

## RESOLUTION NO. 8852

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS ESTABLISHING RESIDENTIAL AND NON-RESIDENTIAL AFFORDABLE HOUSING FEES AND INTEGRATING THE FEES INTO THE CITY'S MASTER FEE SCHEDULE AND MAKING FINDINGS OF CEQA EXEMPTION

**WHEREAS**, on June 19, 2018, the Milpitas City Council passed Ordinance No. 297 (the "Ordinance"); and

**WHEREAS**, the Ordinance established the 15% affordability requirement requiring all new residential development projects of 10 units or more to construct 15% of the total dwelling units within the development as affordable units; and

**WHEREAS**, as extensively articulated in the record before the City Council in considering and adopting the Ordinance, there are extensive legal and policy reasons that amply demonstrate the critical needs and associated goals of the community and the region to facilitate the provision of affordable housing, whose needs and goals are served by the Ordinance and evidence of which is incorporated by reference and supports the City Council actions undertaken herein; and

**WHEREAS**, Municipal Code Section XII-1-4.00 provides the City the authority to adopt by resolution a Residential Affordable Housing fee, also known as Residential in-lieu fee; and

**WHEREAS**, the Mitigation Fee Act, codified at Government Code section 66000, et seq., establishes the legal requirements for a jurisdiction to establish and implement a development impact fee program in conformance with constitutional standards; and

**WHEREAS**, Municipal Code Section XII-1-5.01 provides the City Council the authority to adopt by resolution a Non-Residential Affordable Housing Impact Fee; and

**WHEREAS**, to establish a basis for an affordable housing fee program, the City joined a multi-jurisdictional study organized by the Silicon Valley Community Foundation; and

**WHEREAS**, the Silicon Valley Community Foundation effort resulted in three reports prepared by Keyser Marston Associates, dated December 2016 (collectively, "Nexus Studies"); and

**WHEREAS**, the Nexus Studies demonstrate that new residential and non-residential development and additions to structures containing these types of uses generate an increased demand for affordable housing and that there is a reasonable relationship between how these can be mitigated through imposition of housing impact fees or fees paid in lieu of development of inclusionary housing; and

**WHEREAS**, the City Council has fully considered the Nexus Studies, the information and analysis of which is available for review on the City's website and at the Department of Building and Housing at the City Hall located at 455 East Calaveras Boulevard, Milpitas, California 95035; and

**WHEREAS**, the Nexus Studies identify the impact from each type of new non-residential development and calculates a maximum fee amount for each land use that would mitigate its affordable housing impact; and

**WHEREAS**, the residential in-lieu fee economic analysis in the Nexus Studies provides an economic and police power-based rationale for calculating the residential in-lieu fee as the study also evaluates the impact of new residential development on affordable housing; and

**WHEREAS**, notice was provided to interested parties in accordance with Government Code Section 66016-66019 and on February 22, 2019, a notice of the public hearing to be held on March 5, 2019 to establish the proposed affordable housing fees was published in The Milpitas Post in accordance with Government Code section 65090, et seq.; and

**WHEREAS**, the Council hereby finds this action is exempt from the California Environmental Quality Act ("CEQA") because, each as a separate and independent basis for CEQA compliance: (1) it is not a Project under CEQA and is therefore exempt under CEQA Guidelines Section 15378(b)(4) in that it constitutes a governmental fiscal activity

that does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment; (2) it is statutorily exempt pursuant to CEQA Guidelines section 15267 (Financial Assistance to Low or Moderate Income Housing); (3) it is not intended to apply to specifically identified affordable housing projects and as such it is speculative to evaluate any such future project now and, moreover, such projects will be subject to appropriate environmental review at such time as approvals for those projects are considered and/or (4) it is not intended to, nor does it, provide CEQA clearance for future development-related projects; and

**WHEREAS**, the City Council considered this resolution and the proposed fees at a duly-noticed public hearing, conducted at a regular meeting of the City Council on March 5, 2019.

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, declares and resolves as follows:

1. The City Council has duly considered the full record before it, which includes but is not limited to all City staff reports, including reports presented to commissions, committees and the City Council, the Nexus Studies, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above and found to be true and correct and are an integral part of the Council's decision and are hereby adopted as findings and incorporated by reference herein.
2. The City of Milpitas adopts the Affordable Housing Fees set forth in **Exhibit A**, attached hereto and incorporated herein.
3. The Affordable Housing Fees set forth in Exhibit A will be incorporated and integrated into the City's Master Fee Schedule.
4. The applicable fee levels will be determined by the building permit application date as set forth in Exhibit A. The fees are due prior to building permit issuance, in accordance with the Affordable Housing Ordinance.
5. All fees collected pursuant to this Resolution shall be deposited into the Affordable Housing Ordinance Fund, as specified in Milpitas Municipal Code XII-1-9.00, et seq., and administered in accordance with the requirements of the Milpitas Municipal Code and California law, including without limitation Government Code Sections 66000, et seq.
6. This Resolution shall take effect on July 1, 2019, but shall not apply to development projects which obtain a vested right, as defined by California law, before July 1, 2019.

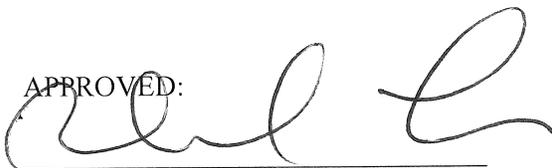
PASSED AND ADOPTED this 5<sup>th</sup> day of March 2019, by the following vote:

AYES: (5) Mayor Tran, Vice Mayor Dominguez, Councilmembers Montano, Nuñez, and Phan  
NOES: (0) None  
ABSENT: (0) None  
ABSTAIN: (0) None

ATTEST:

  
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Mary Lavelle, City Clerk

APPROVED:

  
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Rich Tran, Mayor

APPROVED AS TO FORM:

  
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Christopher J. Diaz, City Attorney

**EXHIBIT A**

Affordable Housing Fees

Residential Projects:

Building Permit Application Date	Ownership	Ownership	Ownership	Rental
	Single Family (Fee/Sq Ft)	Townhome (Fee/Sq Ft)	Condominium (Fee/Sq Ft)	Apartment (Fee/Sq Ft)
July 1, 2019 – June 30, 2020	\$33.00	\$33.00	\$33.00	\$33.00
Each Subsequent Fiscal Year	Adjusted by Rate Index per Affordable Housing Ordinance			

Non-Residential Projects:

Building Permit Application Date	Commercial (Office, Retail and Hotel) (Fee/Sq Ft)	Industrial (R&D, Manufacturing and Warehouse) (Fee/Sq Ft)
July 1, 2019 – June 30, 2020	\$4.00	\$1.00
July 1, 2020 – June 30, 2021	\$6.00	\$3.00
July 1, 2021 – June 30, 2022	\$8.00	\$4.00
Each Subsequent Fiscal Year	Adjusted by Rate Index per Affordable Housing Ordinance	