

Resolution No. 2018-130 N.C.S.  
of the City of Petaluma, California

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PETALUMA  
INCREASING COMMERCIAL DEVELOPMENT HOUSING LINKAGE FEES FOR  
NONRESIDENTIAL DEVELOPMENT PROJECTS PURSUANT TO PETALUMA  
MUNICIPAL CODE SECTION 19.36.040(C) AND REPLACING THE COMMERCIAL  
LINKAGE FEES SET BY RESOLUTION NO. 2011-071 N.C.S.**

**WHEREAS**, on December 15, 2003, the City Council adopted Ordinance No. 2171 N.C.S. implementing a commercial linkage fee for nonresidential projects to mitigate the impact of nonresidential development on the need for affordable housing; and

**WHEREAS**, on May 2, 2011 the City Council adopted Ordinance No. 2403 N.C.S. amending the commercial linkage fee to ensure that it continues to make an adequate financial contribution from new and expanded nonresidential development to the City's affordable housing programs; and

**WHEREAS**, the City's commercial linkage fee program, which is currently codified in Chapter 19.36 entitled "Commercial Development Housing Linkage Fee" ("Housing Linkage Fee") of the Petaluma Municipal Code; and

**WHEREAS**, the Housing Linkage Fee chapter in the Municipal Code provides in Section 19.36.010 that the purpose of the chapter is to implement the goals and objectives of the general plan housing element of the City; mitigate housing impacts caused by new, changed and expanded nonresidential development in the City, and provide affordable housing to people who earn between 80 and 100 percent of area median income; and

**WHEREAS**, the Housing Linkage Fee chapter includes in Section 19.36.020 various findings of the City Council, including findings that the purposes of the chapter include establishing a feasible means by which developers of nonresidential development projects assist in increasing the supply of low and moderate income housing and increasing the supply of housing in proximity to employment centers, and that the chapter is intended to create a rational relationship between the amount of housing need created by the land use and the size of the fee, taking into account the effect of such fee requirements on providing affordable housing opportunities and the economic feasibility of imposing such requirements; and

**WHEREAS**, the Housing Linkage Fee chapter in Section 19.36.040 provides that Housing Linkage Fees shall be established from time to time by resolution of the City Council, and that such fees shall be adjusted annually using the Engineering News Record Construction Cost Index 20 City Average; and

**WHEREAS**, the Housing Linkage Fee chapter in Section 19.36.050 provides that developers of projects subject to Housing Linkage Fees may apply to receive a credit against the fees or a portion thereof if they provide affordable housing through some other means agreeable to the City; and

**WHEREAS**, on May 19, 2008, the City Council approved Resolution No. 2008-085 N.C.S., adopting the City of Petaluma General Plan 2025 ("General Plan"), which contained the City's then-existing housing element; and

**WHEREAS**, on June 15, 2009, the City Council approved Resolution No. 2009-094 N.C.S., adopting the Petaluma 2009-2014 Housing Element; and

**WHEREAS**, on December 1, 2014, the City Council approved Resolution No. 2014-190 N.C.S., adopting the Petaluma 2015-2023 Housing Element; and

**WHEREAS**, on January 23, 2015, the state Housing and Community Development Department (“HCD”) approved the 2015-2023 Housing Element as approved by the City Council; and

**WHEREAS**, on November 2, 2015 the City Council approved Resolution No. 2015-171 N.C.S., adopting a First Amendment to the 2015-2023 Housing Element Program 4.3 to ensure consistency between the City’s Housing Element and the holding in *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles*, (2009) 175 CA 4<sup>th</sup> 1396, which held that the Costa-Hawkins Act, Civil Code section 1954.53(a), prohibits local agencies from requiring on-site inclusionary housing in rental housing developments; and

**WHEREAS**, recent amendments to the state Planning and Zoning Law, which is codified in Government Code section 65000 and following (“Planning Law”) pursuant to AB-1505, which took effect January 1, 2018 and is codified in Government Code sections 65850 and 65850.1, permit cities to adopt ordinances requiring inclusion of affordable residential units for moderate, low, very low, and extremely low income households in rental housing developments, and require that such ordinances provide alternate means of compliance that may include, but are not limited to, in-lieu fees, land dedication, off-site construction, or acquisition and rehabilitation of existing units, and grant HCD the authority to review certain such ordinances that require more than 15 percent of the total number of units in a residential rental development to be affordable to households earning 80 percent or less of area median income; and.

