

## **Chapter 17.712 MIXED INCOME HOUSING**

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### **17.712.010 Purpose and intent.**

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This chapter is intended to require residential projects to contribute to the construction of affordable housing and to implement the policies of the housing element of the city's general plan. (Ord. 2015-0029 § 2)

### **17.712.020 Definitions.**

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The following definitions shall apply in this chapter:

“Affordable dwelling unit” means a dwelling unit rented at an affordable rent or sold at an affordable housing price.

“Affordable housing price” means a sales price at which low income households can qualify for the purchase of for-sale dwelling units. Qualification shall be based on no more than 35% of income being applied to housing expenses (mortgage principal and interest, taxes, insurance, and assessments).

“Affordable rent” means a monthly rent consisting of a maximum of one-twelfth of 30% of 80% of the median income applicable to Sacramento County, adjusted for household size appropriate to the unit, less a reasonable allowance for utilities. The median income applicable to Sacramento County is determined annually by the United States Department of Housing and Urban Development.

“Developer” means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities that seeks city approvals for all or part of a development project. Developer includes “owner.”

“Development agreement” means an agreement entered into between the city and a developer pursuant to chapter [18.16](#) and California [Government Code](#) section 65864.

“Development project” means any real estate development project that includes market rate residential dwelling units. Projects at one location undertaken in phases, stages, or distinct sections are considered a single development project.

“Executive director” means the executive director of the Sacramento Housing and Redevelopment Agency or designee.

“Inclusionary housing plan” means the plan setting forth the elements of a development project's affordable dwelling units required by Ordinance No. 2000-039.

“Low income household” means a household whose income does not exceed 80% of median income applicable to Sacramento County, adjusted for family size as published and annually updated by the United States Department of Housing and Urban Development pursuant to section 8 of the United States Housing Act of 1937.

“Market rate” means not restricted to an affordable housing price or affordable rent.

“Mitigation Fee Act” means chapter 5 (sections 66000 through 66025) of division 1 in title 7 of the California [Government Code](#).

“Mixed income housing strategy” means an approved development plan that is consistent with Housing Element policy and may provide credit towards the housing impact fee through construction

of affordable dwelling units, dedication of land to the city, or other mechanism.

“Nexus study” means a study, adopted by resolution of the city council, that analyzes the connection between projected residential development and the cost of addressing the need for affordable housing for lower income households created by the residential development.

“Owner” means a person, partnership, joint venture, association, corporation, or public or private entity that has sufficient proprietary interest in real property to commence, maintain, and operate a development project.

“Residential project” means the entirety of a residential development with market rate dwelling units in a development project.

“Self-help housing developer” means a not-for-profit organization that develops housing for sale to low income households at an affordable housing price. The organization may permit or require purchasers to participate in the construction of affordable dwelling units.

“SHRA” means the Sacramento Housing and Redevelopment Agency, a joint powers agency. (Ord. 2015-0029 § 2)

### **17.712.030 Affordable housing requirement.**

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A. If a residential project does not exceed 100 gross acres in size, the owner shall pay a housing impact fee on all newly constructed market rate dwelling units pursuant to section [17.712.050](#).

B. If the residential project exceeds 100 gross acres in size, the owner shall pay a housing impact fee on all newly constructed market rate dwelling units pursuant to section [17.712.050](#), and obtain city council approval of a mixed income housing strategy that demonstrates how the project provides housing for a variety of incomes and family types consistent with the housing element policy. The planning director shall review the proposed mixed income housing strategy in consultation with the executive director of SHRA. The planning director shall recommend approval, modification, or denial of the proposed mixed income housing strategy in conjunction with the development project’s earliest planning approvals, consistent with the provisions of section [17.808.260](#). The city council and planning and design commission shall consider the amount of regulated affordable housing in the vicinity.

