

ORDINANCE NO. 2171 N.C.S.

Introduced by

Seconded by

Council Member Canevaro

Council Member Torliatt

IMPLEMENTING A COMMERCIAL LINKAGE FEE FOR NONRESIDENTIAL DEVELOPMENT IN THE CITY OF PETALUMA

WHEREAS, the City of Petaluma along with all other cities in Sonoma County and the County of Sonoma participated in the creation of a study to establish a link between the continued growth of employment and the need for affordable housing; and,

WHEREAS, the City Council has reviewed and considered the findings and conclusions of the Sonoma County Workforce Housing Linkage Fee Study on which this ordinance is based; and,

WHEREAS, the City Council held a duly noticed public hearing on said fee on October 27, 2003 and December 1, 2003.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PETALUMA AS FOLLOWS:

Section 1. The Petaluma Municipal Code is hereby amended to add Chapter 17.35 "Commercial Linkage Fee" to read as follows:

Chapter 17.35

Commercial Linkage Fee

17.35.010 PURPOSE.

a. Mitigation of Affordable Housing Impacts Linked to Nonresidential Development. The purpose of this chapter is to (1) implement the goals and objectives of the General Plan Housing Element of the City of Petaluma; (2) mitigate the housing impacts caused by new, changed and expanded nonresidential development in the City of Petaluma; (3) provide housing affordable to persons who earn between 80-100% of the area median income. The City Council has determined that affordable housing requirements are needed, has found the following requirements to be consistent with its General Plan and, pursuant to Government Code Section 65913.2, has considered the effects of the fee with respect to the City's housing needs as established in the City's Housing Element, as amended from time to time pursuant to state law.

1 **17.35.020 FINDINGS.**

2
3 a. *Need for Affordable Housing.* The City Council has found that persons of low-
4 and moderate-income are experiencing increasing difficulty in locating and
5 maintaining adequate, safe and sanitary affordable housing.
6

7 b. *Housing Needs and Impacts Created by Nonresidential Development.*
8 Pursuant to the Sonoma County Workforce Housing Linkage Fee Study published by
9 Economic and Planning Systems Inc. in December 2001, the City Council finds that the
10 construction or expansion of nonresidential development is a major factor in attracting
11 new employees to the City of Petaluma and the County of Sonoma. A substantial
12 number of these new employees and their families seek residence in the City and
13 County and place a greater strain on an already impacted housing stock. Current and
14 new employees who are unable to find affordable housing in the jurisdictions in which
15 they work are forced to commute long distances. This situation adversely affects their
16 quality of life, consumes limited energy resources, increases traffic congestion and has
17 a negative impact on air quality. Employers have or will have problems attracting a
18 labor force because of the shortage of housing affordable to many workers.
19

20 c. *Means of Meeting Affordable Housing Demand.* Increasing the production
21 and availability of affordable housing is problematic. Prices and rents for affordable
22 housing remain below the level needed to attract new construction. At the same time,
23 escalating land costs and rapidly diminishing amounts of land available for
24 development hinder the provision of affordable housing units solely through private
25 action. Federal and State housing finances and subsidy programs are not sufficient by
26 themselves to satisfy the affordable housing needs associated with employment
27 resulting from nonresidential development. Programs and activities to expand
28 affordable housing opportunities can be accomplished through public/private
29 partnership action. It is the purpose of this chapter to establish a feasible means by
30 which developers of nonresidential development projects assist in (1) increasing the
31 supply of low- and moderate-income housing and (2) increasing the supply of housing
32 in proximity to employment centers.
33

34 d. *Imposing Housing Requirement on Developers Whose Projects Create the*
35 *Need.* It is appropriate to impose some of the cost of the increased burden of providing
36 housing for low- and moderate-income people necessitated by such development
37 directly upon the sponsors of a development, and indirectly upon the occupiers. The
38 imposition of a commercial linkage fee requirement is an appropriate means to
39 accomplish the purpose of this chapter. In calculating the commercial linkage fee
40 requirement, the City Council has taken into account other factors in addition to the
41 simple calculation of contribution. These include impact on construction costs, special
42 factors and hardships associated with certain types of development, and legal issues.
43

44 e. *Rational Relationship Between Affordable Housing Need Created and Fee*
45 *Requirement.* The unit requirements and housing fees contained in this chapter are
46 designed to create a rational relationship between the amount of housing need
47 created by the land use and the size of the fee, taking into account the effect of such
48 fee requirement on providing affordable housing opportunities and the economic

1 feasibility of imposing such requirements.

