

# ATTACHMENT 1

## ORDINANCE O2018-\_\_

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NAPA, STATE OF CALIFORNIA, AMENDING NAPA MUNICIPAL CODE CHAPTER 15.94 ("AFFORDABLE HOUSING IMPACT FEES") TO INCLUDE UNITS THAT ARE 500 SQUARE FEET OR LESS WITHIN THE DEFINITION OF "AFFORDABLE UNITS" AND TO MAKE MINOR CLARIFICATIONS; AND DETERMINING THAT THE ACTIONS AUTHORIZED BY THIS ORDINANCE WERE ADEQUATELY ANALYZED BY A PREVIOUS CEQA ACTION

WHEREAS, Napa Municipal Code Chapter 15.94 imposes an affordable housing impact fee on new non-residential and residential developments to mitigate the impact of such developments on the need for affordable housing in the City of Napa; and

WHEREAS, Chapter 15.94 provides that any portion of a residential development project that is an "affordable unit" is not subject to the payment of affordable housing impacts fees; and

WHEREAS, accessory dwelling units and efficiency units that are 500 square feet or less are generally rented at rates affordable to low-income households given their small size; and

WHEREAS, to encourage the development of accessory dwelling units and efficiency units affordable to low-income households, the City desires to include such units within the definition of "affordable units" so that they are not subject to the payment of affordable impact fees; and

WHEREAS, the City Council has considered all information related to this matter, as presented at the public meeting of the City Council identified herein, including any supporting reports by City Staff, and any information provided during public meetings.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Napa as follows:

**SECTION 1: CEQA.** The City Council hereby determines that the potential environmental effects of the actions authorized by this Ordinance were adequately analyzed by the negative declaration adopted by Council on July 24, 2012 for the Affordable Housing Impact Fee Ordinance dated May 18, 2012 (PL 12-0045) pursuant to CEQA Guidelines Section 15162.

**SECTION 2: Amendment.** Chapter 15.94, "Affordable Housing Impact Fees," is hereby amended by: (a) repealing the previous language in its entirety, and (b) replacing it with a new Chapter 15.94, "Affordable Housing Impact Fees" (as set forth on Exhibit "A," attached hereto and incorporated herein by reference) which is hereby adopted.

ATTACHMENT 1

**SECTION 3: Severability.** If any section, sub-section, subdivision, paragraph, clause or phrase in this Ordinance, or any part thereof, is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections or portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, sub-section, subdivision, paragraph, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more sections, sub-sections, subdivisions, paragraphs, sentences, clauses or phrases may be declared invalid or unconstitutional.

**SECTION 4: Effective Date.** This Ordinance shall become effective thirty (30) days following adoption.

City of Napa, a municipal corporation

MAYOR: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
CITY CLERK OF THE CITY OF NAPA

STATE OF CALIFORNIA }  
COUNTY OF NAPA } SS:  
CITY OF NAPA }

I, Dorothy Roberts, City Clerk of the City of Napa, do hereby certify that the foregoing Ordinance had its first reading and was introduced during the public meeting of the City Council on the 17<sup>th</sup> day of July 2018, and had its second reading and was adopted and passed during the public meeting of the City Council on the \_\_\_\_ day of \_\_\_\_, 20\_\_, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: \_\_\_\_\_

Dorothy Roberts  
City Clerk

Approved as to Form:

