

**CHAPTER 17.146 HOUSING TRUST FUND, HOUSING IMPACT FEE
AND INCLUSIONARY/IN LIEU FEE REQUIREMENTS**

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Sec. 17.146.010 Purpose.

The purpose of this chapter is to establish a Housing Trust Fund, a Housing Impact Fee on developers of non-residential development projects in the City of St. Helena, and an inclusionary requirement or an in-lieu fee on developers of residential development projects to mitigate the impacts caused by these development projects on the additional demand for more affordable housing and rising land prices for limited supply of available residential land. The fees will be used to defray the costs of providing affordable housing for very low, low, and moderate income households in the City of St. Helena. The fees and inclusionary requirements required by this chapter do not replace other regulatory, development and processing fees or exactions; funding required pursuant to a development agreement or reimbursement agreement; assessments charged pursuant to special assessments or benefit assessment district proceedings, etc., unless so specified.

Sec. 17.146.020 Definitions.

As used in this chapter:

- A. "**Addition**" means an extension or increase in floor area of an existing building.
- B. "**Affordable housing**" means housing for which "affordable rent" or an "affordable sales price" is required to be charged.
- C. "**Affordable rent**" means monthly rent, including tenant paid utilities allowances as determined by the Housing Director and all fees for housing services that do not exceed one-twelfth of 30% of the maximum annual income for a Household of the applicable income level.

In the case where the applicant is requesting a density bonus under California Government Code sections 65915-65918 or where the applicant is requesting direct financial assistance requiring a different rent, "affordable rent" for lower income

households means monthly rents that do not exceed 30% of 60% of area median income. Affordable rent shall be based on presumed occupancy levels of one person in a studio unit, two persons in a one bedroom unit, three persons in a two bedroom unit, and one additional person for each additional bedroom thereafter.

- D. **“Affordable sales price”** means the maximum purchase price that will be affordable to the specified target income household. A maximum purchase price shall be considered affordable only if each monthly owner-occupied housing payment is equal to or less than one-twelfth of 30% of annual income for the specified target income household. In setting the affordable sales price, the Housing Director shall use realistic estimations regarding down payment, mortgage interest rate and term, so that targeted income families can reasonably qualify. Affordable sales price shall be based upon presumed occupancy levels of one person in a studio unit, two persons in a one bedroom unit, three persons in a two bedroom unit, and one additional person for each additional bedroom thereafter.
- E. **“Affordable units”** means those dwelling units which are required to be rented at affordable rents or purchased at an affordable sales price to specified households as described in Section 17.146.050.
- F. **“Annual household income”** means the combined gross income for all adult persons living in a dwelling unit as calculated for the purpose of the Section 8 program under the United States Housing Act of 1937, as amended, or its successor.
- G. **“Building permit”** means a permit issued pursuant to Title 15, Chapter 15.04 of the St. Helena Municipal Code.
- H. **“Chief building official”** means the chief building official of the City of St. Helena, or the designee of such individual.
- I. **“Concession” or “incentive”** shall have the same meaning as set forth in California Government Code section 65915.
- J. **“Construction costs”** means the estimated cost per square foot of construction, as established by the building department of the City of St. Helena for use in the setting of regulatory fees and building permits, multiplied by the total square footage, minus the garage floor area, to be constructed.
- K. **“Conversion”** means conversion of an existing residential building to a non-residential use, excluding home occupations as defined in Chapter 17.116.040, or 3,000 square feet of floor area or more of a non-residential building from one use category to another as set forth in Table 1 (office, commercial/retail, winery/industrial, hotel).
- L. **“Developer”** means every person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities, constructing, placing, or creating

new non-residential or residential development directly or through the services of any employee, agent, independent contractor or otherwise.

- M. "**Discretionary permit**" means any permit or license issued by the City of St. Helena for a project which requires the exercise of judgment or deliberation wherein the City decides to either approve or disapprove a particular activity in accordance with applicable laws, including but not limited to use permits, and the approval or modification of tentative, or tentative parcel maps pursuant to Title 16 of the St. Helena Municipal Code.
- N. "**Dwelling unit**" means a building or portion of a building including one or more rooms which is designed or used as a residence for one family or housekeeping unit with facilities for living, sleeping, cooking and dining.
- O. "**Eligible household**" means any household or applicant which the Housing Director has determined meets the eligibility standards for affordable housing pursuant to the Section 8 program under the United States Housing Act of 1937, as amended, or its successor.
- P. "**Employee**" means each person engaged in the operation or conduct of any business, whether as owner, any member of the owner's family, partner, agent, manager, solicitor and any and all other persons employed or working in such business.
- Q. "**Gross square feet floor area**" means the sum of the gross horizontal floor areas of a building measured from the exterior face of exterior walls, or from the center line of a wall separating two buildings. In cases where no walls exist, the gross horizontal floor area shall be that area covered by the roof excluding two feet on each side of the structure for a standard roof projection. Outside areas used for sales and/or display may also be considered (e.g., plant nurseries, building materials, auto sales, wine production, etc.) when the Planning Director determines that the use of the outside area significantly contributes to the employee density of the building. For purposes of the requirements of Section 17.146.050, the square footage of any tank pad or wine crush pad or similar non-walled agriculture related structure shall be included in the gross square feet of a non-residential development project. A building or structure consisting of nonusable floor space, e.g. a garage, carport or storage shed shall not be deemed part of the gross floor area, unless the Planning Director feels it significantly contributes to the employee density of the building. Unfinished attics, crawlspaces, and basements shall not be assessed until converted and finished as usable floor space.
- R. "**Housing Board**" means the Housing Trust Fund Board established pursuant to Section 17.146.030.
- S. "**Housing Director**" means the Planning Director of the City of St. Helena or the designee of such individual.

