

Resolution No. 2022-XXX N.C.S. of the City of Petaluma, California

AMENDING RESOLUTION NOS. 2014-036 N.C.S. SETTING CITY FACILITIES DEVELOPMENT IMPACT FEES, 2014-037 N.C.S. SETTING PARK LAND DEVELOPMENT IMPACT FEES, 2014-038 N.C.S. SETTING NON-QUIMBY ACT PARK LAND ACQUISITION FEES, 2014-039 N.C.S. SETTING OPEN SPACE LAND ACQUISITION FEES, AND 2016-076 N.C.S. SETTING TRAFFIC DEVELOPMENT IMPACT FEES, TO PROVIDE FOR NON-APPLICABILITY OF THE FEES TO CERTAIN CITY-SUPPORTED AFFORDABLE HOUSING PROJECTS

WHEREAS, the City of Petaluma General Plan 2025 describes future land uses within the City of Petaluma and applies to a planning area that includes the City and land outside the City in unincorporated Sonoma County that must also be considered to properly plan for the City's future; and

WHEREAS, an Environmental Impact Report (State Clearinghouse no. 2004082065) was prepared for the City's General Plan pursuant to the California Environmental Quality Act or CEQA, and certified by the City Council on April 7, 2008 by Resolution no. 2008-058 N.C.S.; and

WHEREAS, the City Council adopted Resolution no. 2008-085 N.C.S. approving the City's General Plan on May 19, 2008; and

WHEREAS, the General Plan area is shown on the land use maps contained in the General Plan; and

WHEREAS, on May 19, 2008, the City Council adopted: Resolution no. 2008-086 N.C.S. updating the Aquatic Center Facilities fee and superseding Resolution no. 2003-213 N.C.S.; Resolution no. 2008-087 N.C.S. updating the Community Facilities fee and superseding Resolution no. 2003-208 N.C.S.; Resolution no. 2008-088 updating the Fire Suppression Facilities fee and superseding Resolution no. 2003-207 N.C.S.; Resolution no. 2008-089 updating the Law Enforcement Facilities fee and superseding Resolution no. 2003-210 N.C.S.; Resolution no. 2008-090 N.C.S. updating the Library Facilities fee and superseding Resolution no. 2003-211 N.C.S.; Resolution no. 2008-91 N.C.S. updating the Open Space Acquisition fee and superseding Resolution no. 2003-212 N.C.S.; Resolution no. 2008-92 N.C.S. updating the Parkland Acquisition fee for Non-Quimby Act projects and superseding Resolution no. 2003-213; Resolution no. 2008-93 N.C.S. updating the Parkland Development fee and superseding Resolution no. 2003-212 N.C.S.; Resolution no. 2008-094 N.C.S. updating the Public Facilities fee and superseding Resolution no. 2003-209 N.C.S., and Resolution no. 2008-095 N.C.S. updating the Traffic Development fee and superseding Resolution no. 2003-206 N.C.S.; Resolution no. 2008-096 updating the Water Capacity fee and superseding Resolution no. 91-18 N.C.S.; and Resolution no. 2008-097 updating the Wastewater Capacity fee and superseding Resolution no. 2002-190 N.C.S.; and

WHEREAS, the City's General Plan designates defined land uses for all property with the City and, based on those uses, calculates the expected number of residents, residential units, employees and squared footage of non-residential development that will result when all property in the City is developed as anticipated in the General Plan; and

WHEREAS, the City's General Plan and its EIR analyze the impacts of development under the General Plan and propose mitigation measures, including the creation of fee programs to require new development to pay for its proportional fair share of the cost of acquiring and improving public facilities necessary to meet the demands of new residents, employees, customers and businesses for such facilities; and

WHEREAS, the General Plan incorporates policies and programs to mitigate the impacts of such anticipated new development, including policies that require new development to pay for the proportional fair share of the cost of acquiring and improving public facilities, including community and neighborhood park improvements and open space necessary to meet the demands of residents, employees, customers and businesses, and the resolutions the City Council adopted on May 19, 2008 updating the City's development fees each cite to the General Plan policies and programs that identify the need for public improvements and facilities to be funded by the City's development fees, and also list improvements to be funded, as identified in the fee studies supporting each fee; and

WHEREAS, on August 27, 2012, the City Council introduced Ordinance no. 2444 N.C.S. adding a new Title 19 entitled "Development Fees" to the Petaluma Municipal Code including new chapters with enabling legislation providing for the City's City Facilities, Open Space Land Acquisition, Park Land Acquisition, Park Land Development, and Traffic Development impact fees, and Water and Wastewater capacity fees, and a Commercial Development Housing Linkage fee; and