\_\_\_\_\_  
Michael W. Barrett  
City Attorney

# EXHIBIT A

## Chapter 15.94 AFFORDABLE HOUSING IMPACT FEES

### 15.94.010 Purpose.

The purpose of this chapter is to promote the achievement of policy goals identified in the Housing Element of the City's General Plan, and to mitigate the impacts that development projects have on the need for affordable housing, by imposing an affordable housing impact fee on every development project. As defined herein, a development project includes any residential development or nonresidential development that creates a demand for affordable housing. In general, each development project creates a need for additional employees to provide goods and services to residents and businesses; and, since a portion of those additional employees are lower wage earners (generally at 80% or less of area median income), a demand is created for affordable units of housing for those employees. City policies encourage programs to bridge the affordability gap between market rate and affordable units for lower wage earners. The City of Napa, like other cities in the region, is experiencing a shortage of affordable housing. In order to achieve housing goals identified in the Housing Element and encourage the development and construction of a diverse housing inventory at a range of affordability levels, the City imposes impact fees on development projects in order to provide direct funding, subsidies, and incentives to increase, improve, or preserve the supply of housing units affordable to extremely low, very low, and low income households. The collection of revenue from these affordable housing impact fees, combined with other available sources of revenue from the federal, state, and local levels, will allow the City to mitigate the impacts of development projects on the need for affordable housing by funding programs and services that increase, improve, or preserve the supply of affordable units of housing.

### 15.94.020 Definitions.

As used in this chapter:

"Addition" means an extension of or net increase in gross square feet floor area of an existing development project.

"Affordable housing impact fee(s)" mean the fees established pursuant to Section 15.94.030 for development projects to be established by implementing resolution.

"Affordable housing project" means any residential development in which 15% or more of the units are affordable units.

"Affordable rent" means monthly rent (including an allowance for tenant paid utilities as determined by the Director and all mandatory tenant paid fees for housing services) that does not exceed 30% of 60% of area median income for lower income households, that does not exceed 30% of 50% of area median income for very low income households, and that does not exceed 30% of 30% of area median income for extremely low income households. Affordable rent shall be based on presumed occupancy levels of one person in a studio unit, two persons in a one-bedroom unit,

## EXHIBIT A

three persons in a two-bedroom unit, and one additional person for each additional bedroom thereafter, or such other standard that applies pursuant to federal rules applicable to project financing.

“Affordable sales price” means the maximum purchase price that will be affordable to households of the specified target income level. A maximum purchase price shall be considered affordable only if each monthly owner-occupied housing payment (including mortgage, taxes, and insurance) is equal to or less than one-twelfth of 35% of the specified target household income level. The assumptions used to set the affordable sales price, including down payment, mortgage interest rate and loan term shall be determined by the Director. Affordable sales price shall be based upon presumed occupancy levels of one person in a studio unit, two persons in a one-bedroom unit, three persons in a two-bedroom unit, and one additional person for each additional bedroom thereafter.

“Affordable unit” means and is limited to each dwelling unit which is (a) required to be rented at an affordable rent to an extremely low, very low or low income household pursuant to an affordable housing agreement executed in accordance with Section 15.94.080; (b) required to be sold at an affordable sales price to an extremely low, very low or low income household pursuant to an affordable housing agreement executed in accordance with Section 15.94.080; or (c) 500 square feet or less.

“Alteration” means any construction, remodel, renovation, or tenant improvement to an existing building or structure which does not result in an increase in the gross square feet floor area.

“Alternative equivalent proposal” means a proposal to satisfy a developer’s affordable housing impact fee payment obligation through alternative means as authorized under Section 15.94.070 of this code.

“Annual household income” means the combined gross income for all adult persons living in a dwelling unit as calculated for the purpose of the Section 8 program under the United States Housing Act of 1937, as amended, or its successor.

“Area median income” means the median income, adjusted for family size, applicable to Napa County, as determined annually by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937 and as published from time to time by the State of California Department of Housing and Community Development in Section 6932 of Title 25 of the California Code of Regulations, or successor provision published pursuant to California Health and Safety Code Section 50093(c).

“Building permit” means a permit issued pursuant to Chapter 15.08 of this code.

“Chief Building Official” means the Chief Building Official of the City of Napa, or a designee of the Chief Building Official or City Manager.

“Developer” means every person, firm, partnership, joint venture, association, corporation or any entity or combination of entities that seeks a discretionary permit or building permit from the City of Napa for a development project.

## EXHIBIT A

“Development project” means any nonresidential development or residential development as those terms are defined under this section.

“Director” means the Community Development Director of the City of Napa, or a designee of the Community Development Director or City Manager.