- T. "**Housing Fund**" means the City of St. Helena Affordable Housing Trust Fund established pursuant to Section 17.146.030.
- U. "**Housing Impact Fee**" means the fee established pursuant to Section 17.146.040 for non-residential development projects.
- V. "**Housing In-lieu Fee**" means the fee established pursuant to Section 17.146.050 for residential development projects.
- W. "**Low-income households**" are those households with incomes of 51% to 80% of median income.
- X. "**Market rate units**" means dwelling units in a residential project, which are not affordable units.
- Y. "**Median income**" means the median income, adjusted for family size, applicable to Napa County as published annually pursuant to Title 25 of the California Code of Regulations, Section 6932 (or its successor provision) by the United States Department of Housing and Urban Development.
- Z. "**Moderate income households**" are those households with incomes of 81% to 120% of median income.
- AA. "**Monthly owner-occupied housing payment**" shall be that sum equal to the principal, interest, property taxes, homeowner's insurance and homeowner's association dues paid on an annual basis divided by 12.
- BB. "**Non-residential development project**" means any development or use for which a discretionary permit or building permit is required, other than those developments or uses involving solely the construction or remodeling of dwelling units. Non-residential development projects shall include conversion of an existing building from a residential to a non-residential use, or 3,000 square feet of floor area or more of a non-residential building from one use category to another. Change of use shall be determined by reference to Table 1 of section 17.146.040.
- CC. "**Planning Director**" means the director of the City of St. Helena Planning Department or the designee of such individual.
- DD. "**Residential development project**" means a project for the construction or remodeling of any dwelling unit located within the boundaries of the City for which a building permit or discretionary permit is issued by the City, provided that the development project consists of (1) the construction of any dwelling unit, except for legally constructed second units as defined in Municipal Code Chapter 17.116;(2) the remodeling of any dwelling unit unless otherwise excepted in section 17.146.050(A)(7) (3) projects that are not otherwise excepted under section

17.146.050(A) or (4) the subdivision of land which is planned, designed, or used for the following land use categories:

- a. **Single-family residential:** This category consists of single-family dwellings, including a mobile home constructed to meet 1976 HUD standards when placed on a permanent foundation, which are designed or used exclusively as residences, including only one (1) dwelling unit.
- b. **Multi-family residential:** This category consists of multiple-family dwellings which are designed or used exclusively as residences, including two (2) or more dwelling units.

EE. **"Very low-income households"** are those households with incomes of up to 50% of median income.

Sec. 17.146.030 Housing Trust Fund.

A. **Housing Trust Fund Established.** There is hereby established the City of St. Helena Affordable Housing Trust Fund (the "Housing Fund"). Separate accounts within such Housing Fund may be created from time to time to avoid commingling as required by law or as deemed appropriate to further the purposes of the Housing Fund.

B. **Administration of Fund.** The Housing Fund shall be administered by the Housing Director who shall have the authority to govern the Housing Fund consistent with this chapter, and to prescribe procedures for such purpose, subject to approval by the Council.

C. **Housing Board.** A Housing Trust Fund Board (the "Housing Board") is hereby established. The composition, size, term, decision-making authority and other organizational features of the Housing Board shall be as determined by resolution of the City Council. To the extent permitted by law and determined by resolutions of the City Council and Napa County Board of Supervisors, the Housing Board shall be an advisory joint City/County Housing Board with final funding decisions made by the appropriate legislative body on expenditure of monies from their respective Housing Funds, unless otherwise provided in an agreement between the City and the County. The Housing Board shall develop a Housing Assistance Plan Program and Financing Strategy every two years, subject to approval by the Council, to further define and prioritize the uses of the monies in the Housing Fund, provided that failure to prepare such strategy does not excuse compliance with this chapter.

