

Resolution No. 2018-142 N.C.S.  
of the City of Petaluma, California

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PETALUMA  
INCREASING INCLUSIONARY HOUSING IN-LIEU FEES PAYABLE AS  
REQUIRED BY PROGRAM 4.3 IN THE CITY OF PETALUMA'S  
GENERAL PLAN 2025, 2015-2023 HOUSING ELEMENT AS ADOPTED BY  
RESOLUTION NO. 2014-190 N.C.S. AND REPLACING THE HOUSING  
IN-LIEU FEES SET BY RESOLUTION NO. 2003-241 N.C.S.**

**WHEREAS**, on December 6, 1982, by Resolution no. 9620 N.C.S., the City Council adopted the Housing Element of the Petaluma General Plan ("1982 Housing Element") setting forth the goals, polices and implementation programs to achieve an adequate supply of housing for all groups; and

**WHEREAS**, Program 2 of the policies for implementing the 1982 Housing Element provided for requiring developers of residential developments with 16 or more units to achieve adequate housing supply for all groups by one of several methods, including an in-lieu fee related to the cost of providing housing to write down land costs or acquire housing for low and moderate-income housing in Petaluma; and

**WHEREAS**, on August 20, 1984, by adoption of Resolution no. 84-199 N.C.S., the City Council established a schedule of in-lieu fees to implement Program 2 of the 1982 Housing Element; and

**WHEREAS**, on December 16, 2002, by Resolution no. 2002-198 N.C.S. the City Council adopted the Housing Element of the Petaluma General Plan ("2002 Housing Element") setting the goals, policies and implementation programs to achieve an adequate supply of housing units and programs for all groups; and

**WHEREAS**, Program 4.4 of the 2002 Housing Element provided for requiring residential projects of five or more units to contribute to the provision of below-market rate housing by providing affordable units on site, dedicating a portion of the project site, making an in-lieu payment to the City's housing fund, or using alternative methods; and

**WHEREAS**, on December 1, 2003, by Resolution No. 2003-241 N.C.S., the City Council established an in-lieu fee schedule for those developers who chose to make an in-lieu payment into the City's housing fund; 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**, it is the desire of the City Council to approve an inclusionary housing ordinance in accordance with the authority in AB-1505 to require on-site inclusionary housing units as part of residential housing development projects, both homeownership and rental, in the City to mitigate the effect of new market rate housing on the City’s stock of affordable housing, 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 and generally to ensure the provision of affordable housing to help address the City’s Regional Housing Need Allocation and the acute housing crisis in Sonoma County, and to provide for alternative means of compliance as AB-1505 requires; and

**WHEREAS**, it is the desire of the City Council to increase the City’s Inclusionary Housing In-Lieu fee in accordance the EPS Presentation, the Memorandum, and the Reports, to apply to developers of residential housing that the Council permits to make a payment in-lieu of providing affordable housing on site to more closely approach developers’ fair-share responsibility toward contributing to implementing the City’s 2015-2023 Housing Element policies and programs; 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 effect of new market rate housing on the City’s stock of affordable housing, 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 not an exaction, if it imposes lawful, non-confiscatory land use restrictions in the form of price limits; and

**WHEREAS**, under *California Building Association*, inclusionary ordinances, to be valid, need only be reasonably related to the broad general welfare purposes for which they are enacted, and such inclusionary housing ordinances that require residential projects to provide a reasonable amount of on-site affordable units, and offer reasonable alternative means of satisfying the ordinance’s inclusionary objectives, such as payment of in-lieu fees, land dedication, and off-site construction are valid local land use regulations and not takings; and

**WHEREAS**, the City Council finds that this resolution and the inclusionary housing in-lieu fee it establishes is a valid local land use regulation and does not affect a taking in accordance with *California Building Association*; and

**WHEREAS**, on June 7, 2018, public notice of a June 18, 2018 public hearing before the City Council to consider proposed inclusionary housing amendments to the IZO and proposed increases to the City's inclusionary housing fees was published in the Argus-Courier as an eighth page ad; and

**WHEREAS**, on June 18, 2018, the City Council of the City of Petaluma held a duly noticed public hearing to consider the proposed IZO amendments and inclusionary fees and continued the item to a date certain of August 6, 2018; and

**WHEREAS**, on August 6, 2018, the City Council continued the item to a date certain of September 10, 2018; and

**WHEREAS**, on September 10, 2018 the City Council of the City of Petaluma held a duly noticed public hearing to consider proposed amendments to the IZO, Ordinance 2300 N.C.S. incorporating inclusionary housing requirements into the IZO and proposed increases to the City's inclusionary fees; and

**WHEREAS**, this resolution and the inclusionary housing in-lieu fee it establishes is exempt from environmental review under the general rule in 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 inclusionary housing in-lieu fee 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 in-lieu fee it establishes is statutorily exempt pursuant to Section 15283 of the CEQA Guidelines because this resolution and the inclusionary housing in-lieu fee 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; and

**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 this resolution as findings of the City Council of the City of Petaluma.
2. The in-lieu inclusionary housing fee schedule attached to and hereby made a part of this resolution as Exhibit A shall apply to payments to the City's housing fund which the City Council permits developers to make in-lieu of provision of on-site affordable housing in accordance with Policy 4.2 and Program 4.3 of the 2015-2023 Housing Element.