“Discretionary permit” means any permit or license issued by the City of Napa for a project which requires the exercise of judgment or deliberation wherein the City decides to either approve or disapprove a particular activity in accordance with applicable laws, including, but not limited to, use permits, and the approval or modification of tentative, or tentative parcel maps pursuant to Title 16 of this code.

“Dwelling unit” shall have the meaning set forth in Title 17 of this code.

“Extremely low income households” means those households with an annual household income of up to 30% of area median income.

“Gross square feet floor area” means the sum of the gross horizontal floor areas of a building measured from the exterior face of exterior walls, or from the center line of a wall separating two buildings. In cases where no walls exist, the gross horizontal floor area shall be that area covered by the roof excluding two feet on each side of the structure for a standard roof projection. The square footage of any tank or wine crush pad or similar non-walled wine related structure shall be included in the gross square feet floor area of a nonresidential development. Outside areas used for sales and/or display may also be considered (e.g., plant nurseries, building materials, auto sales, wine production, outdoor seating, etc.) when the Director determines that the use of the outside area significantly contributes to the number of employees using the building. “Gross square feet floor area” for any development project shall be calculated by determining the combined gross square feet floor area for all floors of all buildings within the development project.

“Implementing resolution” means a resolution of the City Council of the City of Napa, including any technical reports incorporated therein by reference, which sets forth findings required under California Government Code Section 66001 and establishes affordable housing impact fees as authorized by this chapter.

“Low-income or lower income households” means those households with an annual household income of up to 80% of area median income.

“Manager” means the Housing Manager of the City of Napa, or a designee of the Housing Manager or City Manager.

“Market rate units” mean dwelling units in a residential development which are not affordable units, including units affordable to median and moderate income households.

“Median income households” means those households with an annual household income of up to 100% of area median income.

“Moderate income households” means those households with an annual household income of up to 120% of area median income.

“Nonresidential development” means any project, or any portion of a mixed or com-

## EXHIBIT A

bined use project, for the construction, addition, or placement of a building or structure in a permanent location for which a discretionary permit or building permit is required that is not a residential development. The land use categories for nonresidential development include office, hotel, retail, and industrial uses. "Nonresidential development" shall not include repairs or alterations. For the purposes of this chapter, none of the following shall be considered a nonresidential development subject to payment of the affordable housing impact fee:

1. Developments located entirely on property owned or leased by the City of Napa, the County of Napa, the State of California or any of its political subdivisions, the United States of America or any of its agencies, to the extent the use of the property is for exclusively public purposes.
2. Any development to the extent it has a vested right to commence construction without payment of an affordable housing impact fee pursuant to state law or common law.
3. Any development operated by a nonprofit organization to provide food storage, meal service and/or temporary shelter or supportive services to the homeless.

"Planning Manager" means the Planning Manager of the City of Napa, or the designee of the Planning Manager or City Manager.

"Repair" means the reconstruction, renewal, or maintenance of any part of an existing building which does not result in an increase in the gross square feet floor area.

"Residential development" means any project for the construction of, addition to, or placement of, any dwelling unit in a permanent location for which a discretionary permit or building permit is required, or the subdivision of land, which is planned or designed for either of the land use categories identified below as "single-family residential" and "multifamily residential." For the purposes of this chapter: (a) a residential development shall not include alterations, repairs, or other projects which do not result in an addition to an existing residential development; (b) an affordable housing project shall not be considered a residential development subject to payment of the affordable housing impact fees established by this chapter; and (c) any portion of a residential development that is an affordable unit shall not be subject to payment of the affordable housing impact fees established by this chapter. The land use categories for residential development include:

1. Single-Family Residential. This category consists of single-family detached dwelling units, condominiums, and duplexes.
2. Multifamily Residential. This category consists of buildings containing three or more dwelling units (excluding condominiums), and mobile or manufactured homes in mobile home park.

"Transfer" means a change of fee ownership of the property that contains a development project.

"Very low-income households" means those households with an annual household income of up to 50% of area median income.

