

Chapter 3.26 AFFORDABLE HOUSING FEE

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3.26.010 Intent and purpose.

It is the purpose of this chapter to establish a feasible means by which developers assist in increasing the supply of affordable housing.

A. Need for Affordable Housing. A serious shortage of affordable housing exists in the state. Concerned with this shortage, the State Legislature has stated that “the lack of affordable housing is a critical problem which threatens the economic, environmental, and social quality of life in California.” California housing is the most expensive in the nation, and the consequences include a lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration. Of particular concern is the shortage of housing for low-income and moderate-income households (Government Code Section [65589.5](#)).

The Legislature has enacted policies to encourage more affordable housing: requiring cities to address the issue in their housing elements, providing for density bonuses, providing for second dwelling units, limiting the grounds on which affordable housing developments may be disapproved, and others (Government Code Sections [65583](#), [65589.5\(d\)](#), [65852.150](#), [65913](#), [65915](#), [65850](#), [65850.01](#)).

Echoing this concern, the City's general plan housing element has the goal of providing housing affordable to all economic segments of the community, and dispersed and integrated throughout the community. The housing element identified the inclusionary housing ordinance as a program to achieve this goal (2015–2022 Housing Element: Section 5, Goal 3, Policy 3.1, Program 3.1.1).

As a result of increasing growth in California, significant residential and nonresidential development is expected to occur in the City. Because of housing market conditions, the shortage of affordable housing will be exacerbated. Both residential and nonresidential development contribute, in different ways, to the need for more affordable housing.

B. New Residential Development. Residential development, if it does not include affordable housing, contributes to the need for affordable housing because it reduces the available supply of residential land in the community and increases the demand for affordable housing required for persons employed in lower compensation jobs. Some of these jobs are created by the demands for goods and services of new households in new market-rate dwelling units. The developers of new market-rate dwelling units have the responsibility to help provide some affordable housing.

C. New Nonresidential Development. Nonresidential development also contributes to the need for affordable housing because it generates jobs and generates the need for more housing for its employees. A certain proportion of the new employees will require affordable housing. Traditionally, these nonresidential uses have benefited from a supply of housing for their employees available at competitive prices and locations close to the place of employment, but the supply of housing has not kept pace. If employees are unable to find appropriate housing in the City, they are forced to commute long distances. This situation adversely affects their quality of life and the community's. Commuters consume limited energy resources, increase congestion on already overcrowded highways and have a negative impact on air quality.

The competition for affordable housing is especially acute. An identifiable portion of the new employees attracted to the City by nonresidential development will live in moderate, low-income and very-low-income households and will therefore compete with present residents for scarce affordable housing units in the City.

D. Studies. The City has undertaken five studies: "City of Livermore Housing Impact Fee Study," dated July 8, 1998, prepared by David M. Griffith & Associates, Ltd.; "City of Livermore Study of Inclusionary Housing Program and In-Lieu Fees," dated February 3, 2000, prepared by DMG-Maximus, Inc.; "City of Livermore Inclusionary Housing Ordinance Update: Feasibility Analysis," dated April 2005, prepared by Bay Area Economics; "Residential Nexus Analysis," dated April 2013, prepared by Keyser Marston Associates; and "Financial Feasibility Analysis," dated November 2013, prepared by Seifel Associates. The studies evaluate the impact of (1) high-cost, low-density residential development on the supply of affordable housing; (2) commercial and industrial development on the need for affordable housing; (3) increasing the inclusionary housing requirement from 10 to 15 percent and including housing affordable to moderate income households; (4) the linkages between the development of market-rate housing and the demand for affordable housing; and (5) the financial feasibility of a 15 percent inclusionary housing requirement in the fourth quarter of 2013.

Regarding residential development, the 2005 Inclusionary Housing Ordinance Update: Feasibility Analysis shows that increasing the inclusionary housing requirement from 10 to 15 percent increases the cost of developing residential units. However, the analysis shows that the resulting developer returns are sufficient. Thus the overall impact of increasing the requirement does not unreasonably burden developers.