D. Purposes and Use of Funds.

1. Monies deposited in the Housing Fund along with any interest earnings on such monies shall be used solely to increase and improve the supply of housing affordable to households of moderate, low and very low income households,

including, but not limited to acquisition of property and property rights; cost of construction including costs associated with planning, administration, and design, as well as actual building or installation, as well as any other costs associated with the construction or financing of affordable housing; reimbursement to the City for such costs if funds were advanced by the City from other sources; and reimbursement of developers or property owners who have been required or permitted to install facilities which are beyond that which can be attributed to a specific development. To the maximum extent possible, all monies should be used to provide for additional affordable housing and services. Monies may also be used to cover reasonable administrative expenses not reimbursed through processing fees, including reasonable consultant and legal expenses related to the establishment and/or administration of the Housing Fund and reasonable expenses for administering the process of calculating, collecting, and accounting for inclusionary fees and any deferred City fees authorized by this section. No portion of the Housing Fund may be diverted to other purposes by way of loan or otherwise.

2. Monies in the Housing Fund shall be used in accordance with the priorities identified by the Council approved Housing Assistance Plan Program and Financing Strategy to construct, acquire, rehabilitate or subsidize very low, low and moderate income housing and/or to assist other governmental entities, private organizations or individuals in the construction, rehabilitation, reimbursement of City advanced funds, reimbursement of developer supplied infrastructure capacity, location or subsidy of very low, low and moderate income housing. To the extent possible, as determined by the Council, monies shall be targeted to benefit households identified as a need in the housing element of the General Plan. Monies in the Housing Fund may be disbursed, hypothecated, collateralized or otherwise employed for these purposes from time to time as the Housing Director and City Council determine is appropriate to accomplish the purposes of the Housing Fund. These uses include, but are not limited to, assistance to housing development corporations, equity participation loans, grants, pre-home ownership co-investment, pre-development loan funds, participation leases, or other public/private partnership arrangements. The Housing Fund monies may be extended for the benefit of rental or owner occupied housing or housing services.
3. Expenditures by the Housing Director from the Housing Fund shall be controlled, authorized and paid in accordance with general city budgetary policies. Execution of contracts related to the use or administration of Housing Fund monies shall be in accordance with standard Council policy.

E. Location of Housing Units and Housing Services to be Assisted With Housing Fund Monies.

With respect to monies generated by the Housing Impact Fee established by Section 17.146.050, these criteria shall also consider a reasonable geographical linkage between the non-residential development projects subject to such fee and the housing assistance provided with the Housing Fund monies collected in connection with such

projects, such that those receiving the housing assistance could reasonably commute to the commercial locations.

Sec. 17.146.040 Non-Residential Development Project Housing Impact Fee.

A. Application.

A Housing Impact Fee is hereby imposed on all developers of non-residential development projects, including conversions as set forth in definitions 17.146.020K and BB. Notwithstanding the foregoing, this fee shall not apply to developers of non-residential projects that fall within one or more of the following categories:

1. Projects that are the subject of development agreements currently in effect with the City, approved prior to the effective date of this chapter where such agreements expressly preclude the City from requiring compliance with this type of housing fee program; or
2. The non-residential uses are set forth either in a building permit application accepted as complete by the City prior to the adoption of Resolution 2003-65 on May 27, 2003 or in a use permit or similar discretionary approval approved prior to the adoption of Resolution 2003-65 on May 27, 2003. However, any extension or modification of such approval or permit after such date shall not be exempt; or
3. That portion of a project located on property owned by the State of California, the United States of America or any of its agencies used exclusively for governmental or educational purposes; or
4. A project to the extent it has received a vested right to proceed without payment of housing impact fees pursuant to state law; or
5. Projects operated by nonprofit organizations which provide food storage, meal service and/or temporary shelter to the homeless; or
6. Projects for which no nexus can be established; or
7. Projects for uses labeled “Exempt” in Table 2 of this Section; or
8. Any building which is damaged or destroyed by fire or natural catastrophes so long as the square footage of the building remains the same.

B. Payment of fee.

Unless otherwise preempted by law, the Housing Impact Fee shall be paid prior to the issuance of a building permit. For good cause shown, the City Council may allow for the Fee to be paid at the time of final inspection/Certificate of Occupancy.

C. Calculation of Housing Impact Fee.

1. The Housing Impact Fee for non-residential development projects shall be charged on a per square foot basis for all new gross floor area, including all additions where floor area is increased, and for conversions as defined within this Chapter, with a specific per square foot amount set for each nonresidential use type identified in Table 1 below. The amount and calculation for each such fee shall be established by resolution of the City Council. Gross floor area is determined by calculating the combined area for all floors in accordance with the definition of “Gross square feet floor area” contained in Section 17.146.020.
2. In calculating the fee, the chief building official shall use those fees in Table 1 at the time of the issuance of the building permit or if no building permit is required, at the time of issuance of a use permit or other discretionary permit. In the case of large, mixed-use development projects involving the simultaneous construction of different structures and/or different uses, the categories in Table 1 may be used to create a mixed fee to be collected for all uses in the project. In that case, the fee shall be designed to approximate the revenue which would have been collected had the appropriate type of use category in Table 1 been applied to each individual portion of the project.
3. Every person converting an existing residential building to a non-residential use or 3,000 square feet of floor area or more of an existing building from one use category to another use category (Table 1) shall pay a fee equal to the difference between the fees calculated for the existing and new uses. No fee shall be assessed on conversion to another use within the same category, unless such conversion includes an increase in the gross floor area. No person shall be entitled to a refund on conversions from a higher rate use category to a lower rate use category.
4. The type of use subject to the Housing Impact Fee will be determined in the following situations based on a case-by-case calculation of employee density:
 - a. In the case of uses listed as “Special Fee” in Table 1.
 - b. In the case of a use which does not fall into one of the uses listed in Table 1 and the Housing Director determines that (i) the building size is an inappropriate indicator of employee density, or (ii) insufficient generalized information is available to permit a determination that the use falls within one of the use categories listed in Table 1. In the case of uses involving one or fewer employees, such uses shall be exempt from the fee requirement.
5. Upon the remodeling of a nonresidential building to add additional square footage, that does not involve a conversion of use, the appropriate Housing Impact Fee shall be paid only on the additional square footage.