**WHEREAS**, the 2015-2023 Housing Element as amended identifies and analyzes existing and projected housing needs and states goals and policies, and quantifies objectives and special programs for the reservation, improvement and development of housing in the City from 2015 through 2023; and

**WHEREAS**, Policy 4.2 of the 2015-2023 Housing Element currently provides for assigning a share of the responsibility for providing affordable housing to the developers of market-rate housing and non-residential projects; and

**WHEREAS**, Program 4.3 of the 2015-2023 Housing Element currently provides for continuing to require residential projects of five or more units to contribute to provision of below-market rate housing by: dedicating 15% of the units on-site or a portion of the project site or property to the City or a non-profit organization for use as affordable housing; encouraging developers of projects within a half-mile radius of the planned Sonoma Marin Area Rail Transit District (“SMART”) stations to provide at least 15 percent of the units in a rental housing project at rents affordable to very low and low income households for a minimum period of 30 years; requiring developers of for sale projects within a half-mile radius of the planned SMART stations to provide at least 15% of the units at prices affordable to low and moderate income households for a minimum period of 30 years; or by making an in-lieu payment to the City’s housing fund; or by using alternative methods to meet the intent of the inclusionary requirement, subject to approval by the City Council; and

**WHEREAS**, the City has 2,161 housing units in various stages of development but only 75 of the units are affordable in accordance with the City’s inclusionary housing requirements; and

**WHEREAS**, in-lieu fees collected by the City in accordance with Program 4.3 of the 2015-2023 Housing Element are insufficient to fund construction of sufficient numbers of affordable housing units to meet the City’s projected housing needs; and

**WHEREAS**, the City contracted with Economic and Planning Systems (EPS) to complete studies (“EPS Studies”) to identify funds the City could lawfully recover from inclusionary housing in-lieu fees and to provide information and analysis in support of potential updates to the City’s affordable housing fees; and,

**WHEREAS**, at a City Council workshop on September 25, 2017, EPS gave an Affordable Housing Fees presentation (“Presentation”), presented an administrative draft memorandum (“Memorandum”), and a draft Ownership Inclusionary Housing In-lieu Fee report, a draft Nexus-Based Affordable Housing Fee Analysis for Ownership Housing report, a draft Nexus-Based Affordable Housing Fee Analysis for Rental Housing report, and a draft Commercial Linkage Fee Nexus Study report all dated August 29, 2017 and all referred to as the “Reports,” and

**WHEREAS**, the Presentation, Memorandum and the Reports, detailed a gap between market prices of housing in the City and prices affordable to very low, low, and moderate-income households, and included a proposed per square foot in-lieu fee for rental and ownership projects based on the affordability gap; and

**WHEREAS**, the City Council hereby approves the Presentation, Memorandum and the Reports, which are by this reference hereby made a part of this resolution; and

**WHEREAS**, the City Council desires to adopt updated Commercial Linkage Fees for nonresidential development projects as authorized by section 19.36.040(C) of the Municipal Code such that the fees do not exceed the amounts needed to mitigate the actual affordable housing impacts attributable to the nonresidential development projects to which the fees relate, as determined by the EPS report, and so that such projects increase the supply of low and moderate income housing and housing in proximity to employment centers in the City; and

**WHEREAS**, in accordance with the holding of the California Supreme Court in *California Building Association v. City of San Jose*, (2015) 61 Cal. 4<sup>th</sup> 435, where a city adopts an inclusionary ordinance to mitigate the effects of development on the City’s stock of affordable housing, and to increase the number of affordable units in the city, and to distribute the affordable units throughout the city to obtain the benefits of economically diverse communities, such an ordinance is a valid local land use regulation and not a taking if it is reasonably related to the broad general welfare purposes for which it is enacted, and offers reasonable alternative means of satisfying the ordinance’s inclusionary objectives; and

**WHEREAS**, the City Council finds that this resolution and the Housing Linkage fee it establishes is a valid local land use regulation and does not effect a taking in accordance with *California Building Association*; and

**WHEREAS**, this resolution and the Housing Linkage Fees it establishes are exempt from environmental review under the general rule Section 15061(b)(3) of the California Environmental Quality Act (“CEQA”) Guidelines because CEQA applies only to projects that have the potential for causing a significant effect on the environment, and it can be seen with certainty that there is no possibility that this resolution and the Housing Linkage Fees it establishes creates changes in the physical environment, or results in any changes to the General Plan or Implementing Zoning Ordinance land use policies, and any development that occurs in the future subject to such standards will undergo an independent analysis pursuant to the requirements of CEQA; and