The 2000 Inclusionary Housing Study shows that the strong demand for high-cost, low-density residential development in Livermore has made residential land scarce and expensive, so that development of affordable housing is not feasible without subsidies. It calculates the fees to be imposed on market-rate residential development to offset a portion of the required subsidies. The calculation is based on the difference between the development cost for a market-priced residence and the maximum affordable purchase price (to a lower-income family) for a residence of comparable size.

Regarding nonresidential development, the 1998 study evaluates the impact of commercial and industrial development on lower-income housing needs by estimating the number of lower-income jobs, and households, associated with various types of employment-generating development. This approach was upheld by the Federal Ninth Circuit Court of Appeals in *Commercial Builders v. City of Sacramento*.

Concerned about the effect of this housing impact fee on nonresidential development especially, the City undertook an analysis entitled, "Economic Impact of Proposed... City of Livermore Housing Impact Fee," dated August 1998, prepared by Keyser Marston Associates, Inc. That economic analysis concluded that for most types of commercial development (high-tech R&D/office, retail), the cost advantages to building in Livermore are not significantly affected by the proposed fee.

The 2013 Residential Nexus Analysis establishes the direct impact of homebuilding activity on the need and level for affordable housing. The underlying nexus concept is that newly constructed units represent new households in Livermore. These households represent new income in Livermore that will consume goods and services, either

through purchases of goods and services or use of government services. New consumption translates to jobs; a portion of the jobs are at lower compensation levels; low compensation jobs relate to lower income households that cannot afford market-rate housing in Livermore and therefore need affordable housing. Through this economic analysis, it was calculated that the impact of for-sale residential units on the need for affordable housing is commensurate with 15 percent inclusionary requirement of the affordable housing ordinance.

Regarding residential development, the 2013 Financial Feasibility Analysis shows that sustaining the inclusionary housing requirement at 15 percent increases the cost of developing residential units. However, the analysis shows that the resulting investment returns on for-sale residential units are adequate or better. The overall impact of increasing the requirement does not unreasonably burden developers.

In 2017, Governor Brown signed several housing bills to produce, preserve and protect affordable housing. Assembly Bill 1505 superseded the 2009 decision of *Palmer/Sixth Street Properties, L.P., et al. v. City of Los Angeles* (2009) 175 Cal.App.4th 1396, and authorized the legislative body of any county or city to adopt ordinances requiring developers to set aside a certain amount of on-site affordable units for lower income households, as a condition of development of residential rental units. This bill restored the ability of cities and counties to enact inclusionary policies which require developers to provide affordable units in residential rental projects where those localities also offer alternative means of compliance, for example by land dedication, in-lieu fees or off-site compliance.

E. The Proposed Fee. The affordable housing fees proposed under this chapter will assist in providing affordable housing in the City by assisting in the private and nonprofit development and preservation of affordable owner and rental housing and related programs that help residents to enter or remain in affordable housing. These include, but are not limited to, mortgage subsidies and down-payment assistance, site acquisition, banking of land for use in the development of affordable housing, rental subsidies, construction financing, issuance of bonds, providing predevelopment funds, providing rehabilitation funds to preserve existing affordable housing stock, providing loan security, and any other assistance that will serve to increase or maintain the supply of affordable housing in the City.

It is the City's intent that this chapter create a fair and feasible way to assist in providing affordable housing in the City. It is the City's intent that this chapter and any fee-setting resolution adopted under it fully conform to the requirements of the State Mitigation Fee Act in the adoption and monitoring of development impact fees.

F. Implementation of Housing Element. The City Council finds that this chapter and the housing impact fee resolution implement policies in the City's housing element. (Ord. 2125 § 1 (Exh. A), 2021; Ord. 2065 § 1(A), 2018; Ord. 1989 § 1 (Exh. A), 2014; Ord. 1763 § 2, 2005; Ord. 1579 § 2, 2000; Ord. 1549 § 2, 1999)

3.26.020 Findings.

Mindful of the requirements for establishing an appropriate nexus between the impact of new development and the use of the fee, as set forth in Government Code Section [66000](#) and following, the City Council finds as follows:

A. The purpose of this fee is to establish a feasible means by which developers of residential and nonresidential projects assist in increasing the supply of affordable housing.