3. In-lieu fees authorized pursuant to this resolution shall be paid and collected on behalf of the City at the time escrow closes on purchase of for-sale residential units, and at the time of issuance of a certificate of occupancy for rental units.
4. Except as provided in Section 6, below, the in-lieu inclusionary housing fees established pursuant to Resolution no. 2003-241 N.C.S. and any other previously-enacted in-lieu inclusionary housing fees are hereby repealed and shall no longer be of any effect 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, except that any residential project application or mixed-use project application with a residential component that either a) has a recorded final map as of January 1, 2019 that is consistent with the previously approved tentative map (regardless of whether further subdivision or further discretionary approvals for the project are required) or b) that is deemed complete by the Planning Division prior to January 1, 2019 shall be subject to those in-lieu fees in effect immediately prior to the new housing in lieu fees adopted pursuant to this resolution taking effect. The exception in clause a) of this provision for residential project applications or mixed-use project applications with residential components that have recorded final maps as of January 1, 2019 shall expire and cease to be of any effect without further action of the City Council concerning project applications that would otherwise qualify for the exemption but that are not deemed complete prior to January 1, 2024.

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 10<sup>th</sup> day of September 2018, by the following vote:

Approved as to form:



City Attorney

**AYES:**

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

**NOES:**

None

**ABSENT:**

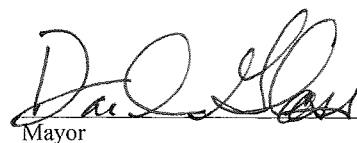
None

**ABSTAIN:**

None

**ATTEST:**

  
City Clerk

  
Mayor

IN-LIEU HOUSING FEES (5 units or more – based on square footage) see Tables below:

Sq. Ft	Fee	Sq. Ft	Fee	Sq. Ft	Fee	Sq. Ft.	Fee	Sq. Ft	Fee
640	\$6,477	960	\$9,715	1280	\$12,954	1600	\$16,192	1920	\$19,430
650	\$6,578	970	\$9,816	1290	\$13,055	1610	\$16,293	1930	\$19,532
660	\$6,679	980	\$9,918	1300	\$13,156	1620	\$16,394	1940	\$19,633
670	\$6,780	990	\$10,019	1310	\$13,257	1630	\$16,496	1950	\$19,734
680	\$6,882	1000	\$10,120	1320	\$13,358	1640	\$16,597	1960	\$19,835
690	\$6,983	1010	\$10,221	1330	\$13,460	1650	\$16,698	1970	\$19,936
700	\$7,084	1020	\$10,322	1340	\$13,561	1660	\$16,799	1980	\$20,038
710	\$7,185	1030	\$10,424	1350	\$13,662	1670	\$16,900	1990	\$20,139
720	\$7,286	1040	\$10,525	1360	\$13,763	1680	\$17,002	2000	\$20,240
730	\$7,388	1050	\$10,626	1370	\$13,864	1690	\$17,103	2010	\$20,341
740	\$7,489	1060	\$10,727	1380	\$13,966	1700	\$17,204	2020	\$20,442
750	\$7,590	1070	\$10,828	1390	\$14,067	1710	\$17,305	2030	\$20,544
760	\$7,691	1080	\$10,930	1400	\$14,168	1720	\$17,406	2040	\$20,645
770	\$7,792	1090	\$11,031	1410	\$14,269	1730	\$17,508	2050	\$20,746
780	\$7,894	1100	\$11,132	1420	\$14,370	1740	\$17,609	2060	\$20,847
790	\$7,995	1110	\$11,233	1430	\$14,472	1750	\$17,710	2070	\$20,948
800	\$8,096	1120	\$11,334	1440	\$14,573	1760	\$17,811	2080	\$21,050
810	\$8,197	1130	\$11,436	1450	\$14,674	1770	\$17,912	2090	\$21,151
820	\$8,298	1140	\$11,537	1460	\$14,775	1780	\$18,014	2100	\$21,252
830	\$8,400	1150	\$11,638	1470	\$14,876	1790	\$18,115	2110	\$21,353
840	\$8,501	1160	\$11,739	1480	\$14,978	1800	\$18,216	2120	\$21,454
850	\$8,602	1170	\$11,840	1490	\$15,079	1810	\$18,317	2130	\$21,556
860	\$8,703	1180	\$11,942	1500	\$15,180	1820	\$18,418	2140	\$21,657
870	\$8,804	1190	\$12,043	1510	\$15,281	1830	\$18,520	2150	\$21,758
880	\$8,906	1200	\$12,144	1520	\$15,382	1840	\$18,621	2160	\$21,859
890	\$9,007	1210	\$12,245	1530	\$15,484	1850	\$18,722	2170	\$21,960
900	\$9,108	1220	\$12,346	1540	\$15,585	1860	\$18,823	2180	\$22,062
910	\$9,209	1230	\$12,448	1550	\$15,686	1870	\$18,924	2190	\$22,163
920	\$9,310	1240	\$12,549	1560	\$15,787	1880	\$19,026	2200	\$22,264
930	\$9,412	1250	\$12,650	1570	\$15,888	1890	\$19,127	2210	\$22,365
940	\$9,513	1260	\$12,751	1580	\$15,990	1900	\$19,228	2220	\$22,466
950	\$9,614	1270	\$12,852	1590	\$16,091	1910	\$19,329	2230	\$22,568