**WHEREAS**, this resolution and the inclusionary Housing Linkage Fees it establishes is statutorily exempt pursuant to Section 15283 of the CEQA Guidelines because this resolution and the Housing Linkage Fees reflect determinations by the City regarding the need to adequately provide for the City’s share of regional housing needs pursuant to Government Code section 65584;

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

1. The above recitals are hereby declared to be true and correct and are incorporated into the resolution as findings of the City Council of the City of Petaluma.
2. The following Housing Linkage Fees shall apply to non-residential projects subject to this resolution in accordance with Policy 4.2 and Program 4.3 of the 2015-2023 Housing Element:

Office/Commercial	Retail	Industrial
\$2.84/ s.f.	\$4.91/s.f.	\$2.93/s.f.

3. Housing Linkage Fees authorized pursuant to this resolution shall be paid and collected on behalf of the City at the time of issuance of a certificate of occupancy.
4. The Housing Linkage Fees established pursuant to Resolution No. 2011-071 N.C.S. and any other previously-enacted commercial development Housing Linkage Fees are hereby repealed on the date this resolution takes effect.
5. If any section, subsection, sentence, clause, phrase or word of this resolution is for any reason held to be unconstitutional, unlawful, or otherwise invalid by a court of competent jurisdiction or preempted by state legislation, such decision or legislation shall not affect the validity of the remaining portions of this resolution. The City Council of the City of Petaluma hereby declares that it would have passed and adopted this resolution and each and all provisions thereof irrespective of the fact that any one or more of said provisions be declared unconstitutional, unlawful, or otherwise invalid.
6. This resolution shall become effective upon its adoption.

Under the power and authority conferred upon this Council by the Charter of said City.

**REFERENCE:**

I hereby certify the foregoing Resolution was introduced and adopted by the Council of the City of Petaluma at a Regular meeting on the 6<sup>th</sup> day of August 2018, by the following vote:

Approved as to form:

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

**AYES:**

Albertson, Barrett, Mayor Glass, Vice Mayor Healy, King, Miller

**NOES:**

None


**ABSENT:**

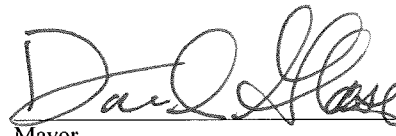
Kearney

**ABSTAIN:**

None

**ATTEST:**

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

  
\_\_\_\_\_  
Mayor

**EFFECTIVE DATE  
OF ORDINANCE**

June 1, 2011

**ORDINANCE NO. 2403 N.C.S**

1 Introduced by

Seconded by

2  
3  
4  
5 Teresa Barrett

Mike Healy

6  
7  
8  
9 **ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PETALUMA AMENDING**  
10 **CHAPTER 17.35, SECTIONS 17.35.030 AND 17.35.040 OF THE CITY OF**  
11 **PETALUMA MUNICIPAL CODE REGARDING THE COMMERCIAL LINKAGE FEE**  
12 **FOR NONRESIDENTIAL DEVELOPMENT**

13  
14 **WHEREAS**, on December 15, 2003, the City Council adopted Ordinance No. 2171 N.C.S.  
15 Implementing a Commercial Linkage Fee for Nonresidential Development in the City of  
16 Petaluma; and,

17  
18 **WHEREAS**, in September, 2010, the Sonoma County Economic Development Board  
19 published a report entitled "2010-11 City of Petaluma: Local Economic Report" ("Report"); and,

20  
21 **WHEREAS**, the Report identifies total employment in Petaluma at 28,200 jobs as of March,  
22 2010, the lowest level in ten years, and down 9.74% from its peak in October, 2007; and,

23  
24 **WHEREAS**, the Report finds that in the past decade, the percentage of households  
25 making less than \$50,000 in Petaluma was reduced from 38% to 25% of local earners; and,

26  
27 **WHEREAS**, the Report concludes that the percentage of expected household income in  
28 all categories lower than \$75,000 per year will remain lower than 2000 levels through 2014; and,

29  
30 **WHEREAS**, according to the Report, the median home price in Petaluma as of 2009 had  
31 declined by 26% since 2005; and,

