing fee levels in the County, and other relevant factors, determined the *legally justified maximum fee* that the County could charge to new development, based on the share of affordable housing need created by new development. Under state law, the County could, legally, levy this maximum fee on the types of new development analyzed in the Nexus Study.

However, the fact that a fee level is legally justified does not mean that such a fee is feasible or desirable. The legally justified fees described in the Nexus Study are very high; fees established at too high a level could slow or entirely deter new development, by adding too greatly to the cost of production. In addition to the maximum legal fee, the Nexus Study also provided a recommended set of fees that are calibrated to ensure that new development still remains possible and profitable. The recommendations in this report are based on the *feasible fees* provided in the Nexus Study, as well as consideration of the work of other jurisdictions, the direction of the Board, and other factors.

Impact of Housing Fee on Development

It is important to note that not only are the fee recommendations in this report carefully designed to ensure that development remains feasible, but also that research indicates that such housing impact fees are not a barrier to development. Research from other jurisdictions shows that the imposition of new housing impact fees does not tend to slow the pace of development, and that developers typically adjust to the fees by ultimately incorporating the expected fees into the price they are willing to pay for developable land.

Fees in Other Jurisdictions

A number of other jurisdictions are working to adopt, or have already adopted, affordable housing impact fees, often based on their components of the Countywide Nexus Study in which the County participated. The proposed County impact fees are comparable to the impact fees under consideration or already adopted by these jurisdictions, including Redwood City, Daly City, San Mateo, Burlingame, and a number of other local jurisdictions. Attachment C shows the County’s total current fee levels, compared to other jurisdictions, including jurisdictions with and without a housing impact fee.

Direct Creation of Affordable Housing

The proposed impact fee reflects a strong County policy preference that developers, where possible, offset the impact of their projects on affordable housing not by simply paying the fee, but by developing such housing units themselves. To this end, the proposed impact fee ordinance:

1. Exempts any units which are subject to the County’s existing inclusionary ordinance, which requires the direct creation of affordable units for larger projects. This includes all multifamily ownership housing, such as condo and townhome projects, greater than 5 units in size.

1. For projects not subject to the inclusionary ordinance, provides an option for developers to directly create affordable units, if they so choose, instead of paying the fee.
2. Is carefully crafted such that the existing inclusionary ordinance and new housing impact fee will work together in parallel, with neither undermining either the mechanism or policy aims of the other.

Adoption of a new housing impact fee is consistent with the County’s 2014-2022 Housing Element. The Housing Element, adopted by the Board of Supervisors in 2011, committed in Policy HE 31 to exploration of an affordable housing impact fee.

The proposed impact fee is also consistent with the County’s leadership in the Jobs-Housing Gap Task Force, which is a multijurisdictional effort, co-led by Supervisors Slocum and Horsley, that is working with leaders in local government, the business community, the non-profit community, housing advocates and others to find solutions to the Countywide housing crisis, including exploration of housing impact fees.

The Affordable Housing Impact Fee program set out herein is consistent with the Nexus Studies and meets the legal requirement for impact fees, under California law, in that there is a rational and proportional connection between market-rate housing development and the need for new affordable housing, and between non-residential development and the need for new affordable housing. The proposed fees are well below the maximum legal levels established by the Nexus Study, as well as at or below the feasible fee levels described in the Study, and in most cases near or below the levels established by comparable local jurisdictions.

Impact Fee Proposal

The subcommittee led by Supervisors Horsley and Slocum worked with staff to determine the appropriate impact fee level on new residential and non-residential development, by development type. The subcommittee also examined types and sizes of development that should be partially or wholly exempted from the impact fee. The subcommittee’s recommendations, as well as the rationale for various fee levels and exemptions, and comparisons with other jurisdictions, are shown in the table below.