1. The mixed income housing strategy may provide for fee credits for land dedication to SHRA, construction of affordable dwelling units, or other mechanisms that lead to the provision of affordable housing.

a. Land dedication must be approved and accepted by the SHRA consistent with the guidelines prepared pursuant to section [17.712.090](#).

b. Multi-unit dwelling development projects constructed for fee credit under this subsection may contain any proportion of affordable dwelling units. However, no multi-unit dwelling development project consisting of more than 50% affordable dwelling units and constructed for credit under this subsection may be located within 400 feet of another multi-unit dwelling development project with more than 50% affordable dwelling units.

c. The maximum number of affordable dwelling units in any multi-unit dwelling development project constructed for credit under this subsection shall be 150.

2. The mixed income housing strategy may provide for a fee credit for donation of land to a self-help housing developer. Land donated must have all site improvements completed. The home must have a recorded affordability covenant that restricts resale to the satisfaction of the city and SHRA.

C. A residential project subject to an inclusionary housing plan approved prior to the effective

date of the ordinance adopting this chapter may either:

1. Comply with the approved inclusionary housing plan; or
2. Comply with the provisions of this chapter.

D. Affordable dwelling units constructed pursuant to subsection B.1 of this section shall have a regulatory agreement recorded on title, requiring the units to remain affordable for a period of no less than 30 years. The agreements shall be monitored by SHRA and the owners shall be subject to monitoring fees as established by the guidelines authorized by section [17.712.090](#). (Ord. 2015-0029 § 2)

#### **17.712.040 Exempted development projects.**

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The following development projects are exempt from this chapter and generate no affordable housing obligation:

- A. Mobilehome parks.
- B. Development projects in which at least 10% of the dwelling units are affordable dwelling units. The affordable dwelling units shall have a regulatory agreement recorded on title, requiring the units to remain affordable for a period of no less than 30 years. The agreement shall be monitored by SHRA and the owners shall be subject to a monitoring fee as established by the guidelines authorized by section [17.712.090](#).
- C. A new single-unit dwelling built by an owner-builder on his or her property if:
  1. The owner does not intend to sell the dwelling within two years of completion of construction, and
  2. The owner has not utilized this exemption set forth in this subsection on another dwelling within two years of applying for a building permit for the new dwelling, and
  3. The owner personally performs the work, or the owner directly contracts with a contractor to perform the work.
- D. A secondary dwelling unit.
- E. A development project subject to a development agreement adopted prior to October 3, 2000 (adoption date of Ordinance No. 2000-039), provided the development agreement has not expired.
- F. A development project that obtained approval of site plan and design review or a tentative map prior to the effective date of the ordinance adopting this chapter, provided the project was exempt from the requirements of Ordinance No. 2000-039 at the time of application submittal. Subsequent modifications to or reapprovals of the approved site plan and design review or tentative map that do not increase or decrease the number of units by more than 10% shall not affect a development project's exemption pursuant to this subsection.
- G. A multi-unit dwelling development project for which an application for site plan and design review or a tentative map had been submitted in accordance with section [17.800.010](#) prior to the effective date of the ordinance codified in this chapter, provided the development project was exempt from the requirements of Ordinance No. 2000-039 at the time of application submittal.
- H. Uninhabitable square footage without conditioned air, such as garages, carports, open porches, open entryways, pool houses, storage, patio covers, and unfinished basements.
- I. Community rooms for residential developments. (Ord. 2015-0029 § 2)