6. The Housing Director's determination of employee density pursuant to subsection 3 shall be based on: data concerning anticipated employee density for the project submitted by the applicant; employment surveys or other research on similar uses submitted by the applicant or independently researched by the Housing Director; or any other data or information the Housing Director determines relevant. Any application for a non-residential development project where a special fee determination is requested shall be accompanied by information sufficient to enable the Housing Director to make a determination of employee density pursuant to this subsection.

Table 1: Non-Residential Land Use Fee Categories

Office
 Commercial/Retail
 Hotel/Motel
 Winery/Industrial

Special Fee **Determined on a case by case basis**
Exempt **No fees**

Commercial/Retail

Antique store
 Appliance store (inc.repair)
 Art supply store or gallery
 Auto sales
 Auto supply store
 Auto, truck, and equipment leasing and rental
 Bakery – no seating
 Barber shop/beauty shop
 Bicycle store
 Boat sales
 Bookstore
 Catalogue office/retail center
 Clothing store
 Computer store
 Confectionary shop
 Contractor’s showroom
 Delicatessen
 Department store
 Drinking establishments
 Dry cleaners, Laundromat
 Eating establishments
 Electronics store
 Farmers’ market
 Farm supply store
 Feed store
 Florist
 Foodstore – no seating

Commercial/Retail (continued)

Frame shop
 Furniture store
 Gunsmith
 Hardware store (inc. saw, knife, tool sharpening)
 Health club
 Hobby, toy, and game store
 Home furnishing store
 Home health care equipment
 Ice cream, frozen yogurt shops
 Interior decorating shop
 Jewelry store
 Liquor store
 Locksmith
 Luggage store
 Lumber and other building materials store
 Massage salon
 Music store
 Nail salon
 Newsstand
 Nursery, lawn, garden supplies
 Paint and wallpaper store
 Party supply store
 Pawnshops
 Pet store
 Pharmacy and drug store

Commercial/Retail (continued)

Photographic supply store (inc. commercial art and photography services)
Pool supply and sales
Postal services
Printing and copy services
Saddle and equestrian sales
Service station
Sewing, needlework, fabric store
Shoe store, repair
Sporting goods store
Spa
Stamp and coin store
Stationary store
Tailor and dressmaker
Tanning salon
Tattoo, piercing salon
Tobacconist
Trophy shop
Used merchandise store
Variety store
Video rental store
Watch and clock shop
Welding supply store
Wine shop (inc. wine tasting stores and winery visitor tasting rooms)
Yoga studio

Hotel/Motel

Bed and Breakfast
Hotels
Motels

Office

Accounting, auditing, bookkeeping office
Advertising agencies
Architectural office
Bank, savings and loan institutions, credit unions
Chamber of Commerce office
Computer and data processing services
Contractor's offices – excluding storage yards

Dental offices
Engineering and surveying office
Graphic design services
Insurance Office
Legal Services
Management, consulting, and public relations services
Media representatives
Medical Office
Mortgage Company
Newspaper office
Optician
Personnel services
Real Estate
Research and development labs
Secretarial, mail, message, and postal services
Security services
Stockbrokers
Taxidermist
Telephone center
Title Company
Travel Agency
Veterinary Office.

Winery/Industrial

Ambulance facilities
Animal boarding facility, kennels
Auto repair, body work
Breweries
Carpentry, Cabinet, and sign shops
Car wash
Cleaning and janitorial services
Commercial laundries
Contractor's yards
Dance studio
Landscape services
Machine, welding, sheet metal, electric motor, pump, and heavy equipment repair shop
Manufacturing and production facilities
Mortuary and funeral home
Music recording studio
Newspaper distribution facility (no retail sales)
Photography studio

Winery/Industrial (continued)

Recycling centers
Small wineries (not including tasting rooms)
Towing services
Truck, bus, taxi, van and limousine terminals and service centers, including truck, trailer, and recreational vehicle rental and storage
Veterinary services (animal boarding)
Well drilling shops
Wineries (not including tasting rooms or gift shops)
Mini-storage facilities
Wine storage facilities
Warehouse and wholesale businesses (excluding retail sales)

Special Fee

Childcare facilities serving seven (7) or more children
Electric and gas utilities
Nursing homes
Private parking facilities when not required to serve an approved use
Private for-profit elementary or secondary schools, college/universities
Residential care facilities
Social halls – privately owned
Telecommunication facilities
Theatres – movie and legitimate

Exempt

Childcare facilities serving six (6) or fewer children
Churches
Non-profit schools
Vineyards
Public elementary or secondary schools, college/universities
Public library, art galleries, museums, and other non-recreational public facilities
Public parking lot
Public utility yard

D. Alternative to Payment of 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, or mixed use or other resources. Such requests may be approved by 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.