Sq. Ft	Fee	Sq. Ft	Fee	Sq. Ft	Fee	Sq. Ft.	Fee	Sq. Ft	Fee
2240	\$22,669	2560	\$25,907	2880	\$29,146	3200	\$32,384	3520	\$35,622
2250	\$22,770	2570	\$26,008	2890	\$29,247	3210	\$32,485	3530	\$35,724
2260	\$22,871	2580	\$26,110	2900	\$29,348	3220	\$32,586	3540	\$35,825
2270	\$22,972	2590	\$26,211	2910	\$29,449	3230	\$32,688	3550	\$35,926
2280	\$23,074	2600	\$26,312	2920	\$29,550	3240	\$32,789	3560	\$36,027
2290	\$23,175	2610	\$26,413	2930	\$29,652	3250	\$32,890	3570	\$36,128
2300	\$23,276	2620	\$26,514	2940	\$29,753	3260	\$32,991	3580	\$36,230
2310	\$23,377	2630	\$26,616	2950	\$29,854	3270	\$33,092	3590	\$36,331
2320	\$23,478	2640	\$26,717	2960	\$29,955	3280	\$33,194	3600	\$36,432
2330	\$23,580	2650	\$26,818	2970	\$30,056	3290	\$33,295	3610	\$36,533
2340	\$23,681	2660	\$26,919	2980	\$30,158	3300	\$33,396	3620	\$36,634
2350	\$23,782	2670	\$27,020	2990	\$30,259	3310	\$33,497	3630	\$36,736
2360	\$23,883	2680	\$27,122	3000	\$30,360	3320	\$33,598	3640	\$36,837
2370	\$23,984	2690	\$27,223	3010	\$30,461	3330	\$33,700	3650	\$36,938
2380	\$24,086	2700	\$27,324	3020	\$30,562	3340	\$33,801	3660	\$37,039
2390	\$24,187	2710	\$27,425	3030	\$30,664	3350	\$33,902	3670	\$37,140
2400	\$24,288	2720	\$27,526	3040	\$30,765	3360	\$34,003	3680	\$37,242
2410	\$24,389	2730	\$27,628	3050	\$30,866	3370	\$34,104	3690	\$37,343
2420	\$24,490	2740	\$27,729	3060	\$30,967	3380	\$34,206	3700	\$37,444
2430	\$24,592	2750	\$27,830	3070	\$31,068	3390	\$34,307	3710	\$37,545
2440	\$24,693	2760	\$27,931	3080	\$31,170	3400	\$34,408	3720	\$37,646
2450	\$24,794	2770	\$28,032	3090	\$31,271	3410	\$34,509	3730	\$37,748
2460	\$24,895	2780	\$28,134	3100	\$31,372	3420	\$34,610	3740	\$37,849
2470	\$24,996	2790	\$28,235	3110	\$31,473	3430	\$34,712	3750	\$37,950
2480	\$25,098	2800	\$28,336	3120	\$31,574	3440	\$34,813	3760	\$38,051
2490	\$25,199	2810	\$28,437	3130	\$31,676	3450	\$34,914	3770	\$38,152
2500	\$25,300	2820	\$28,538	3140	\$31,777	3460	\$35,015	3780	\$38,254
2510	\$25,401	2830	\$28,640	3150	\$31,878	3470	\$35,116	3790	\$38,355
2520	\$25,502	2840	\$28,741	3160	\$31,979	3480	\$35,218	3800	\$38,456
2530	\$25,604	2850	\$28,842	3170	\$32,080	3490	\$35,319	3810	\$38,557
2540	\$25,705	2860	\$28,943	3180	\$32,182	3500	\$35,420	3820	\$38,658
2550	\$25,806	2870	\$29,044	3190	\$32,283	3510	\$35,521	3830	\$38,760