2

3 **17.35.030 DEFINITIONS.**

4

5 As used in this section:

6

7 *Addition* shall mean adding gross square feet to an existing development project or
8 building subject to this ordinance.

9

10 *Affordable housing* shall mean the total cost of monthly housing payments does not
11 exceed thirty (30) percent of gross household income.

12

13 *Changed Nonresidential Development* shall mean the transition of existing
14 nonresidential space from one type of nonresidential use to another or a change from
15 residential to nonresidential.

16

17 *City Manager* shall mean the City Manager of the City of Petaluma or his/her
18 designee.

19

20 *Development or development project* for purposes of this Chapter shall mean any
21 project resulting in new, expanded, remodeled, or changed nonresidential
22 development.

23

24 *Director of Community Development* shall mean the Director of Community
25 Development for the City of Petaluma or his/her designee.

26

27 *Expanded Nonresidential Development* shall mean construction that results in a net
28 increase in the gross square footage of an existing nonresidential space.

29

30 *Gross square feet or gross square footage* shall mean the area included within the
31 surrounding walls of a nonresidential development. This area does not include enclosed
32 parking for vehicles.

33

34 *Low- and moderate-income* shall mean a household with total annual income
35 between 80-100 percent of the area median income, adjusted for family size, and in
36 accordance with the Area Median Income Schedule as published annually by the U.S.
37 Department of Housing and Urban Development for the Santa Rosa MSA.

38

39 *Nexus Study* shall mean the Sonoma County Workforce Housing Linkage Fee Study
40 published by Economic and Planning Systems, Inc. in December 2001 as may be
41 amended from time to time.

42

43 *Remodeled Nonresidential Development* shall mean all interior tenant or owner
44 improvements to existing nonresidential space.

45

46 **17.35.040 APPLICATION OF FEE.**

47

48 a. *Determination of Development Projects.* The fee requirement shall be applied to

1 nonresidential development projects involving the construction of a new building,
2 construction of additional gross square footage to existing nonresidential buildings,
3 interior remodels of existing nonresidential buildings, or a change in nonresidential use
4 or a change from residential to nonresidential use in an existing building that increases
5 the number of employees.
6

7 *b. Determination of Land Uses.* For the purposes of, this ordinance, nonresidential
8 land uses shall be divided into three (3) classifications: commercial, retail, and industrial.
9 Where necessary, the Director of Community Development shall determine the land
10 use classification that best describes the nonresidential development, or portion thereof
11 in the case of "Mixed Use" developments, for the purposes of assigning the fee to be
12 charged.
13

14 *c. Application of Fee.* The fee shall be applied as provided in Sections 17.35.040 (a)
15 and (b) commencing on January 1, 2005 and shall automatically increase on January
16 1, 2006 and on January 1, 2007, as follows:
17

Effective Date	Commercial Fee	Retail Fee	Industrial Fee
January 1, 2005	\$0.69/square foot	\$1.19/square foot	\$0.71/square foot
January 1, 2006	\$1.38/square foot	\$2.38/square foot	\$1.42/square foot
January 1, 2007	\$2.08/square foot	\$3.59/square foot	\$2.15/square foot

18
19 The fee shall be applied to all building or other applicable permits issued on or after the
20 applicable effective date. For any "changed nonresidential use" that does not require
21 a building or other applicable permit, the fee shall be applied at the time a new
22 business license is issued.
23

24 *d. Application of Fee in Redevelopment Project Areas.* Any nonresidential
25 development as provided in Sections 17.35.040 (a) and (b) located within the adopted
26 boundaries of a City of Petaluma Community Development Commission
27 redevelopment project area shall pay a fee equal to one-half the amount established
28 by the table in Section 17.35.040 (c) or, after January 1, 2007, as may be adjusted from
29 time to time.
30