E. Processing Requirements.

1. Each discretionary permit for a project subject to this section shall contain an express condition requiring compliance with this section. Notwithstanding this subsection, failure to include such condition does not excuse compliance with this chapter.

2. No application for building permits or discretionary permits for any project subject to this section shall be deemed complete unless the application contains (a) a statement of the number of gross square feet in a non-residential development project to be constructed, added, or placed that are subject to the requirements of this section, together with documentation sufficient to support the application; (b) the intended use or uses for the non-residential development project by gross square feet; and (c) a statement of any exemptions applicable to the project.
3. The Housing Director may require similar information for completeness of other city permits or licenses as necessary or convenient to implement this section.

Sec. 17.146.050 Residential development project: Inclusionary/in-lieu fee requirements.

A. Inclusionary requirement.

At least 20% of all new dwelling units in a residential development project shall be affordable units, which shall be constructed and completed not later than the related market rate units. For fractions of affordable units, including fractions resulting from construction of less than five dwelling units, the developer may elect, at his or her option, to construct the next higher whole number of affordable units, perform an alternative equivalent action which has received the approval of the City Council pursuant to subsection B, or pay the Housing In-lieu fee specified in subsection E for such fraction. Notwithstanding the above, this section shall not apply to projects which fall into one or more of the following categories:

1. The construction of a single dwelling unit which is the whole of a residential development project and which is built, owned, and after completion, occupied for two years by a moderate income household verified by the Housing Director and meets the requirements established by subsection M. For purposes of this exemption, a dwelling unit shall be deemed “built” by its owner if it is built by or for a permit holder who intends to reside in the dwelling unit subject to subsection M; or
2. The building permit application for a residential development project was accepted as complete by the City prior to the adoption of Resolution 2003-65 on May 27, 2003 or in a use permit or similar discretionary approval approved prior to the adoption of Resolution 2003-65 on May 27, 2003. However, any extension or modification of such approval or permit after such date shall not be exempt; or
3. A residential development project to the extent it has received a vested right to proceed without payment of housing impact fees pursuant to state law; or

4. Building permits for residential development projects if compliance with this section for such project has already been satisfied including, but not limited to, building permits on newly created lots where the subdivider has built affordable units or otherwise satisfied this section; or
5. Replacement or rehabilitation of any dwelling unit which is damaged or destroyed so long as the square footage and use of the building remains the same. Upon the remodeling or rebuilding of a residential dwelling to add additional square footage, the Housing Impact Fee shall be paid on the additional square footage (except for a one-time exclusion of 850 square feet per residence).
6. The whole of a residential construction project that contains four or fewer units, is built at the maximum density allowed under the zoning ordinance, and has a total floor area of 2000 square feet or less.
7. The one-time remodeling of any dwelling unit for which the Gross Square Floor Area of the structure is increased by 850 square feet or less, provided that the residence was not exempt pursuant to subsection A.6 within the three years prior to date of building permit application for remodeling.

B. Alternative Equivalent Proposal.

1. A developer of any residential project may propose to meet the requirements of subsection A with an alternative equivalent action, subject to the review and approval of the City Council. Proposals for alternative equivalent actions may include, but are not limited to, dedication of vacant land, the construction of affordable units on another site, or acquisition and enforcement of required rental/sales price restrictions on existing standard dwelling units consistent with this section. Any proposal shall show how the alternative action will further affordable housing opportunities in the City to an equal or greater extent than compliance with the express requirements of subsection A or payment of the appropriate in-lieu housing fee.
2. Alternative equivalent action proposals for single family and multi-family residential developments shall be considered on a case by case basis by the City Council, and may be approved at the City Council's sole discretion, if the City Council determines that such alternative will further affordable housing opportunities in the City to an equal or greater extent than compliance with the express requirements of subsection A.

C. In-lieu Housing Fee.

A developer of four or fewer residential dwelling units which are the whole of a residential development project may meet the requirements of subsection A through payment of an in-lieu fee.