32  
33 **WHEREAS**, the current HUD income guidelines for Petaluma for the categories defined as  
34 low and moderate income in the fee ordinance range from \$45,00-\$56,300 for a single person  
35 household to \$74,600-\$83,970 for a family of six; and,

36  
37 **WHEREAS**, the Report determined that office, industrial, and commercial vacancies in the  
38 City of Petaluma as of the first quarter of 2010 were 39.6%, 18.7% and 12.8%, respectively; and,

39  
40 **WHEREAS**, based on future nonresidential development provided for in the General Plan  
41 2025, the Commercial Linkage Fee could generate close to \$18,000,000 over the buildout  
42 horizon of the General Plan, more than the \$10,920,000 envisioned at the time of adoption of the  
43 Commercial Linkage Fee in 2003; and,

1           **WHEREAS**, the City's current affordable housing stock includes 1,924 units of which 614  
2 are designed as workforce housing; and,

3  
4           **WHEREAS**, the City of Petaluma Housing Division historically leverages housing funds at a  
5 ratio of \$10-12 outside dollars for every local dollar and has a record of successful leveraged  
6 projects; and,

7  
8           **WHEREAS**, affordable projects currently approved or in the pipeline include Logan Place,  
9 66 units of workforce housing, construction anticipated Fall 2011; Vintage Chateau II, 67 senior  
10 apartments, construction anticipated Summer 2011; and Kellgren Apartments, senior housing,  
11 construction anticipated in 2013; and,

12  
13           **WHEREAS**, the City's 2009-2014 Housing Element was updated in 2009 and continues to  
14 identify adequate land within the City for affordable housing development and programs and  
15 policies designed to encourage affordable housing; and,

16  
17           **WHEREAS**, on November 15, 2010, the City Council accepted the Petaluma Economic  
18 Development Strategy; and,

19           **WHEREAS**, the Economic Development Strategy calls for filling existing nonresidential  
20 vacancies as one of its highest priorities; and,

21           **WHEREAS**, the current Commercial Linkage Fee may serve as a disincentive to filling  
22 certain existing nonresidential vacancies; and,

23           **WHEREAS**, the Commercial Linkage Fee program as herein amended will continue to  
24 make an adequate financial contribution from nonresidential development and expanded  
25 nonresidential development to the City's affordable housing programs; and,

26           **WHEREAS**, the City Council considered the modification limiting the types of  
27 nonresidential development projects subject to the Commercial Linkage Fee adopted hereby  
28 at a noticed public meeting on April 18, 2011.

29  
30           **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PETALUMA AS**  
31 **FOLLOWS:**

32  
33           **Section 1.**       The City Council adopts the above recitals as true and correct and further finds  
34 that this ordinance is consistent with the City of Petaluma General Plan 2025 and that the City  
35 has duly considered the effects of this ordinance with respect to the housing needs of the city  
36 and the region in which the city is situated.

37  
38           **Section 2.**       Chapter 17.35, Section 17.35.030 of the Petaluma Municipal Code entitled  
39 "Definitions" is hereby amended to read in full as follows:

40           **17.35.030 DEFINITIONS.**

41  
42           As used in this Chapter:

- 43  
44           A. Addition shall mean adding gross square feet to an existing development project or  
45 building subject to this ordinance.  
46  
47

- 1 B. Affordable housing shall mean the total cost of monthly housing payments does not  
2 exceed thirty (30) percent of gross household income.
- 3
- 4 C. City Manager shall mean the City Manager of the City of Petaluma or his/her designee.
- 5
- 6 D. Director of Community Development shall mean the Director of Community  
7 Development for the City of Petaluma, his or her designee, or such person as the City  
8 Manager may designate.
- 9
- 10 E. Expanded Nonresidential Development or Expanded Nonresidential Development  
11 Project shall mean construction that results in a net increase in the gross square footage  
12 of an existing nonresidential space or any conversion of residential space to  
13 nonresidential space.
- 14
- 15 F. Gross square feet or gross square footage shall mean the area included within the  
16 surrounding walls of a nonresidential development. This area does not include enclosed  
17 parking for vehicles.
- 18
- 19 G. Low- and moderate-income shall mean a household with total annual income between  
20 80 percent and 100 percent of the area median income, adjusted for family size, and in  
21 accordance with the Area Median Income Schedule as published annually by the U.S.  
22 Department of Housing and Urban Development for the Santa Rosa MSA.
- 23
- 24 H. Nexus Study shall mean the Sonoma County Workforce Housing Linkage Fee Study  
25 published by Economic and Planning Systems, Inc. in December 2001 as may be  
26 amended from time to time.
- 27
- 28 I. Nonresidential Development or development project for purposes of this Chapter shall  
29 mean any project resulting in new or expanded nonresidential gross square footage.
- 30