31 **17.35.050 FEE CREDIT OR REFUND.**
32

33 *a. Fee Credit.* A developer of any project subject to the fee requirement may apply
34 to receive a credit against the total amount of fees due, or a portion thereof, if said
35 developer provides affordable housing through some other means agreeable to the
36 City of Petaluma.
37

38 *b. Refund of Fee.* If the affordable housing fee is paid and the building permit is later
39 canceled or voided, or the permit which triggers the application of the fee fails to vest
40 within the terms of said permit, the Director of Community Development may, upon
41 written request of the developer, order return of the fee if (1) the fees paid have not
42 been committed, and (2) work on the private development project has not progressed
43 to a point that would permit commencement of a new, changed, or expanded use for

1 which a fee would be payable.

2
3 **17.35.060 USE OF FEES.**

4
5 a. *Use and Disbursement of Monies in the Fund:* Monies collected pursuant to this
6 Chapter shall be used in accordance with and in support of activities to implement the
7 City's adopted Housing Element, Consolidated Plan, and Implementation Plan.
8 Activities shall be limited to direct expenditure for the development of affordable
9 housing as defined herein or incidental non-capital expenditures related to such
10 projects, including but not limited to land acquisition, applicable pre-development
11 costs, construction, rehabilitation, subsidization, counseling or assistance to other
12 governmental entities, private organizations or individuals to expand affordable housing
13 opportunities to low- and moderate-income households. Monies in the fund may be
14 disbursed, hypothecated, collateralized, or otherwise employed for these purposes
15 from time to time as the City Council so determines is appropriate to accomplish the
16 purposes of the affordable housing fund. These uses include, but are not limited to,
17 assistance to housing development corporations, equity participation loans, grants,
18 predevelopment loan funds, participation leases, loans to develop affordable housing
19 or other public/private partnership arrangements. The affordable housing funds may be
20 expended for the benefit of both rental and owner-occupied housing.

21
22 b. *Accounting of Fees.* All fees shall be deposited into a segregated account and all
23 expenditures of funds from the same shall be documented and available for public
24 inspection during regular business hours.

25
26 **17.35.070 EXEMPTIONS.**

27
28 a. Public facilities, public and private schools, and churches are exempt from the
29 provisions of this section.

30
31 **17.35.080 FEE ESCALATORS.**

32
33 a. After January 1, 2007, this fee shall be annually increased to reflect the
34 percentage increase in the cost of construction or public improvements as reported in
35 the Engineering News Record-Construction Price Index for the San Francisco Bay Area.

36
37 b. This fee may be adjusted from time to time, based upon amendments or updates
38 to the Nexus Study, or based on any other data and analysis which the City Council
39 determines to be applicable to the continued establishment of this fee.

40
41 **Section 2.** All code provisions, ordinances, and parts of ordinances in conflict
42 with the provisions of this ordinance are repealed. The provisions of this ordinance,
43 insofar as they are substantially the same as existing code provisions relating to the
44 same subject matter shall be construed as restatements and continuations thereof and
45 not as new enactments. With respect, however, to violations, rights accrued, liabilities
46 accrued, or appeals taken, prior to the effective date of this ordinance, under any
47 chapter, ordinance, or part of an ordinance shall be deemed to remain in full force for
48 the purpose of sustaining any proper suit, action, or other proceedings, with respect to

1 any such violation, right, liability or appeal.

2
3 **Section 3.** The City Clerk is hereby directed to post/publish this ordinance for the
4 period and in the manner required by the City Charter.

5
6 **Section 4.** This ordinance shall take effect thirty (30) days after its passage.

7
8 **INTRODUCED** and ordered posted/published this 1st day of December 2003.

9
10 **ADOPTED** this 15th day of December 2003 by the following vote:


11
12 **AYES:** Canevaro, Mayor Glass, Harris, Healy, Vice Mayor O'Brien, Torliatt

13 **NOES:** Moynihan

14 **ABSENT:** None

15
16
17
18 
19 _____
20 David Glass, Mayor

21
22 **ATTEST:**

23
24 
25 _____
26 Gayle Petersen, City Clerk

27
28 **APPROVED AS TO FORM:**

29
30 
31 _____
32 Richard R. Rudnansky, City Attorney