B. The fee will be used to finance a variety of programs and mechanisms for creating more affordable housing, including but not limited to: mortgage subsidies and down payment assistance, site acquisition, banking of land for use in the development of affordable housing, rental subsidies, construction financing, issuance of bonds, providing predevelopment funds, providing rehabilitation funds to preserve existing affordable housing stock, providing loan security, and any other assistance that will serve to increase or maintain the supply of affordable housing in the City.

C. There is a reasonable relationship between the fee's use and the types of development projects on which the fee is imposed. Both residential and nonresidential development affect the need for more affordable housing. Market-priced residential development impacts the supply of housing and demand for affordable housing; commercial and industrial development impact the demand for housing.

D. There is a reasonable relationship between the need for affordable housing and the types of development projects on which the fee is imposed. New residential development contributes to the need for affordable housing because it reduces the available supply of residential land in the community and generates jobs. Nonresidential development contributes to the need for affordable housing because it generates jobs and therefore the need for more housing for its employees. A certain proportion of the new employees generated by both residential and nonresidential development will require affordable housing.

E. There is a reasonable relationship between the amount of the fee and the cost of the affordable housing programs attributable to the development on which the fee is imposed. As shown in the 2000 Inclusionary Housing Study, the fee for residential development is based on the difference between the development cost for a market-priced residence and the maximum affordable purchase price (to a lower-income family) for a residence of comparable size. And, based on the 1998 Study, the fee for nonresidential development is based on estimating the number of lower-income jobs, and households, associated with various types of employment-generating development. The 2005 Inclusionary Housing Ordinance Update: Feasibility Analysis, which analyzes an increase in the inclusionary requirement, proposes the same methodology for calculating the in-lieu fee as the 2000 Study. The fee calculation is still based on the difference between the development cost for a market-priced residence and the maximum affordable purchase price. As shown in the 2013 Residential Nexus Analysis, the demand created for affordable housing is proportional to the size of the market-rate residential unit built. This finding supports assessing the residential in-lieu fee on a per-square-foot unit basis instead of a per-unit basis. The 2013 Residential Financial Feasibility Analysis demonstrates both the on-site inclusionary housing requirement and the new method of calculating the in-lieu fee are financially feasible for residential development projects. (Ord. 2125 § 1 (Exh. A), 2021; Ord. 2065 § 1(A), 2018; Ord. 1989 § 1 (Exh. A), 2014; Ord. 1763 § 3, 2005; Ord. 1579 § 2, 2000; Ord. 1549 § 2, 1999)

3.26.030 Definitions.

In this chapter:

A. "1998 Housing Impact Fee Study" means the study entitled "City of Livermore Housing Impact Fee Study," dated July 8, 1998, prepared by David M. Griffith & Associates, Ltd., which is on file in the City Community Development Department.

"2000 Inclusionary Housing Program Study" means the study entitled "City of Livermore Inclusionary Housing Program Study," dated February 3, 2000, prepared by DMG-Maximus, Inc., which is on file in the City Community Development Department.

"2005 Inclusionary Housing Ordinance Update: Feasibility Analysis" means the study entitled "City of Livermore Inclusionary Housing Ordinance Update: Feasibility Analysis," dated April 2005, prepared by Bay Area Economics, which is on file in the City Community Development Department.

"2013 Residential Nexus Analysis" means the study entitled "Residential Nexus Analysis, Inclusionary Housing Ordinance" dated April 2013, prepared by Keyser Marston Associates for the City of Livermore, which is on file in the City Community Development Department.

"2013 Financial Feasibility Analysis" means the study entitled "Inclusionary Housing Financial Feasibility Analysis," dated November 2013, prepared by Seifel Associates for the City of Livermore, which is on file in the City Community Development Department.

“Studies” means all of the above.

B. “Affordable housing” means, for very-low-income, low-income and moderate-income households, that the housing cost, adjusted for family size, does not exceed 30 percent of gross income (Health and Safety Code Section [50052.5\(b\)](#)). The monetary standards for affordable housing are determined annually by City Council resolution (City of Livermore affordable housing sales prices and rental rates).