WHEREAS, on August 27, 2012, the City Council adopted Resolution no. 2012-121 N.C.S. to update and consolidate the City's Aquatic Center, Community Center, Fire Suppression, Law Enforcement, Library, and Public Facilities impact fees into a single City Facilities Development Impact Fee and repealing and replacing resolution nos. 2008-086 N.C.S., 2007-087 N.C.S., 2008-088 N.C.S., 2008-089 N.C.S., 2008-090 N.C.S., and 2008-094 N.C.S.; and

WHEREAS, also on August 27, 2012, the City Council adopted the following resolutions to replace the development fee resolutions the City Council adopted on May 19, 2008: Resolution no. 2012-122 N.C.S. to update the City's Park Land Development Impact Fee replacing Resolution no. 2008-093 N.C.S.; Resolution no. 2012-123 N.C.S. updating the City's Open Space Land Acquisition Fee, replacing Resolution no. 2008-091 N.C.S.; Resolution no. 2012-124 N.C.S. updating the City's Park Land Acquisition Fee for Non-Quimby Act Development, replacing Resolution no. 2008-92 N.C.S.; Resolution no. 2012-125 N.C.S. updating the City's Traffic Development Impact Fee, replacing Resolution no. 2008-095 N.C.S.; Resolution no. 2012-126 N.C.S. updating the City's Water Capacity Fee and replacing Resolution no. 2008-096 N.C.S.; and Resolution no. 2012-127 N.C.S. updating the City's Wastewater Capacity Fee replacing Resolution no. 2008-097 N.C.S.; and

WHEREAS, the resolutions the City Council adopted on August 27, 2012 were each supported by and incorporated, as appropriate, studies of the impacts of anticipated future development on existing public facilities and analyses of new facilities required by future development, including a report prepared by the Municipal Resource Group dated August 14, 2012 and entitled "City of Petaluma Mitigation Fee Act Nexus Report and Quimby Act In-Lieu Fee Report," a report prepared by Fehr and Peers dated August 15, 2012 and entitled "City of Petaluma Traffic Mitigation Fee Program Update," and a report prepared by Bartle Wells and Associates dated August 15, 2012 and entitled "City of Petaluma Water and Wastewater Capacity Fee Memo;" and

WHEREAS, on March 3, 2014, the City Council adopted amendments to the City's City Facilities, Park Land Development, Park Land Acquisition, Open Space Land Acquisition, and Traffic Development Impact Fees, and to the City's Wastewater Capacity Fee, to: harmonize definitions of single and multi-family residential development in the fee resolutions with the supporting Municipal Resource Group study; provide a fee credit based on prior uses for new residential and non-residential development within one half mile of parcels identified as possible future SMART rail station sites; provide for refunds of traffic impact fees for public and quasi-public development on parcels designated Public/semi-Public or Education; and to require payment of updated Wastewater Capacity Fees in the event of operational changes of non-residential customers that are subject to issuance of a new or revised industrial wastewater discharge permit, and, accordingly, the City Council adopted Resolution no. 2014-036 N.C.S. to replace Resolution no. 2012-121 N.C.S. governing City Facilities Development Impact Fees; Resolution no. 2014-037 N.C.S. to replace Resolution no. 2012-122 N.C.S. governing Park Land Development Impact Fees; 2014-038 N.C.S. to replace Resolution no. 2012-124 N.C.S. governing

Park Land Acquisition Fees Resolution no. 2014-039 N.C.S. to replace Resolution no. 2012-123 N.C.S. governing Open Space Land Acquisition fees; Resolution no.; Resolution no. 2014-040 N.C.S. to replace Resolution no. 2012-125 N.C.S. governing Traffic Development Impact Fees; and Resolution no. 2014- 041 N.C.S. to replace Resolution no. 2012-127 N.C.S. governing Wastewater Capacity Fees; and

WHEREAS, on July 7, 2014, the City Council adopted a new Resolution no. 2014-112 N.C.S. to replace Resolution no. 2014-040 governing the City's Traffic Development Impact Fees to create a new fee category for gas/service stations and to reduce the \$18.8 Million Redevelopment Supplement portion of the City's Traffic Impact Fees by \$8,836,001 to reflect the application of Tax Allocation Bond revenues in that amount to the Old Redwood Highway Interchange project; and

WHEREAS, on December 7, 2015, the City Council adopted a new Resolution no. 2015-191 to replace Resolution no. 2014-112 governing the City's Traffic Development Impact Fees to update the 2012 Fehr and Peers report; to implement Government Code Section 66005.1 which requires reduced traffic impact fees for housing developments with at least 50% of floor space devoted to residential use and that are located within ½ mile of a transit station and convenience retail, and with limited parking as specified; and to update the fee table accordingly; and

WHEREAS, on May 16, 2016, the City Council adopted a new Resolution no. 2016-076 to replace Resolution no. 2015-191 governing the City's Traffic Development Impact Fees to update the traffic fee study to add funding for SMART rail station infrastructure and Rainier cross town connector right of way costs; and