A developer of any other residential project may propose to meet the requirements of subsection A through payment of an in-lieu fee by showing good cause that it is not feasible to construct the required units. A written request shall be submitted with the developer's application for a discretionary approval or building permit, whichever comes first. The request shall include: a statement identifying all overriding conditions that prevent the developer from meeting the requirement to construct the affordable units; sufficient independent data, including appropriate financial information, to support the developer's claim that it is not feasible to construct the required affordable units; and a detailed analysis of why the concessions and incentives identified in subsection F cannot mitigate the conditions that are preventing the developer from constructing the affordable units. The Housing Director shall review all such requests and prepare a recommendation for the City Council. Such requests shall be considered on a case-by-case basis by the City Council, and may be approved if the Council determines that there are overriding conditions which prevent the developer of a multi-family residential project from meeting the requirement to construct affordable units, and that payment of the in-lieu fee will further affordable housing opportunities to an equal or greater extent.

D. Time of Payment of In-lieu Fee.

Unless otherwise preempted by law, the In-lieu Fee shall be paid prior to the issuance of a building permit. For good cause shown, the City Council may allow for the Fee to be paid at the time of final inspection/Certificate of Occupancy.

E. Calculation of Housing In-lieu Fee.

The housing in-lieu fee shall be charged on a percentage basis of the projected construction costs of market rate dwelling units. The amount and calculation of the housing in-lieu fee shall be established by resolution of the City Council. Construction costs of market rate dwelling units are determined in accordance with the definition in Section 17.146.020. Construction costs shall be separately calculated for each dwelling unit in attached single-family residential and rental residential development projects, and the appropriate fee paid for each unit within the residential project. The housing in-lieu fee required by this section may be satisfied either by cash payment or, upon the recommendation of the Housing Director and approval of the City Council, by an alternative which will provide the City with a value equal to or greater than the amount of the required in-lieu fee.

F. Affordable Housing Concessions or Incentives.

1. For residential development projects which meet the requirements specified in subsection A through the actual construction of affordable units, the City shall follow the procedures described below and provide the described concessions and/or those incentives identified in California Government Code sections 65915-65918:

- a. A developer may submit a written preliminary development proposal prior to the submittal of any formal application for a general plan amendment, rezoning, use permit, tentative subdivision or parcel map or other permit or entitlement. The proposal should describe and specify the number, type, location and size of the housing development, and should identify any requests for density bonus, additional incentives, concessions, waivers, or modification of development or zoning standards that will be necessary to make construction feasible for the entire development, including the affordable units. The City Council shall review the preliminary development proposal within 60 days at a regular Council meeting and shall identify issues of potential concern, offer direction regarding the proposed development, and make any requests for additional affordable housing incentives, concessions or waivers or modification of development or zoning standards. Such preliminary review shall not bind the City Council, but rather shall be subject to the discretion of the City Council to modify its preliminary recommendations based upon a full review of all pertinent project information, including any environmental impact analysis, presented at the public hearing on the application.
 - b. Applications that include the construction of affordable units shall be given priority by all City departments before other residential land use applications regardless of the original submittal date. Applications including affordable rental units shall be given priority before applications including owner-occupied units.
 - c. All City-required fees on affordable units shall be deferred for payment until the issuance of the certificate of occupancy.
2. The City Council may consider, on a case-by-case basis, at its sole discretion, providing the following additional concessions or incentives identified in Government Code Section 65915 which are consistent with state law and the Housing Element of the City of St. Helena General Plan for projects which meet or exceed the requirements of Chapter 17.144.
 - a. An additional density bonus or other incentives of equal financial value subject to the City Council's review and approval.
 - b. Waiver or modification of City standards that have a direct impact on reducing total project costs while being consistent with required building and safety code standards. The developer shall be responsible for documenting that the waiver or modification is necessary for the feasibility of the residential development project and is consistent with required building and safety code Standards.
 - c. Direct financial assistance in the form of a loan or grant using trust fund or other appropriate available funds subject to the recommendation of the Housing Director.

- d. Defer payment of City fees on market rate units until the issuance of the certificate of occupancy for the unit.
3. The City Council may consider, on a case by case basis, at its sole discretion, providing additional concessions or incentives consistent with state law and the Housing Element of the City of St. Helena General Plan for residential development projects which provide at least 25% of the total dwelling units as affordable units or meet the maximum density allowed under the zoning ordinance.

G. Requirements for Rental Affordable Units.

1. If under subsection A, the developer is required to build 3 or fewer units of affordable rental housing, the following requirements apply:
 - a. If the developer is required to build only one affordable unit, that unit shall be affordable for a very low income household.
 - b. If the developer is required to build two affordable units, one unit shall be affordable for a very low income household and one unit shall be affordable for a low income household.
 - c. If the developer is required to build three affordable units, one unit shall be affordable for a very low income household, one unit shall be affordable for a low income household, and one unit shall be affordable for a moderate income household.
 - d. If the City's fair share housing goals, as set by the Housing Element of the General Plan, have been met for the lowest income category, any required units shall be affordable in the next higher income category in which there is a fair share requirement.
2. If under subsection A, the developer is required to build 4 or more units of affordable housing, the number of affordable units which are required to be constructed in very low, low or moderate units shall be determined by the ratio of units needed in each of those categories in order to satisfy the City's fair share housing goals. Where the number of required affordable units in each category is a fractional number, the fractional units shall be carried to the category in which there is the greatest number of units needed. For instance, the City currently needs 31 very low (36%), 20 low (23%), and 36 moderate (41%) units to satisfy its fair share requirements. Therefore, a project that requires 9 affordable units would be required to build 3 very low units, 2 low units and 4 moderate units.
3. With respect to any particular rental residential project, the City Council may, upon the recommendation of the Housing Director, forgive all or a portion of the affordability requirement set forth in subsection A above upon a showing by the applicant that imposition of such requirement on the residential project will cause

undue hardship and that such residential project will contribute significantly to affordable housing opportunities in the City.