C. “Development” means a subdivision map approval or any new residential or nonresidential construction, addition, extension or enlargement of an existing structure. “Development” also includes a conversion or change in use of an existing commercial structure when the conversion or change may result in a greater number of workers at that location.

“Commercial development” includes, but is not limited to, retail, service, office and lodging.

“Industrial development” includes, but is not limited to, manufacturing, warehouse, research and development center, high-cube warehouse, mini-storage.

D. “Development cost of a housing unit” means the construction valuation of the building permit, on- and off-site costs including site development, design costs, and project administration costs, other than profit, and the cost of all permits, fees and impact fees charged by the City, plus a percentage for the cost of land.

E. “Gross developed acreage,” when calculating residential density, means the gross acreage of a development project excluding the land required for dedication for major streets, for public parks, and for public schools.

F. “Gross floor area,” when calculating commercial and industrial fees, means the square footage of: (1) the floor area included within the surrounding exterior walls of a building, or portions of it, including mezzanines, or (2) the usable area under the horizontal projection of the roof or floor above. “Gross floor area” does not include floor area devoted to vehicle parking, necessary interior driveways and ramps, atriums and lobbies.

G. “Housing element” means the City of Livermore 2015-2022 housing element of the 2003 Livermore general plan and amendments to it.

H. Income.

“Above-moderate-income household” means persons or families whose incomes are above 120 percent of the area median income, adjusted for family size, as established annually by the California Department of Housing and Community Development (HCD).

“Low-income household” means persons or families whose incomes are 80 percent or less of the area median income, adjusted for family size, as established annually by the California Department of Housing and Community Development (HCD) and confirmed by City Council resolution (Health and Safety Code Section [50079.5](#)). In this chapter, “low-income household” includes both very-low-income and low-income households.

“Median income” means persons or families whose incomes are between 80 percent and 100 percent of the area median income, adjusted for family size, as established annually by the California Department of Housing and Community Development (HUD) and confirmed by City Council resolution (Health and Safety Code Section [50093\(b\)](#)).

“Moderate-income household” means persons or families whose incomes are between 100 percent and 120 percent of the area median income, adjusted for family size, as established annually by the California Department of Housing and Community Development (HCD) and confirmed by City Council resolution (Health and Safety Code Section [50093\(b\)](#)).

“Very-low-income household” means persons or families whose incomes are 50 percent or less of the area median income, adjusted for family size, as established annually by the California Department of Housing and Community Development (HCD) and confirmed by City Council resolution (Health and Safety Code Section [50105](#)). (Ord. 2125 § 1 (Exh. A), 2021; Ord. 2065 § 1(A), 2018; Ord. 2045 § 1(A), 2016; Ord. 2016 § 1(A), 2015; Ord. 1989 § 1 (Exh. A), 2014; Ord. 1763 § 4, 2005; Ord. 1579 § 2, 2000; Ord. 1549 § 2, 1999)

3.26.040 Applicability – Time of payment – Exceptions – Credits.

A. Applicability. Except as provided in subsection B of this section, this chapter applies to new development which results in:

1. Residential: a new residential dwelling unit. If a project includes more than 10 residential units, this chapter applies only if the City Council has approved the in-lieu fee alternative under LDC 10.06.050(E). The in-lieu alternative is available without City Council approval for projects that include 10 or fewer residential units and the South Livermore Valley Specific Plan Area and the Arroyo Vista Neighborhood Plan Area.
2. Commercial and industrial:
 - a. New commercial or industrial use; or
 - b. Additional gross floor area for commercial or industrial use; or
 - c. A change in use of an existing commercial or industrial structure requiring City approval which results in an increase in the number of employees.

This chapter applies to development fees charged as a condition of development. It is not intended to and does not apply to regulatory and processing fees or fees required under a development agreement (Government Code Section [66000](#)(b)).