31 **Section 3.** Chapter 17.35, Section 17.35.040 of the Petaluma Municipal Code entitled  
32 "Application of Fee" is hereby amended to read in full as follows:  
33

34  
35 **17.35.040 APPLICATION AND CALCULATION OF FEE.**  
36

- 37 A. Payment of Fees Required. Every person constructing or causing to be constructed within  
38 the city nonresidential development projects and/or expanded nonresidential  
39 development projects as defined in this Chapter shall pay to the city a fee computed as  
40 set out in this chapter.
- 41
- 42 B. Determination of Land Uses. For the purposes of this chapter, nonresidential land uses shall  
43 be divided into three (3) classifications: commercial, retail, and industrial. When  
44 necessary, the Director of Community Development or such other person as may be  
45 designated by the City Manager shall determine the land use classification that most  
46 accurately describes the nonresidential development, or in the case of Mixed Use  
47 developments, the portion thereof, for the purposes of determining the fee to be  
48 imposed.
- 49
- 50 C. Computation of Fees. The fee charged for residential and nonresidential development  
51 shall be established from time to time by resolution of the city council and adjusted  
52 consistent with the provisions of such resolution and this chapter.

- 1  
2 D. Adjustment of Fee. The fees specified herein shall increase or decrease annually by the  
3 same percentage as the latest "Engineering News Record Construction Cost Index – 20  
4 City Average" ("Index") annually increases or decreases. The adjustment shall be based  
5 on a comparison of the most recent Index to the Index in the month of the adoption of  
6 the fee, or the Index used for the prior adjustment of the fee. The Finance Director shall  
7 compute the increase or decrease in such fee. The first adjustment shall take place on  
8 July 1, 2012 and each following July 1st.  
9
- 10 E. Time of Collection. Such fees shall be due and payable prior to issuance of a building  
11 permit, or if no permit is to be issued by the city, at the time a new business license is  
12 issued.  
13
- 14 F. Application of Fee in Redevelopment Project Areas. Any nonresidential development or  
15 expanded nonresidential development located within the adopted boundaries of a City  
16 of Petaluma Community Development Commission redevelopment project area shall  
17 pay a fee equal to one-half the amount established pursuant to Section 17.35.040.C.  
18

19  
20 **Section 4.** Except as amended pursuant to this ordinance, Chapter 17.35 of the Petaluma  
21 Municipal Code remains unchanged and in full force and effect.  
22

23 **Section 5.** If any section, subsection, sentence, clause or phrase or word of this ordinance is  
24 for any reason held to be unconstitutional, unlawful or otherwise invalid by a court of competent  
25 jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.  
26 The City Council of the City of Petaluma hereby declares that it would have passed and  
27 adopted this ordinance and each and every provision thereof regardless of the fact that any  
28 one or more of said provisions be declared unconstitutional, unlawful or otherwise invalid.  
29

30 **Section 6.** The City Council finds that this ordinance is not subject to the California  
31 Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in  
32 a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3)  
33 (the activity is not a project as defined in Section 15378) of the CEQA Guidelines because it has  
34 no potential for resulting in physical change to the environment, directly or indirectly.  
35

36 **Section 7.** The City Clerk is hereby directed to post and/or publish this ordinance or a  
37 synopsis of this ordinance for the period and in the manner required by the City Charter.  
38

39 **INTRODUCED** and ordered posted/published this 18<sup>th</sup> day of April, 2011.  
40

41 **ADOPTED** this 2<sup>nd</sup> day of May, 2011 by the following vote:

42  
43 Ayes: Albertson, Barrett, Mayor Glass, Harris, Vice Mayor Healy, Kearney, Renée  
44  
45 Noes: None  
46  
47 Abstain: None



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39

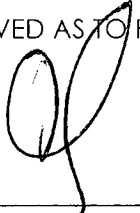
Absent: None

  
\_\_\_\_\_  
David Glass, Mayor

ATTEST:

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Claire Cooper, City Clerk

  
\_\_\_\_\_  
Eric W. Danly, City Attorney