

Sec. 10-12.102. Use of the Land or Fee.

The use of the dedicated land or fee shall be for the same purposes and accounted for in the same manner as fees collected under section 10-1.602.

Sec. 10-12.103. Collection of the Fee.

Park land required to be dedicated under this chapter shall be dedicated prior to the issuance of a building permit. A fee imposed by this chapter shall be collected at the time of the issuance of a building permit. A different time for the dedication of land or the collection of fees may be provided in the project's conditions of approval or otherwise approved by the Community Development Director. (§1, Ord. 2036, eff. 9/4/04)

CHAPTER 13. FEE ON COMMERCIAL DEVELOPMENT FOR AFFORDABLE HOUSING**Sec. 10-13.101. Purpose.**

The purpose of this chapter is to facilitate the development and availability of housing affordable to a broad range of households with varying income levels within the City. It is intended in part to implement state policy that declares that local governments have a responsibility to exercise their powers to facilitate the development of housing to adequately provide for the housing needs of all economic segments of the community. It is also intended to implement the program in the Housing Element of the General Plan that calls for continued use of commercial linkage fee revenues to pay for the City's affordable housing programs and requires the City to update the nexus study supporting the commercial development housing impact fee and consider updating the fee. The goal of this chapter is to impose a fee on new commercial development that partially funds the need for affordable housing created by the workforce of this new development. (§3, Ord. 2041, eff. 4/1/05; §3, Ord. 2177, eff. 1/5/18)

Sec. 10-13.102. Definitions.

A. **Commercial Development Project.** A project consisting of the construction of new floor area for any use classification defined under Section 10-2.1.403(B), Commercial Use Classifications, those uses defined as research development industry under Section 10-2.1.403(C), those uses defined as hospital and acute medical care, residential care facilities, and skilled nursing facilities under Section 10-2.1.403(E), and any use determined to be a commercial use by the Zoning Administrator pursuant to Section 10-2.1.401.

B. **Gross Floor Area.** "Floor Area, Gross" as defined in Section 10-2.1.303.

C. **Commercial Gross Floor Area.** Gross floor area devoted to the uses listed in subsection (A) of this section.

D. **Residential Gross Floor Area.** Gross floor area devoted to uses which are subject to the provisions of Title 10, Chapter 2, Part III, Article 9 (Inclusionary Housing). (§3, Ord. 2041, eff. 4/1/05; §3, Ord. 2177, eff. 1/5/18)

Sec. 10-13.103. Commercial Development Project Housing Impact Fee.

A. **Requirement.** A housing impact fee is hereby imposed on all commercial development projects. No application for a building permit for a commercial development project shall be approved, nor shall any such commercial development project be constructed, without compliance with this chapter. The fee imposed by this chapter shall be collected at the time of the issuance of a building permit. The collection of fees may be delayed until the certificate of occupancy is issued, if approved by the Community and Economic Development Director. No certificate of occupancy shall be issued for a commercial development project that has not paid a fee required under this chapter.

B. **Exemptions.** Notwithstanding subsection (A) of this section, this chapter shall not apply to the following:

1. Reconstruction of any commercial gross floor area that was destroyed by fire, flood, earthquake or other act of nature, so long as the floor area does not exceed the floor area before the loss.
2. Any project for which an application for Design Review Commission approval was deemed complete prior to the date of adoption of the ordinance codified in this chapter.
3. Replacement for commercial use gross floor area previously on the site but demolished within one year prior to the filing of a complete application for the new construction.
4. Replacement of any commercial gross floor area demolished as part of the development project.
5. Parking lots or parking structures.
6. Fifty percent (50%) of the net new commercial gross floor area of not-for-profit hospitals.

C. **Calculation of the fee.** The housing impact fee shall be charged on a square foot basis for all new commercial gross floor area, except as provided in subsection (B) of this section. The amount of the fee shall be established by resolution of the City Council. (*§3, Ord. 2041, eff. 4/1/05; §3, Ord. 2177, eff. 1/5/18*)

Sec. 10-13.104. Adjustments.

A. The requirements of this chapter may be adjusted or waived if the developer demonstrates that an insufficient nexus exists between the proposed use and the housing impact fee. The developer shall submit documentation demonstrating this with a request for an adjustment or waiver in writing to the Community and Economic Development Director no later than the date it files its initial development application with the City. The developer shall provide such additional information as may be required by the Community and Economic Development Director to make a determination on the request. The determination of the Community and Economic Development Director may be appealed to the City Council as provided in Section 1-4.01 et seq.

B. The requirements of this chapter may be adjusted or waived if the developer demonstrates that applying this chapter would take property in violation of the United States and/or California Constitutions.

The developer shall submit a request for an adjustment or waiver in writing to the Community and Economic Development Director no later than the date it files its initial development application with the City. The developer shall provide such additional information as may be required by the Community and Economic Development Director to make a determination on the request. The determination of the Community and Economic Development Director may be appealed to the City Council as provided in Section 1-4.01 et seq. (§3, Ord. 2041, eff. 4/1/05; §3, Ord. 2177, eff. 1/5/18)

Sec. 10-13.105. Mixed Use Projects.

A. If the commercial development project also includes housing, and more than sixty-five percent (65%) of the gross floor area is devoted to residential uses which are subject to the provisions of Title 10, Chapter 2, Part III, Article 9 (Inclusionary Housing), then the project shall be exempt from this chapter.

B. In any other mixed-use project, the calculation of commercial gross floor area shall be reduced by thirty percent (30%) of the residential gross floor area. (§3, Ord. 2041, eff. 4/1/05; §3, Ord. 2177, eff. 1/5/18)

Sec. 10-13.106. Conversions.

If a development is exempt from the fee at initial construction, but later converts to a commercial development project, the converted gross floor area will be deemed new commercial gross floor area and the housing impact fee shall be paid be a condition of the building permit or certificate of occupancy. (§3, Ord. 2041, eff. 4/1/05; §3, Ord. 2177, eff. 1/5/18)

Sec. 10-13.107. Use of Funds.

All funds derived from this chapter shall be placed in a separate fund earmarked for the City's affordable housing program. (§3, Ord. 2177, eff. 1/5/18)

Sec. 10-13.108. Alternative to Payment of a Housing Impact Fee.

As an alternative to payment of the housing impact fee, a developer of a nonresidential development project may submit a request to mitigate the impacts of such development through the construction of residential units, the dedication of land for affordable housing, or provision of other resources. Such requests may be granted in the sole discretion of the City Council, if the City Council determines that such alternative will further affordable housing opportunities in the City to an equal or greater extent than payment of the housing impact fee. (§3, Ord. 2041, eff. 4/1/05; §3, Ord. 2177, eff. 1/5/18)