B. Exceptions. This chapter does not apply to:

1. These types of residential development:
 - a. Residential development which fully satisfies the inclusionary housing requirement of LDC 10.06.050, or an alternative (other than the in-lieu fee) under subsection E of that section;
 - b. An accessory dwelling unit approved under LDC 6.03.120;
 - c. Expansion or remodeling;
 - d. Replacement which occurs within 36 months of demolition or destruction; or
 - e. An affordable housing development which receives a density bonus under LDC 6.02.030 for including very-low-income or low-income housing.
2. Church, temple, or other property used primarily for religious worship.
3. Public and private day care, elementary and secondary school.
4. Development for public use on publicly owned property by the City, county of Alameda, state or federal government, or other public agency, such as the Livermore Area Recreation and Park District.
5. These types of commercial and industrial development: remodeling or addition which does not increase the gross floor area by 200 square feet or more; replacement which occurs within 36 months of damage or destruction; temporary use for less than 12 months; public hospital.

C. Time of Payment. The affordable housing fee is payable before the date of final inspection or the date the certificate of occupancy is issued, whichever occurs first, or as specified in the City Council resolution establishing the amount of the (commercial/industrial) fee, or as provided in a development agreement or low-income housing agreement.

D. Deferred Fee Program. The City Council may, by resolution, adopt administrative guidelines to provide a special fee deferral program in response to unprecedented conditions such as extraordinary economic changes. (Ord. 2125 § 1 (Exh. A), 2021; Ord. 2065 § 1(A), 2018; Ord. 1989 § 1 (Exh. A), 2014; Ord. 1948 § 1, 2011; Ord. 1902 § 4, 2010; Ord. 1901 § 3 (Exh. A § 5), 2010; Ord. 1879 § 5, 2009; Ord. 1763 § 5, 2005; Ord. 1579 § 2, 2000; Ord. 1549 § 2, 1999)

3.26.050 Fee for residential development.

A. General. A person who constructs one or more residential dwelling units shall pay an affordable housing fee, unless the particular development is an exception under LMC [3.26.040\(B\)](#).

If the residential development project has more than 10 units, the developer is required to comply with either subsection (A)(1) or (2) of this section:

1. Provide units that are reserved for sale or rental as affordable housing, under LDC 10.06.050:

- a. General plan area: 15 percent affordable units. (In this section, “general plan area” means everywhere in the City except the downtown specific plan area and the Isabel neighborhood specific plan area.);
- b. Downtown specific plan area: 10 percent affordable units;
- c. Isabel neighborhood specific plan area: 20 percent affordable units as stated in the specific plan and Livermore Development Code; or

2. Submit a written request to, and obtain approval from, the City Council to satisfy the requirement by an alternative means of compliance, under LDC 10.06.050(E). These alternatives may include: accessory dwelling units, off-site construction, in-lieu fee, or dedication of land. City Council may, at its discretion, opt for the development project to satisfy all or a portion of its on-site affordable housing obligation through the payment of the in-lieu fee.

B. Method of Calculation for For-Sale Residential Development Projects of 10 Units or Less. The for-sale affordable housing fee for residential development projects that include 10 or fewer residential units shall be 15 percent of the difference between:

- 1. The development cost for the market-priced unit; and
- 2. The maximum affordable purchase price (of a moderate-income and low-income housing unit averaged together) for a housing unit with the same number of bedrooms as the market-priced unit giving rise to the requirement. This maximum affordable price is established by City Council resolution.
- 3. The fee per market-priced unit shall not exceed 15 percent of the estimated development cost of constructing a three-bedroom detached housing unit that would meet the standards of the affordable housing program. This fee shall be computed and applied on a square-foot basis. This fee shall be set annually by City Council resolution.

C. Method of Calculation for For-Sale Residential Development Projects of 11 Units or More. The affordable housing fee for residential development projects that include 11 or more residential units shall be the difference

between the estimated base market rate sales price for the unit subject to the on-site affordability requirement minus the maximum affordable purchase price, multiplied by the total number of units to be paid in fee.

1. Example. Calculation of affordable housing fee for 20-unit residential project in the general plan area:

a. Total affordable units to be paid in fee: one moderate-income unit and two low-income units.

b.

Estimated Base Market Rate Sales Price:

\$700,000

(-) Maximum Affordable Purchase Price (Low):

\$380,000

(-) Maximum Affordable Purchase Price

(Moderate): \$540,000

= Fee for 1 Affordable Low-Income Unit \$320,000

= Fee for 1 Affordable Moderate-Income Unit

\$160,000

c.