## EXHIBIT A

### **15.94.030 Residential and nonresidential development—Adoption of affordable housing impact fee by implementing resolution.**

The City Council hereby establishes affordable housing impact fees to be imposed on development projects, which shall be calculated and updated in accordance with this chapter and by implementing resolution. Affordable housing impact fees shall not exceed the estimated reasonable cost of mitigating the impact of development projects on the need for affordable housing within the City. The fees shall be established based on the methodology adopted by the City Council in the implementing resolutions and shall apply to and be calculated according to the land use categories identified in the implementing resolutions. The City Council may periodically review the affordable housing impact fees for development projects and adjust the fees by implementing resolution.

### **15.94.040 Method of calculation and timing of payment of affordable housing impact fees.**

A. Affordable housing impact fees shall be calculated by the Chief Building Official based on the methodology identified by the City Council and in the amounts established by implementing resolution for each development project land use category.

B. Each application for a building permit for any development project shall contain a statement of the gross square feet area for the development project, together with supporting documentation sufficient to support the representation contained in the application, and, if the developer proposes an alternative to payment of the affordable housing impact fees, a request for approval of an alternative equivalent proposal in accordance with the requirements of Section 15.94.070.

C. In the event a development project requires a discretionary permit but no building permit, the developer shall include a statement of gross square feet area contained in the development project along with the development application submitted to the Planning Division, and the Chief Building Official shall calculate affordable housing impact fees according to the methodology identified by the City Council and in the amounts established by implementing resolution for each development project land use category.

D. In calculating the fee, the Chief Building Official shall use the fees for each development project land use category identified in the implementing resolution that are in effect at the time the fees are paid.

E. In the event the application is for a nonresidential development that does not fall into one of the land use categories listed in the implementing resolution, such as a use that is estimated to generate a number of employees per square foot that is substantially more than the number of employees used to calculate the fee in the implementing resolution, the developer shall so indicate in the application, and provide supporting and supplemental information sufficient to enable the Director to make a determination as to the number of employees expected for the nonresiden-

## EXHIBIT A

tial development use and the appropriate fee amount. Such supporting and supplemental information may include data regarding the number of employees anticipated for the nonresidential development, employment surveys, other research surveys, or any other data or information that will enable the Director to estimate the estimated impacts of the nonresidential development on the need for affordable housing. Upon receipt of the application, the Chief Building Official shall refer the matter to the Director for a fee determination based on a calculation of the estimated number of employees. Such determination shall be based on the impact information submitted by the developer, and any other data or information the Director deems relevant. Based on the documentation and information submitted, the Director shall determine the most similar land use category as identified in the implementing resolution. In the event the developer contests the Director's fee determination, the developer may, within 30 days of receipt of the Director's notification of the fee amount, amend their application to include a petition for adjustment or waiver of the fees in accordance with the procedures set forth in Section 15.94.100.

F. Unless otherwise preempted by law, affordable housing impact fees shall be paid prior to the issuance of a building permit for any development project, or, if no building permit is required, prior to the approval of a discretionary permit for the development project, or upon the execution by the developer and owner, if different, of the City's secured building agreement recorded against the subject property as authorized under California Government Code 66007, at the time of final inspection or issuance of a certificate of occupancy, whichever occurs first. Affordable housing impact fees shall be paid no earlier than either: (1) the date on which a complete application is filed for the building permit; or (2) if no building permit is required, the date on which a complete application is filed for the discretionary permit.