WHEREAS, Resolution nos. 2014-036 N.C.S governing the City's City Facilities Development Impact Fees, 2014-037 N.C.S. governing the City's Park Land Development Impact Fees, 2014-038 N.C.S. governing the City's Park Land Acquisition Fee for Non-Quimby Act Development Projects, 2014-039 N.C.S. governing the City's Open Space Land Acquisition Fee, and 2016-076 N.C.S. governing the City's Traffic Development Impact Fees each include a Section 7 entitled "Inapplicability of Fee;" and

WHEREAS, Resolution nos. 2012-126 governing the City's Water Capacity Fees, and 2014-041 governing the City's Wastewater Capacity fees do not include a Section entitled "Inapplicability of Fee" in order to ensure that such fees needed to fund the City's Water and Wastewater utility enterprises adequately sustain the utility enterprises without City General Fund subsidy, and in compliance with the requirements of Proposition 218, and in particular, California Constitution Article XIID, Section 6; and

WHEREAS, Resolution nos. 2014-036 N.C.S., 2014-037 N.C.S., 2014-038 N.C.S. each include a paragraph (f) under Section 7 making the fee inapplicable to certain specified low and/or moderate income senior citizens housing projects owned and developed by charitable non-profit organizations; and

WHEREAS, Resolution nos. 2014-039 N.C.S., and 2016-076 N.C.S. do not include a paragraph (f) under Section 7 making the fee inapplicable to certain specified low and/or moderate income senior citizens housing projects owned and developed by charitable non-profit organizations; and

WHEREAS, the City of Petaluma's 5th cycle Housing Element includes Goal 3 which states "minimize constraints on housing development to expedite construction and lower development costs" and further includes Program 3.4 which calls for the City to "continue to subsidize and defer application fees, development impacts fees, and on and off site improvements for affordable housing projects;" and

WHEREAS, the City of Petaluma's 5th cycle Housing Element includes Policy 4.1 which states that "because of the dissolution of redevelopment housing set-aside funding, make the maximum use of other resources available for the provision of housing affordable to extremely low to moderate income households;" and

WHEREAS, the City of Petaluma’s 5th cycle Housing Element includes Policy 5.2 which states: “ensure the long-term affordability of units developed or provided with City assistance” and Program 5.5 notes that the City should “continue to impose long term resale controls or rent restrictions on affordable units provided through the inclusionary housing program or city subsidies to ensure that they remain affordable to the targeted income groups;” and

WHEREAS, California law recognizes that local governments play a vital role in facilitating the development of affordable housing, and starting in 1969 began mandating that all California jurisdictions plan for needed housing at all income levels through the assignment of Regional Housing Needs Allocations and requirement that each jurisdiction adopt a Housing Element each cycle; and

WHEREAS, Petaluma’s Regional Housing Needs Allocation for the 5th cycle, which extended from 2015 to 2023, included 745 units of which 56% were categorized as lower income and moderate income; and

WHEREAS, Petaluma’s Regional Housing Needs Allocation for the upcoming 6th cycle, which extends from 2023 to 2031, includes 1,910 units of which approximately 58% are categorized as lower income and moderate income; and

WHEREAS, on September 13, 2021 the Petaluma City Council adopted Resolution No. 2021-149 N.C.S. declaring a shelter crisis consistent with the discretion offered by AB 2553 and in recognition of the urgent need for shelter faced by a significant and growing number of persons in the City; and

WHEREAS, the City’s Development Impact Fees are not taxes as defined in Section 1, paragraph (e) of Article XIII C of the California Constitution (“Proposition 26”), because the City’s Development Impact Fees are imposed for a specific benefit conferred or a privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable cost to the City of providing the service or produce; and/or the City’s Development Impact Fees are imposed for specific government services or products provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable cost to the City of providing the service or product; and/or the City’s Development Impact Fees are imposed for the reasonable regulatory costs to the City of issuing licenses and permits, performing investigations, inspections and audits, enforcing agricultural marketing orders and the administrative enforcement and adjudication thereof, and/or the City’s Development Impact Fees are imposed as a condition of property development; and

WHEREAS, the City’s Development Impact Fees are not subject to the requirements of Proposition 218 concerning property related assessments and fees pursuant to Apartment Association of Los Angeles County v. City of Los Angeles (2001) 24 Cal.4th 830, in that such fees are not applicable to incidents of property ownership, but rather to the actual use of and need for City services and/or facilities; and

WHEREAS, in accordance with Government Code Section 50076, fees and charges that do not exceed the reasonable cost of providing the service or regulatory activity for which the fees are charged and which are not levied for general revenue purposes are not special taxes as defined in Article 3.5 of the Government Code; and