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| **Recommended Housing Impact Fee and Fee Structure by Development Type** | | | | | |
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| **Development Type** | **Nexus Study Fee Range** | **Comparable Jurisdiction Fees** | **Recommended San Mateo County Fee** | **Recommended Exemptions** | **Fee and Exemption Rationale** |
| **Commercial** | | | | | |
| Hotel | $10–25 | RWC $5/sq ft; | **$10/sq. ft.** | Projects up to 3,500 sq ft: exempt. Projects larger than 3,500 sq ft: all sq ft subject to fee | Placing the fee at the low end of the Study's justified range is consistent and competitive with neighboring jurisdictions. |
| Retail | $5–10 | RWC $5/sq ft | **$5/sq. ft.** | Projects up to 3,500 sq ft: exempt. Projects larger than 3,500 sq ft: all sq ft subject to fee | Placing the fee at the low end of the Study's justified range is consistent and competitive with neighboring jurisdictions. |
| Office | $25–40 | RWC $20/sq ft; | **$25/sq. ft.** | Projects up to 3,500 sq ft: exempt. Projects larger than 3,500 sq ft: all sq ft subject to fee | Placing the fee at the low end of the Study's justified range is consistent and competitive with neighboring jurisdictions. |
| **Residential** | | | | | |
| Single Family Residential | | | | | |
| Single Family Detached - Large Subdivision Projects (5 or more units) | $35–40 | Redwood City $25/sq. ft.; Daly City $18/sq. ft. | **$15/sq. ft** | None | While the Study justifies up to $40, a fee somewhere in the range of or slightly below comparable jurisdictions is more competitive and appropriate |
| Single Family Detached For Sale - Small Projects (1 to 4 units) | $35–40 | Redwood City $25/sq. ft.; Daly City $18/sq. ft. | **Graduated Fee** | First 2,500 sq ft exempt; above 2,500 sq ft, graduated fees that increase with size of unit | An equivalent fee to that imposed on larger subdivision projects is justified, but as smaller projects have less impact, a lower fee and exemption are also reasonable. Imposing a lower fee for smaller scale projects (1 - 4) units, and exempting the first 2,500 sq. ft. exempts many discrete, single family homes built on single lots in the County. This is also less costly for smaller scale developers and owner-builders, who have fewer resources to pay fees. |
| Multi Family Residential | | | | | |
| Multifamily Attached For-Sale - Large Condo/Townhome Projects(5 units or more) | N/A — exempt because subject to Inclusionary Ordinance | N/A | **N/A** | Exempt because subject to Inclusionary Ordinance | Exempt because subject to Inclusionary Ordinance |
| Multifamily Attached For-Sale - Small Condo/Townhome Projects (1 to 4 units) | $5–25 | Redwood City $20 - $25/sq. ft.; Daly City $18 - $22/sq. ft | **Graduated Fee** | First 2,500 sq. ft. exempt; graduated fees above 2,500 sq. ft, increasing with size of unit | An equivalent fee to that imposed on larger single-family projects is justified, but as smaller projects have less impact, a lower fee and exemption are also reasonable. Imposing a lower fee for smaller scale projects (1 - 4) units, and exempting the first 2,500 sq. ft. exempts many projects with smaller units. This is also less costly for smaller scale developers, who have fewer resources to pay fees. |
| Rental (Apartment) Projects | $5–10 | Redwood City $20/sq. ft.; Daly City, $25/sq. ft | **$10/sq. ft.** | None | While Redwood City charges $20/sq. ft., the Study only justifies $5-$10. Setting the fee at the high end of the justified range places the County closer to, but below comparable jurisdictions. |

As the table shows, the proposed fee for various kinds of development is typically at or below the lower end of the feasible fee levels described in the Nexus Study, and comparable to the fees imposed by other local jurisdictions. The proposed fees and exemptions also, in general, provide relief for smaller projects, both residential and non-residential. The basic fee levels are:

*Hotel, Retail, and Office uses*: $10, $5, and $25 per square foot of new development, respectively. The proposal exempts projects of up to 3,500 square foot in size, to avoid unduly burdening smaller businesses. Each of these fees is at the very low end of the feasible range from the Nexus Study.

*Single-family detached subdivision projects of 5 units or more*: $15 per square foot. While this fee is below the low end of the feasible range from the nexus study, it is close to the fees imposed in Redwood City and Daly City.

*Multifamily rental projects (apartments):* $10 a square foot, at the high end of the Nexus Study’s feasibility range, but below the fee established by Redwood City, Daly City, and others.

As noted above, *larger multifamily for-sale projects* (larger townhome and condominium projects) are already subject to the County’s inclusionary ordinance, and must directly provide affordable units. These projects would be exempt from the impact fee.

For *single-family and multi-family for-sale development projects of less than five units*, the proposal includes a graduated fee structure. The first 2,500 square feet of each unit in these projects would be exempted from the fee; above that range, the fee would increase in increments, depending on the total square footage of the unit, as shown in the table below. This method avoids unduly burdening smaller units, and provides for a gradual increase in the fee level for larger projects. Even the fee level for the highest bracket, which applies only to the very largest possible homes, is on par with the feasible range from the Nexus Study, and comparable to fee levels in Redwood City and other local jurisdictions. Most typically-sized units built in the County would be exempt from this fee, as they are less than 2,500 square feet. Attachment C also compares the graduated fee levels with comparable fees in other local jurisdictions.