H. Requirements for Owner-occupied Affordable Units.

1. One-half of the affordable units, which are required to be constructed in connection with the construction of market rate units, intended for owner-occupancy shall be available at affordable sales prices to households whose annual household income does not exceed 100% of median income. If one-half of the affordable units required are available at affordable sales prices to households whose annual household income does not exceed 80% of median income, the developer shall be entitled to an additional density bonus of 5% for the proposed development.
2. As an alternative to receiving an additional density bonus of 5%, a developer may submit a request for another incentive of a financial value equal to the density bonus. Such requests shall be considered on a case-by-case basis by the City Council and shall be approved, at the City Council's sole discretion, if the City Council determines that such alternative incentive will further affordable housing opportunities.
3. The remaining one-half of the required affordable units shall be available at affordable sales prices to moderate income household. Where the number of required affordable units is an odd number, the number of units affordable to moderate income households may be one greater than the number affordable at or below 100% of median income.

I. Basic Requirements for Owner-Occupied and Rental Affordable Units.

Affordable units shall be comparable in number of bedrooms, exterior appearance and overall quality of construction to market rate units in the same residential project. Subject to the approval of the Planning Commission, square footage of affordable units and interior features in affordable units need not be the same as or equivalent to those in market rate units in the same residential project, so long as they are of good quality and are consistent with contemporary standards for new housing. Affordable units shall be dispersed throughout the residential project, or, subject to the approval of the Planning Commission, may be clustered within the residential project when this furthers affordable housing opportunities.

J. Continued Affordability.

1. If the affordable units are owner-occupied, prior to the issuance of certificates of occupancy or approval of the final inspection for affordable units, regulatory agreements and resale restrictions, deeds of trust and/or other documents, all of which must be acceptable to the Housing Director and City Attorney and consistent with the requirements of this chapter, shall be recorded against parcels having such affordable units and shall be effective for a minimum of 30 years.

2. Resale restrictions shall be recorded upon each resale of an affordable unit, and the effective period shall be an additional 30 years from the date of resale.
3. Income eligibility of the owners and title in the affordable unit may change over time due to circumstances including death. Upon the death of one of the owners, title in the property may transfer to the surviving joint tenant without respect to the income-eligibility of the household. Upon the death of a sole owner or all owners and inheritance of the affordable unit by a non-income-eligible child or stepchild of one or more owners, there will be a one year compassion period between the time when the estate is settled and the time when the property must be sold to an income-eligible household. Inheritance of an affordable unit by any other person whose household is not income-eligible shall require resale of the unit to an income-eligible household as soon as is feasible, but not more than 180 days.
4. If the affordable units are renter occupied, prior to the issuance of certificates of occupancy or approval of the final inspection for affordable units, regulatory agreements and resale restrictions, deeds of trust and/or other documents, all of which must be acceptable to the Housing Director and City Attorney and consistent with the requirements of this chapter, shall be recorded against parcels having such affordable units and shall be effective in perpetuity.
5. Notwithstanding any other provision in this Section:
 - (a) The maximum sales price permitted on resale of an affordable unit intended for owner-occupancy shall not exceed the seller's purchase price, adjusted for the percentage increase in median income since the seller's purchase, plus the market value of substantial structural or permanent fixed improvements to the property as determined by an independent appraisal, plus the cost of reasonable seller's broker fee as determined by the Housing Director. For purposes of this subparagraph, median income shall be calculated based upon the presumed occupancy levels used to determine affordable sales price.
 - (b) The resale restrictions shall provide that in the event of the sale of an affordable unit intended for owner-occupancy, the City shall have the right to purchase or assign its right to purchase such affordable unit at the maximum price which could be charged to an eligible household. In its sole discretion, the City shall also have the right to postpone its right to purchase without waiving that right.
6. No household shall be permitted to occupy an affordable unit, or purchase an affordable unit for owner-occupancy, unless the City or its designee has approved the household's eligibility, or has failed to make a determination of eligibility within the time or other limits provided by a regulatory agreement or resale restrictions. If the City or its designee maintains a list of eligible households, households selected to occupy affordable units shall be selected first from that list to the extent provided in the regulatory agreement or resale restrictions.