WHEREAS, the mailed notice, fee report availability and published notice requirements in Government Code Section 66016, part of the Mitigation Fee Act, do not apply to this action to provide for the non-applicability of specified City Development Impact Fees to certain City-supported affordable housing projects to help the City fulfill its RHNA responsibilities and to respond to the City’s declared shelter crisis, because this action does not create any new fees or increase any existing fees; and

WHEREAS, this resolution amending Resolution nos. 2014-036 N.C.S., 2014-037 N.C.S., 2014-038 N.C.S., 2014-039 N.C.S., and 2016-076 N.C.S. to provide for non-applicability of the fees to certain City-supported affordable housing is not a “project” within the meaning of Section 15378 of the California Environmental Quality

Act (CEQA) Guidelines, because it is an administrative activity that has no potential for resulting in physical change in the environment, in that this resolution will merely provide a basis for the specified fees not applying to certain housing projects, which projects will be carried out in accordance with all applicable CEQA requirements; and this resolution is also statutorily exempt from CEQA requirements in accordance with Section 15273, subdivision (a) of the CEQA guidelines, because CEQA does not apply to the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, and other charges by public agencies which the public agency finds are for the purpose of obtaining funds for capital projects, necessary to maintain service within existing service areas, and the City Council hereby finds that the development fees amended by this resolution are for the purpose of obtaining funds for capital projects necessary to maintain service levels and amenities in the City as it develops.

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 City Council.
2. This resolution amending Resolution nos. 2014-036 N.C.S, 2014-037 N.C.S., 2014-038 N.C.S., 2014-039 N.C.S., and 2016-067 N.C.S. to provide for non-applicability of the fees to certain City-supported affordable housing is not a “project” within the meaning of Section 15378 of the California Environmental Quality Act (CEQA) Guidelines, because it is an administrative activity that has no potential for resulting in physical change in the environment, in that this resolution will merely provide a basis for the specified fees not applying to certain housing projects, which projects will be carried out in accordance with all applicable CEQA requirements. This resolution is also statutorily exempt from CEQA requirements in accordance with Section 15273, subdivision (a) of the CEQA guidelines, because CEQA does not apply to the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, and other charges by public agencies which the public agency finds are for the purpose of obtaining funds for capital projects, necessary to maintain service within existing service areas, and the City Council hereby finds that the development fees amended by this resolution are for the purpose of obtaining funds for capital projects necessary to maintain service levels and amenities in the City as it develops.
3. The following is hereby added to the “Inapplicability of Fee” section in Resolution nos. 2014-036 N.C.S, 2014-037 N.C.S., 2014-038 N.C.S., 2014-039 N.C.S., and 2016-067 N.C.S., to read as follows:
 - a. Residential development projects that will be deed-restricted prior to occupancy to acutely low, extremely low, very low, low, and/or moderate income residents and that will be owned and operated by non-profit corporations recognized as such by the United States Internal Revenue Service and the State of California Franchise Tax Board.
 - b. Residential development projects that will be deed-restricted prior to occupancy to acutely low, extremely low, very low, low and/or moderate income residents, that will be supportive housing projects or will provide on-site supportive services, and that have received or will receive City financial support or other comparable City support such as the City applying for grant funding for the project as co-applicant with or on behalf of the project developer.
 - c. For purposes of this section:
 - i. “Deed restricted” means that a restrictive covenant has been recorded against the title of all of the property underlying the residential units in the development project which deed restriction will run for at least 55 years.

- ii. “Residential” means Multi Family Residential or Single Family Residential as defined in this resolution.
 - iii. “Supportive housing” and “Supportive services” have the meanings set forth in Section 65582 of the Government Code, which is part of the Housing Accountability Act, as amended from time to time.
 - iv. “Acutely low”, “extremely low”, “very low,” “low,” and “moderate” have the meanings set forth in Section 33411.2 of the Health and Safety Code as amended from time to time.
4. The text in 3 above shall replace in its entirety paragraph (f) in Section 7 of Resolution nos. 2014-036 N.C.S., 2014-037 N.C.S., 2014-038 N.C.S. The text in 3 above shall be added as a new paragraph (f) to Section 7 in Resolution nos. 2014-039 N.C.S., and 2016-067 and the paragraphs in Section 7 renumbered accordingly.
 5. The Development Impact Fee resolutions amended by this resolution shall apply to all development projects specified in Section 3 above as of the effective date of this resolution that have not yet paid to the City of Petaluma the City Facilities Development Impact Fees, Parkland Development Impact Fees, Non-Quimby Act Parkland Acquisition Impact Fees, or Open Space Land Acquisition Development Impact Fees applicable to the development project, including approved development projects under construction.
 6. This resolution shall take immediate effect upon adoption by the City Council.

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 21st day of November 2022, by the following vote:

Approved as to
form:

City Attorney

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

City Clerk

Mayor