### **15.94.050 Allowable uses of affordable housing impact fee revenue.**

Affordable housing impact fees authorized by this chapter and as imposed and collected under implementing resolution adopted by the City Council, along with any interest earned thereupon, shall be used to increase, improve, and preserve the supply of affordable units of housing serving the workforce and residents of the City. Revenue collected under the authority of this chapter may be utilized for, but are not limited to, the following purposes: new construction of affordable units, including any costs associated with planning, administration and design of the affordable units, acquisition of real property for the present or future development of affordable units, conversion of existing market rate units to affordable units, preservation of existing affordable units, rehabilitation of affordable units at risk of loss, or subsidies for developers that will promote and encourage the development of rental or ownership affordable units. Fee revenue may also be used to cover reasonable administrative expenses not reimbursed through processing fees, including reasonable consultant and legal expenses related to the administration of the affordable housing impact fees collected under this chapter and reasonable expenses for administering the process of calculating, collecting, and accounting for affordable housing impact fees. Any expenditure of revenue imposed and collected un-



## EXHIBIT A

der the authority of this chapter shall be consistent with the Section 15.94.010, "Purpose," and any administrative regulations promulgated by the City Manager under the authority of Section 15.94.060.

### **15.94.060 Administrative regulations.**

The City Manager is authorized to establish and maintain written administrative regulations which implement the requirements of this chapter. A copy of the administrative regulations shall be maintained in the office of the City Clerk. The administrative regulations shall be approved by the City Manager, based on the recommendation of the Manager, and subject to the review and approval as to form by the City Attorney. The administrative regulations may include, but are not limited to, the following elements: establishment of policies to prioritize uses of affordable housing impact fees in order to maximize the production of additional affordable units consistent with the purposes of this chapter and the allowable uses of affordable housing impact fees as set forth under Section 15.94.050; setting and administering sales prices for owner-occupied affordable units constructed using affordable housing impact fees; setting and administering gross rents for rental affordable units in accordance with Section 15.94.080; requiring guarantees; procedures for review and approval of the income eligibility of households applying for ownership or occupancy of an affordable unit; procedures for entering into affordable housing agreements with developers and resale restriction agreements with purchasers of affordable units; and establishing additional procedures and protocols necessary to insure that the affordable units are provided for and occupied by extremely low, very low and low income households.

### **15.94.070 Alternative equivalent proposals permitted.**

A. As an alternative to payment of the affordable housing impact fees authorized by this chapter and imposed by implementing resolution of the City Council, a developer may satisfy the fee obligation by providing documentation, to the satisfaction of the City Council, that the developer can further affordable housing opportunities within the City to an equal or greater extent than payment of the affordable housing impact fees through the performance of an alternative equivalent proposal. A developer may submit a request with the development project application to mitigate the affordable housing impacts of the development project through the construction of affordable units either on- or off-site, through the dedication of real property to be reserved for the construction of affordable units, through the provision of rental affordable units, through the conversion of existing market rate units to affordable units, through the preservation of affordable units at risk of loss, or through other means consistent with the Housing Element. The developer must submit documentation which establishes, to the satisfaction of the City Council, that the alternative equivalent proposal will further affordable housing opportunities in the City to an equal or greater extent than payment of the affordable housing impact fees authorized under this chapter and imposed by implementing resolution. The alternative

## EXHIBIT A

equivalent proposal shall be reviewed by the reviewing body with final approval authority for the discretionary permits required for the development project, or, if no discretionary permits are required, by the Director. Any alternative equivalent proposal shall be subject to final review and approval by the City Council, in accordance with this Section 15.94.070(A).

B.If an alternative equivalent proposal is approved, the developer shall enter into an affordable housing agreement with the City, which complies with the requirements in Section 15.94.080. The affordable housing agreement shall be recorded against the parcels upon which the affordable units are or will be located, prior to approval of any final or parcel map, or issuance of any building permit, whichever occurs first.

### **15.94.080 Continued affordability of affordable units constructed using affordable housing impact fee revenue.**

A.Prior to approval of any final or parcel map, or issuance of any building permit, whichever occurs first, for any ownership or rental affordable units constructed or otherwise created pursuant to Section 15.94.070 or constructed all or in part with the use of affordable housing impact fees imposed and collected under this chapter, the developer must execute an affordable housing agreement in accordance with the requirements of this section acceptable to the Director and approved as to form by the City Attorney. Each affordable housing agreement must be signed by the owner of the real property upon which the ownership or rental affordable units are or will be located, and recorded against the subject real property.