#### **17.712.050 Housing impact fees.**

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- A. A housing impact fee is established and imposed on real property for which a residential project is proposed pursuant to the provisions of this chapter and as further described in the nexus study.
- B. The city council, by resolution, shall establish the specific amount of the housing impact fee for the various categories of housing type as identified in the nexus study and as determined appropriate by the city council, and shall make the findings required by this section in establishing the amount of the fees. In addition, the city council, by resolution, may adopt additional provisions, policies, and procedures to implement and administer the provisions of this chapter. The amounts of fees and the policies and procedures adopted by resolution pursuant to this subsection shall be consistent with the purposes of this chapter and the nexus study.
- C. At the time it considers the amount of the fees established pursuant to this section, or at the time of amending the fees other than in making an automatic annual adjustment to the fees in the manner provided by subsection E, the city council shall adopt the amount of such fees if it makes the following findings in support of such fees:
1. A finding that such fees have been determined and calculated in the manner consistent with the nexus study; and
  2. The following additional findings required by the Mitigation Fee Act that demonstrate there is a nexus between the low income housing for which such fees are imposed and the need for such low income housing created by the residential development upon which the fees are imposed:
    - a. Findings that identify the purpose of the fees,
    - b. Findings that identify the use to which the fees are to be put,
    - c. Findings that demonstrate that there is a reasonable relationship between the use of the fees and the type of development project on which the fees are imposed,
    - d. Findings that demonstrate that there is a reasonable relationship between the need for low income housing and the type of residential development project on which the fees are to be imposed, and
    - e. Findings that demonstrate how there is a reasonable relationship between the amount of the fees and the cost of the low income housing attributable to the development project on which the fees are imposed;
  3. In making findings pursuant to this section and any other findings, the city council may consider all matters, whether offered orally or in writing, presented at the hearing or hearings conducted for the purpose of establishing or amending the fees, and any and all oral and written material presented to the city council and planning and design commission in connection with the adoption, approval, or amendment of the nexus study.
- D. At the time of setting the amount of the fees established pursuant to this chapter, or at the time of amending such fees other than in making an automatic annual adjustment to the fees, the city council shall hold a public hearing on the proposed fees or proposed amendment of fees in the manner required by the Mitigation Fee Act.
- E. The fees established pursuant to this section shall be adjusted automatically to take into consideration inflation on July 1 of each year by a factor equal to the percentage increase, if any, in the construction cost index for San Francisco (based on 1913 U.S. average = 100) during the 12 months ending on the preceding March 1 as published by Engineer News Record/McGraw-Hill Construction Weekly, or any substitute index that the city council adopts by resolution. The planning director shall be responsible for calculating the adjustment, if any, to the fees and shall advise the city clerk of the amended fees.
- F. The effective date of any resolution adopted by the city council that establishes or amends

the amount of the fees imposed under this chapter shall be determined in accordance with California [Government Code](#) section 66017.

G. The methodologies set forth in the nexus study shall be used as the basis for setting the amount of the housing impact fees. Applicants for building or other development permits shall include plans and calculations prepared by the applicant or applicant's agent, specifying data necessary to calculate housing impact fees, including, without limitation, the square footage of each use, and other relevant data as may be required by the planning director, or authorized designee(s). All fees due under this chapter shall be determined and calculated by the planning director, or authorized designee(s).

H. Unless exempt from payment under section [17.712.040](#), no building permit or building permit extension for a project described in section [17.712.030](#) shall be issued or granted unless and until the full amount of the housing impact fee has been paid to the city in accordance with the provisions of this chapter.

I. The fees described in subsections A and B will be deemed "imposed" for purposes of the Mitigation Fee Act when the planning director gives the building-permit applicant a written notice that does both of the following:

1. States the amount of the fees as final.
2. Notifies the applicant that the 90-day period in which the applicant may protest has begun. (Ord. 2015-0029 § 2)

#### **[17.712.060 Protest of fees.](#)**

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A. The owner of property subject to the housing impact fees established by this chapter may protest the housing impact fees imposed on the project by filing a written protest notice with the planning director in the manner provided and within the times specified in the Mitigation Fee Act.

B. Concurrently with filing the written protest notice, the owner must tender to the planning director the full amount of the fee under protest, together with payment of a non-refundable protest-filing fee in the amount established by resolution of the city council to offset the city's costs of processing the protest and any appeal. The owner is liable for the city's actual cost to process the protest, including the cost of any appeal to the city council, to the extent that the actual cost exceeds the filing fee. The city may deduct the excess amount from any refund found due and owing to the owner or may add it to the amount of the fee found to be due or owing from the owner.