\$320,000 Affordable Low-Income Unit Fee (X) 2
Units.

+ \$160,000 Affordable Moderate-Income Unit Fee
(X) 1 Unit

= \$800,000 Total Affordable Housing Fee

2. The maximum affordable purchase price is established by City Council. The maximum affordable purchase price shall be for a housing unit with the same affordability requirements and the same number of bedrooms as the market-priced unit giving rise to the requirement.

3. The “estimated base market sales price” is defined as the estimated sales price for a particular unit type based on a comparable unit or appraised price at time of sale. The estimated base market sales price excludes any price increases due to lot premiums or upgraded amenities. (Ord. 2125 § 1 (Exh. A), 2021; Ord. 2065 § 1(A), 2018; Ord. 1989 § 1 (Exh. A), 2014; Ord. 1971 §§ 1(E), (G), (H), 2012; Ord. 1902 § 5, 2010; Ord. 1763 § 6, 2005; Ord. 1579 § 2, 2000; Ord. 1549 § 2, 1999)

3.26.060 Fee for commercial and industrial development.

A. General. A person who develops commercial or industrial property shall pay an affordable housing fee, unless the particular development is an exception under LMC [3.26.040\(B\)](#). The amount of the fee will be established by City Council resolution. Once the fee is established, it shall automatically be increased annually based upon the median home price as reflected in the Bay East Association of Realtors report. The City will also review and revise the fee periodically, based on the factors set forth in subsection B of this section.

B. Method of Calculation. The affordable housing fee for commercial and industrial development is based on the fact that commercial and industrial development generates the need for more affordable housing because a certain proportion of the new employees will have household incomes that place them in the lower income categories. These employees will require affordable housing.

The affordable housing fee for commercial and industrial development will be calculated using the following method. The method is set forth in greater detail in the 1998 Housing Impact Fee study.

1. Estimate the number of full-time very-low-income and low-income employees for each general type of commercial and industrial development, by category. The estimate will be based on a unit of commercial or industrial development, which means the employees per 1,000 square feet of development, or per number of hotel/motel rooms. Adjust this employment impact to account for voluntary commuting (employees who choose to live elsewhere).
2. Determine the estimated number of lower-income households for each category, based on census data.
3. Estimate the capital subsidy required to make new rental units in the City affordable for very-low-income and low-income households.
4. Allocate the subsidy costs per unit of development, by type of development, according to the number of very-low-income and low-income households generated.

C. Time of Payment. The affordable housing fee is payable before the date of final inspection or the date the certificate of occupancy is issued, whichever occurs first, or as specified in the City Council resolution establishing the amount of the (commercial/industrial) fee, or as provided in a development agreement. Alternatively, the developer may pay the fee in either of the two ways provided below:

1. Letter of Credit. The developer may pay the fee, at 20 percent each year, over five years. Under this alternative, the developer shall post a letter of credit, in a form approved by the City Attorney, for: (a) the full amount of the fee; plus (b) a two percent administrative charge; plus (c) interest for the projected unpaid balance over the five years. The interest rate shall not exceed the interest rate established in the California Government Code. The developer shall replace the letter of credit each year to add the annual fee increase represented by the increase in the median home price as reflected in the Bay East Association of Realtors report.
2. By Agreement. A developer may elect to pay the required fee before the first certificate of occupancy is issued or within two years of building permit issuance, whichever is sooner, subject to all of the requirements of this subsection.
 - a. General Requirement. If a developer chooses this option, before a building permit is issued, he or she shall: (i) enter into a written agreement with the City; and (ii) record the agreement with the Alameda County recorder.
 - b. Contents of Agreement. The agreement shall be signed by the property owner and shall include the following provisions, in a form prepared by the City Attorney:
 - i. A legal description of the property;
 - ii. A provision that the agreement runs with the land and is enforceable against successors in interest;
 - iii. That the agreement shall be recorded in the grantor-grantee index in the name of the City as grantee and in the name of the property owner as grantor;
 - iv. A provision that the owner shall pay the fee before a certificate of occupancy is issued, or within two years, whichever is sooner;
 - v. The amount of the fee due at the time of the agreement;

vi. A provision that the amount of the fee due will be the amount of the fee due on the date of the agreement plus a periodic increase based on the increase in median home price as reflected in the Bay East Association of Realtors report. The amount of any fee paid more than two years after the date of the issuance of the building permit is the amount of the fee in effect when the fee is paid; and

vii. A requirement that, with the opening of any escrow for the sale of the property, the property owner provide appropriate notification and escrow instructions that the fee be paid to the City from the sale proceeds in escrow before disbursing proceeds to the seller.