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| **Graduated Fee Structure for Single Family For-Sale Detached** | | | | | | | | | | |
| **and Small-Scale For-Sale Multifamily Attached** | | | | | | | | | | |
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| **Recommended Option:** | | | | | | | | | | |
| **Uppermost Average Fee per Square Foot Exactly at Nexus Study Recommendation** | | | | | | | | | | |
|  | | |  |  | |  | |  |  |  |
| **Fees per Square Foot** | | | | | | **Average Fee Across Total Sq Ft** | | |  |  |
|  | | |  |  | |  | |  |  |  |
| **Unit Size** |  | **Fee for Incremental Sq Ft** | | | **bottom of sq ft range** | | **top of sq ft range** | |  |  |
| Up to | 2,500 | $ — | | | $ — | | $ — | |  |  |
| 2,501 | 3,000 | $12.50 | | | $0.005 | | $2.08 | |  |  |
| 3,001 | 3,500 | $17.50 | | | $2.08 | | $4.28 | |  |  |
| 3,501 | 4,000 | $22.50 | | | $4.28 | | $6.55 | |  |  |
| 4,001 | 4,500 | $27.50 | | | $6.55 | | $8.87 | |  |  |
| 4,501 | 5,000 | $32.50 | | | $8.88 | | $11.23 | |  |  |
| 5,001 | 7,500 | $37.50 | | | $11.23 | | $19.98 | |  |  |
| 7,501 | 10,000 | $42.50 | | | $19.98 | | $25.61 | |  |  |
| 10,001 | and up | $47.50 | | | $25.61 | |  | |  |  |

Other Exemptions

In addition to the exemptions shown in the fee table above, some other development types would also be exempt from the fee. The following table summarizes the exemptions.

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| **Development Type** | **Exemption** |
| In lieu units provided | Exempt |
| Low income housing | Exempt |
| Small commercial projects | *<* 3,500 sq ft, exempt |
| Small scale single family detached (1–4 units) (Including Second Units) | ≤ 2,500 sq ft, exempt  *>* 2,500 sq ft, graduated fee |
| Tear down/Rebuild | Exempt on a sq ft per sq ft basis. Rebuild at greater sq ft subject to Residential/Commercial Expansion provisions |
| Residential Expansion | ≤ 2,500 sq ft, exempt  *>* 2,500 sq ft, graduated fee |
| Commercial Expansion | ≤ 3,500 sq ft exempt  *>* 3,500 sq ft, all sq ft subject to fee |

The Affordable Housing Impact Fee Ordinance

Based on direction from the Subcommittee, staff has prepared, and offers for introduction today, a draft Ordinance (Attachment A) that establishes an impact fee program, based on the proposal described above, that does the following things:

(1) defines types of residential and non-residential development that the Nexus Study shows have an impact on the need for affordable housing;

(2) establishes an affordable housing impact fee program and imposes fees on development that will be subject to the fee, with the amount of the fees to be set by resolution of your Board;

(3) provides a mechanism for developers whose projects are subject to the fee to instead provide affordable housing units in lieu of payment of the fee;

(4) provides a mechanism for administrative challenges to the imposition of the fee on projects where it is asserted that the project will not, for unique reasons, have an impact on the availability of affordable housing; and

(5) directs that the proceeds of the new fee be placed into a special fund earmarked for later use for the provision of affordable housing, including by distribution to a regional housing trust, such as HEART.

The Resolution Setting the Amount of the Affordable Housing Impact Fees

As noted, the Ordinance provides that the amount of the impact fees may be set by resolution. Staff has prepared and presents to your Board a Resolution (Attachment B) that accomplishes several related things:

(1) provides the rates of the fee to be imposed on each type of development subject to the Ordinance, based on the proposal shown above, and establishes the methodology for calculating the fee on the basis of the square footage of the development;

(2) provides exemptions for various types and sizes of development;

(3) provides for a reduction of the fee by 25% for development projects that enter written agreements with the County to pay prevailing wages to project laborers, as such projects have already partially offset their impact on the affordability of housing for such laborers; and

(4) establishes a fee for processing requests for a waiver from the Housing Impact Fee.

Timing of the Ordinance and Resolution

Together, the Ordinance and Resolution constitute the proposed new program for the imposition of a Housing Impact Fee. Because the Resolution can only become effective if the Ordinance is adopted, staff recommends that the Board consider introduction of the Ordinance at its meeting of May 24, 2016. If your Board determines to introduce the Ordinance, staff will return at the next Board meeting, on June 7, 2016, with a recommendation to adopt the Ordinance and, at the same time, hold a hearing regarding, and adopt the Resolution setting, the impact fees. In the interim, staff will arrange for publication of notice required by the Government Code prior to imposition of impact fees. By state law, any affordable housing impact fee adopted by the Board can only take effect 60 days after passage of the Resolution setting the rates.

**FISCAL IMPACT:**

While the actual revenue from any adopted impact fees for the unincorporated areas of the County will depend on what development proposals proceed, staff roughly estimates based on the development levels over the past few years, fees in the range of $10 per square foot of residential space and $20 per square foot of commercial space could generate approximately $1.2 million in revenue per year. As impact fees would be placed in a fund dedicated to development of affordable housing, there would be no impact on the general fund.