K. Annual Monitoring and Transfer Fees.

1. For each rental affordable unit provided hereunder, the current owner may be required to pay an annual monitoring fee for the term of required affordability. Such fee shall be specified in the regulatory agreement(s) required hereunder.
2. For each owner-occupied affordable unit provided under this section, the current owner may be required to pay a transfer fee for any change of ownership during the term of required affordability. Such fee shall be specified in the resale restrictions required by subsection J.

L. Discretionary Permit Requirements.

Every discretionary permit for a residential development project approved after the effective date of this chapter shall contain a condition detailing the method of compliance with this chapter. Every final and parcel map shall bear a note indicating whether compliance with the requirements of this section must be met prior to issuance of a building permit for each lot created by such map. Notwithstanding this subsection, failure to include such condition or note does not excuse compliance with this chapter.

M. Requirements for Certificate of Occupancy/Final Inspection.

1. No temporary or permanent certificate of occupancy shall be issued, final inspection approved or release of utilities authorized for any new dwelling unit in a residential development project until the developer has satisfactorily completed the requirements hereunder, i.e., on-site construction of affordable units, alternative equivalent action(s) or payment of the housing in-lieu fee.
2. No temporary or permanent certificate of occupancy shall be issued, final inspection approved or release of utilities authorized for a dwelling unit described in subsection A (1) above until the builder or owner has made a showing acceptable to the Housing Director that such an exemption is appropriate. The Housing Director shall develop and implement regulations designed to ensure that such initially exempt dwelling units remain in compliance with the terms of the exemption throughout the first two years of occupancy. A builder or owner of a dwelling unit found to be out of compliance at any time during such two-year period shall be required to pay 125% of the then current in-lieu fee for that dwelling unit, as specified by resolution of the City Council. Such payment, however, shall not limit the City's ability to proceed against any party pursuant to Section 17.146.060 or other applicable law.

Sec. 17.146.060 Enforcement provisions.

- A. It shall be unlawful, a public nuisance and a misdemeanor for any person to sell or rent an affordable unit at a price or rent exceeding the maximum allowed under this chapter or to a household not qualified under this chapter, and such person shall be subject to a fine for the first offense of \$100.00 per day per unit from the date of original non-compliance until the affordable unit is in compliance with this section. A second offense by the same owner for the same unit shall be subject to a fine of \$1,000 per day per unit.
- B. The St. Helena City Attorney's Office or the Napa County District Attorney, as appropriate, shall be authorized to abate violations of this chapter and to enforce the provisions of this chapter and all implementing regulatory agreements and resale controls placed on affordable units by civil action, injunctive relief, and any other proceeding or method permitted by law.
- C. The remedies provided for herein shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.

Sec. 17.146.070 Bi-Annual review.

The Housing Impact Fee, Housing In-lieu Fee and inclusionary requirements authorized by this chapter and implementing resolution(s) shall be reviewed every two years by the City Council, provided that failure to perform such review does not excuse compliance with this chapter.

Sec. 17.146.080 Adjustment / Appeal.

- A. A developer of any project subject to the requirements in this chapter may appeal to the City Council for a reduction, adjustment, or waiver of the requirements based upon the absence of any reasonable relationship or nexus between the impact of the development and either the amount of the fee charged or the inclusionary requirement.
- B. A developer subject to the requirements of this chapter who has received an approved tentative subdivision or parcel map, use permit or similar discretionary approval and who submits a new or revised tentative subdivision or parcel map, use permit or similar discretionary approval for the same property may appeal for a reduction, adjustment or waiver of the requirements with respect to the number of lots or square footage of construction previously approved.
- C. Any appeal under this section shall be made in writing and filed with the City Clerk not later than ten (10) days before the first public hearing on any discretionary

approval or permit for the development, or if no such discretionary approval or permit is required, or if the action complained of occurs after the first public hearing on such permit or approval, then the appeal shall be filed within ten (10) days after payment of the fees objected to. The appeal shall set forth in detail the factual and legal basis for the claim of waiver, reduction, or adjustment. The City Council shall consider the appeal at the public hearing on the permit application or at a separate hearing within sixty (60) days after the filing of the appeal, whichever is later. The appellant shall bear the burden of presenting substantial evidence to support the appeal including comparable technical information to support appellant's position. No waiver shall be approved by the City Council for a new tentative subdivision or parcel map, use permit or similar discretionary approval on property with an approved tentative subdivision or parcel map, use permit or similar discretionary permit unless the Council finds that the new tentative subdivision or parcel map, use permit or similar discretionary approval is consistent with the approved project both in its design and its mitigation of environmental impacts. The decision of the Council shall be final. If a reduction, adjustment, or waiver is granted, any change in use within the project shall invalidate the waiver, adjustment, or reduction of the fee or inclusionary requirement.

Section 4. If any section, subsection, sentence, clause, word or phrase of this Chapter is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of St. Helena hereby declares that it would have passed and adopted this ordinance and each and all provisions hereof irrespective of the fact that any one or more of such provisions be declared invalid.