c. Release of Obligation. When the obligation is paid in full, the City shall record a release of obligation.

d. Authorization. The Community Development Department Director is authorized to sign the agreement and the release of obligation under this subsection (C)(2).

D. Adjustments. The Community Development Department Director may reduce the fee amount established under this section if a developer submits sufficient information demonstrating that the jobs produced by the new commercial or industrial project will yield fewer low-wage jobs than the number resulting from the calculation under subsection B of this section. The fee reduction shall be directly proportional to the reduction in low-wage jobs. If a new use (which does not continue the same number of reduced low-wage jobs) is later established at the same location, the City may then collect the balance of the fee. (Ord. 2125 § 1 (Exh. A), 2021; Ord. 2065 § 1(A), 2018; Ord. 2045 §§ 1(A), 1(B), 2016; Ord. 2016 §§ 1(A), 1(B), 2015; Ord. 1765 §§ 15, 16, 2005; Ord. 1579 § 2, 2000; Ord. 1549 § 2, 1999)

3.26.070 Affordable housing fee fund – Use of fees.

A. Affordable Housing Fee Fund. The City will deposit all housing impact and in-lieu fees in an affordable housing fee fund. The City will keep the fees, and all interest earned on the account, only for the uses specified in subsection B of this section.

B. Use of Fees. The fees and interest earned will be used only to finance programs to produce, preserve, or protect affordable housing, including:

1. Mortgage subsidies and down payment assistance;
2. Site acquisition;
3. Banking of land for use in the development of affordable housing;
4. Rental subsidies;
5. Construction financing;
6. Issuance of bonds;
7. Providing predevelopment funds;
8. Providing rehabilitation funds to preserve existing affordable housing stock;
9. Providing loan security; and
10. Any other assistance that will serve to increase or maintain the supply of affordable housing in the City. (Ord. 2125 § 1 (Exh. A), 2021; Ord. 2065 § 1(A), 2018; Ord. 1902 § 6, 2010; Ord. 1579 § 2, 2000; Ord. 1549 § 2, 1999)

3.26.080 Refunds.

The City may refund affordable housing fees if:

- A.
 - 1. A building permit or land use entitlement expires (and no extension is granted);
 - 2. No construction or use occurs for a development for which the affordable housing fee was paid;
 - 3. The fees paid have not been committed; and
 - 4. The developer applies for the refund within one year after the expiration of the building or land use entitlement; or
- B. If authorized by City Council resolution under Government Code Section [66001](#)(d) to (f). (Ord. 2125 § 1 (Exh. A), 2021; Ord. 2065 § 1(A), 2018; Ord. 1902 § 6, 2010; Ord. 1579 § 2, 2000; Ord. 1549 § 2, 1999)