C. The planning director shall consider the protest at an informal hearing held within 60 days after the filing of the protest notice. The planning director shall issue a written decision on the protest and send a copy of the decision to the applicant by first-class mail, postage prepaid, within 15 days after the later of the following: the date of the informal hearing, or the date the planning director sets during the informal hearing for the applicant's submission of any additional evidence the planning director determines to be necessary to the decision. The applicant's failure to timely submit additional information requested by the planning director may result in denial of the protest. The planning director's decision is final and not appealable, except as provided in subsections F and G.

D. The planning director shall consider the following when determining whether to approve or deny a protest:

1. The matters set forth in California [Government Code](#) section 66001, subdivisions (a) and (b).
2. The substance and nature of the evidence presented by the applicant.
3. The facts, findings, and conclusions stated in the nexus study, including technical information, studies, audited construction costs, and reports contained within and supporting

the nexus study, together with findings supporting the resolution setting the amount of the housing impact fee. The applicant must present comparable technical information, studies, and reports to demonstrate that the housing impact fee is inappropriate for the development project involved.

E. If the protest is granted, and the housing impact fee is adjusted, any change in use within the particular development project involved in an application shall invalidate the adjustment of the housing impact fee if the change in use would render the adjustment inappropriate.

F. The applicant may appeal the planning director's decision to the city council in accordance with chapter [1.24](#) by filing a notice of appeal with the city clerk within 10 days after the date the planning director mails the decision. In deciding the appeal, the city council or the appointed hearing examiner, as the case may be, shall consider the factors set forth in subsection D. The city clerk shall mail the city council's or hearing examiner's decision to the applicant by first-class mail, postage prepaid, within five days after the decision is rendered. The decision will be final and not appealable, except as provided in subsection G.

G. The protest procedures in this section are administrative procedures that must be exhausted before the filing of any petition seeking judicial review. Such a petition must be filed under California [Code of Civil Procedure](#) section 1094.5 on or before the later of the following: the 90th day after the date on which the decision is mailed to the applicant, or the expiration of the 180-day limitation period provided by the Mitigation Fee Act. (Ord. 2015-0029 § 2)

#### **[17.712.070 Low income housing fund.](#)**

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A. All fees collected pursuant to section [17.712.050](#) shall be placed in the citywide low income housing fund and shall be administered and used for the purposes described in chapter [17.708](#).

B. Annual Evaluation. Commencing one year after the effective date of the ordinance adopting this chapter, and annually thereafter, the SHRA director and planning director shall report to the city council, the planning and design commission, and the Sacramento housing and redevelopment commission on the status of activities undertaken with the housing fund. The report shall include:

1. A statement of income, expenses, disbursements, and other uses of the fund;
2. Identification of projects generating fee revenue;
3. The current fee amount reflecting the automatic annual adjustment under section 17.712.050.E, if any;
4. The total number and location of low and very low income housing units constructed or assisted during that year and the amount of such assistance;
5. Plans for how the money will be spent;
6. Any recommended changes to this chapter necessary to carry out its purposes; or
7. Any recommended adjustments to the fee. (Ord. 2015-0029 § 2)

#### **[17.712.080 Housing quality.](#)**

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Affordable dwelling units constructed using housing impact fees paid pursuant to this chapter, or constructed through an inclusionary housing plan, or a mixed income housing strategy, shall be visually compatible with surrounding market rate dwelling units and accommodate diverse family sizes by including dwelling units with different numbers of bedrooms, as determined by the approval authority, upon recommendation of the executive director. External building materials and finishes, front yard landscaping, and amenities shall be of the same type and quality for affordable dwelling units as for market rate dwelling units. (Ord. 2015-0029 § 2)

## **17.712.090 Guidelines.**

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The executive director of SHRA, in consultation with the planning director, shall prepare guidelines to ensure compliance with this chapter. The guidelines shall be adopted by resolution of the city council. (Ord. 2015-0029 § 2)

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