B.The affordable housing agreement shall include the following provisions:

1. A description of the affordable units, including whether they will be ownership units or rental units.
2. The number, type, location, size, affordability level and phasing of all affordable units.
3. The formula for calculating the rents or sales prices for the affordable units.
4. Provisions requiring that each affordable unit shall remain affordable to the relevant affordable income level for a minimum of at least 45 years for ownership units and 55 years for rental units.
5. Provisions requiring execution of resale restrictions, deeds of trust, or other regulatory documents, as appropriate.
6. Provisions requiring the purchaser of an ownership affordable unit to execute a resale restriction agreement with the City and record such agreement against the property prior to close of escrow.
7. The marketing plan for sale or rental of the affordable units.
8. Provisions for monitoring the ongoing affordability of the affordable units,

## EXHIBIT A

and the process for qualifying prospective resident households for income eligibility.

9. Any additional provisions relevant to the compliance with this chapter.

C. Prior to the transfer of any ownership affordable unit constructed all or in part with the use of affordable housing impact fees imposed and collected under this chapter, the new owner shall execute new resale restrictions, deeds of trust and/ or other documents acceptable to the Director and approved as to form by the City Attorney, and record such resale restrictions, deeds of trust or other regulatory documents against such unit for a new minimum term of at least 45 years.

D. No household shall be permitted to occupy an ownership or rental affordable unit constructed all or in part with the use of affordable housing impact fees imposed and collected under this chapter unless the household's income eligibility has been verified in accordance with this subsection. For ownership affordable units, the developer shall submit documentation that establishes the household's income eligibility for the unit prior to purchase to the satisfaction of the Manager. For rental affordable units, the property owner or the property owner's designee shall verify the household's income eligibility, and the Manager will monitor the affordable units annually to ensure compliance with the rental affordable housing agreements or other regulatory documents as appropriate.

E. Ownership affordable units constructed or otherwise created pursuant to Section 15.94.070 or constructed all or in part with the use of affordable housing impact fees shall not be rented by the owner without prior written approval from the Director based on substantial hardship including, but not limited to, active military duty and illness, and as consistent with any provisions regarding lease of the property set forth in a resale restriction agreement or other regulatory document as required by subsection A.

### **15.94.090 Enforcement.**

A. Violations of this chapter may be enforced in accordance with the provisions of Title 1 of this code.

B. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the City from seeking any other remedy or relief to which it otherwise would be entitled under law or equity.

### **15.94.100 Adjustment or waiver of affordable housing impact fees.**

As part of an application for approval of a development project, a developer may apply for a reduction, adjustment or waiver of the applicable affordable housing impact fee based upon a showing that payment of the fee authorized by this chapter and imposed by implementing resolution bears no reasonable relationship or nexus with the impact of

## EXHIBIT A

the development on the need for affordable housing within the City. The developer shall submit such application for fee reduction in writing along with the application for the development project and shall set forth in detail all factual and legal bases for the fee reduction application, including any technical supporting documentation, and shall bear the burden of providing sufficient evidence to demonstrate the alleged lack of nexus or reasonable relationship. Any such fee reduction application shall be filed with the City Clerk not later than 10 days before the first public hearing on any discretionary permit or approval for the development project, or if no such discretionary permit or approval is required, then the fee reduction application shall be filed within 10 days after payment of the fees objected to. If applying for a reduction in fees owed upon issuance of a building permit, the developer shall pay all required fees under protest and concurrently file a written application for a waiver or reduction as an appeal to City Council. Fee reduction applications filed under this section shall comply with the requirements set forth in Chapter 17.70 and shall be conducted in accordance with the procedures set forth in that chapter, except that all applications shall be considered by the City Council. The City Council may approve a reduction, adjustment or waiver if it determines that there is no reasonable relationship or nexus between the fees imposed under the authority of this chapter by implementing resolution and the impact of the development on the need for affordable housing within the City. The reduction, adjustment or waiver may be approved only to the extent necessary to establish a reasonable relationship or nexus between the fee and the impact of the development on the need for affordable housing within the City. The decision of the Council shall be final.