3.26.090 Fee adjustment or waiver.

- A. General. The developer of a project subject to a development fee under this chapter may apply to the Community Development Department for an adjustment to or waiver of the fee. The waiver of the fee must be based upon the absence of any reasonable relationship between the impact of that development on affordable housing and either the amount of the fee charged or the type of program or facilities to be financed.
- B. Application. The application must be made in writing and filed with the Community Development Department no later than: (1) 30 days before the public hearing, or staff-level approval, on the land use entitlement application for the project, or (2) if no land use entitlement is required, the time of the application for a building permit. The application must state in detail the factual basis and legal theory for the claim of adjustment or waiver.
- C. Burden of Proof – Considerations. The developer bears the burden of proof in presenting substantial evidence to support the application. The Community Development Department shall consider the following factors in its determinations whether or not to approve a fee adjustment or waiver:
 - 1. The factors identified in Government Code Section [66001](#):
 - a. The purpose and proposed uses of the fee;
 - b. The type of development;
 - c. The relationship between the fee's use and the type of development;
 - d. The relationship between the need for affordable housing and the type of development;
 - e. The relationship between the amount of the fee and the portion of it attributable to the development; and
 - 2. The substance and nature of the evidence, including the City's affordable housing fee and the developer's technical data supporting its request. The developer must show comparable technical information to show that the fee is inappropriate for the particular development. (Ord. 2125 § 1 (Exh. A), 2021; Ord. 2065 § 1(A), 2018; Ord. 2045 § 1(A), 2016; Ord. 2016 § 1(A), 2015; Ord. 1902 §§ 7, 8, 2010; Ord. 1763 § 7, 2005; Ord. 1579 § 2, 2000; Ord. 1549 § 2, 1999)

3.26.100 Appeals – Protest procedures – Judicial actions.

- A. Appeals. A developer may appeal to the City Council any determination made under this chapter. If a developer is seeking a fee adjustment or waiver, he or she must first comply with LMC [3.26.090](#).

An appeal must be on a form prescribed by the Community Development Department, state the factual and legal grounds for the appeal, and be filed with the city clerk within 15 days of the date of the decision being appealed. The City Council will set the matter for hearing within 90 days of the city clerk's receipt of notice of the appeal. The City Council will conduct the hearing, prepare written findings of fact and a written decision, and shall preserve the complete administrative record of the proceeding. The Council will consider relevant evidence presented by the appellant and by the Community Development Department. In making its determination, the City Council will follow the standards set forth in this chapter.

B. Protest Procedures. A person protesting the imposition of fees must comply with the procedures in Government Code Sections [66020](#) and [66021](#).

C. Judicial Actions. Any judicial action brought to challenge the affordable housing fee is subject to Government Code Sections [66022](#) and [66024](#). (Ord. 2125 § 1 (Exh. A), 2021; Ord. 2065 § 1(A), 2018; Ord. 2045 § 1(A), 2016; Ord. 2016 § 1(A), 2015; Ord. 1579 § 2, 2000; Ord. 1549 § 2, 1999)

3.26.110 Accounting requirements.

The City will comply with the accounting requirements in the Fee Mitigation Act, including the following:

A. The City shall avoid any commingling of this affordable housing fee fund with any other accounts, except for temporary investments. The City shall expend the fees solely for the purposes for which the fees were collected (Government Code Section [66006](#)(a)).

B. Within 180 days after the last day of each fiscal year, the City shall make available to the public the information for the fiscal year prescribed in Government Code Section [66006](#)(b).

The City Council shall review this information at the next regularly scheduled public meeting within 15 days after the information is made available to the public. Notice of the time and place of the meeting, including the address where the information may be reviewed, shall be mailed at least 15 days before the meeting to any interested party who has filed a written request for it (Government Code Section [66006](#)(b)).

C. Every five years following the first deposit into the fund, the City Council shall make all of the following findings regarding that portion of the fund remaining unexpended (whether committed or uncommitted):

1. Identify the purpose to which the fee is to be put;
2. Demonstrate a reasonable relationship between the fee and the purpose for which it is charged;
3. Identify all sources and amounts of funding anticipated to complete financing of incomplete improvements; and
4. Designate the approximate dates on which the funding referred to in subsection (C)(3) of this section is expected to be deposited into the fund.

Within 180 days after sufficient funds have been collected to complete financing on the incomplete public improvements, the City shall identify an approximate date by which the construction will be commenced or shall refund the unexpended portion of the fees and any interest earned in conformance with Government Code Section [66001](#)(e).

D. Any person may request and pay for an audit to determine whether the fee is reasonable, under Government Code Sections [66006](#)(d) and [66023](#). (Ord. 2125 § 1 (Exh. A), 2021; Ord. 2065 § 1(A), 2018; Ord. 1579 § 2, 2000; Ord. 1549 § 2, 1999)

The Livermore Municipal Code is current through Ordinance 2125, passed June 28, 2021.

Disclaimer: The City Clerk's Office has the official version of the Livermore Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.