



County of Yolo

PLANNING AND PUBLIC WORKS DEPARTMENT

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DIRECTOR

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TO: Staff and interested parties

FROM: Eric Parfrey, Principal Planner

DATE: April 28, 2009

SUBJECT: New Inclusionary Housing In-Lieu Fee

On March 24, 2009, the Yolo County Board of Supervisors adopted an “in-lieu” fee for the Inclusionary Housing program. The in-lieu fee may be paid by developers of small residential development projects in-lieu of (instead of) constructing affordable housing units as part of their project. The in-lieu fees that are collected by the county will be deposited in a special account, which will be earmarked for very low income and extremely low income households by providing supplemental funding for affordable housing developers. The fees go into effect on May 25, 2009.

A schedule of the in-lieu fees that would apply to single family (for sale) projects of less than 10 units, or multiple family (rental) projects of less than eight units, is included in Table 1, below.

Table 1
Inclusionary Housing
In Lieu Fee Schedule

Number of Units in Project	Required Percentage of Fee	In Lieu Fee for 1.0 unit	In Lieu Fee to be Paid
1 unit	0.1	\$12,920 (for sale) \$17,610 (rental)	\$1,292 (for sale) \$1,761 (rental)
2 units	0.2	\$12,920 (for sale) \$17,610 (rental)	\$2,584 (for sale) \$3,522 (rental)
3 units	0.3	\$12,920 (for sale) \$17,610 (rental)	\$3,876 (for sale) \$5,283 (rental)
4 units	0.4	\$12,920 (for sale) \$17,610 (rental)	\$5,168 (for sale) \$7,044 (rental)
5 units	0.5	\$12,920 (for sale) \$17,610 (rental)	\$6,460 (for sale) \$8,805 (rental)
6 units	0.6	\$12,920 (for sale) \$17,610 (rental)	\$7,752 (for sale) \$8,805 (rental)

7 units	0.7	\$12,920 (for sale)	\$9,044 (for sale)
8 units	0.8	\$12,920 (for sale)	\$10,336 (for sale)
9 units	0.9	\$12,920 (for sale)	\$11,628 (for sale)

As indicated in Table 1, a single housing unit (such as a for sale home constructed on an agricultural parcel) is required to pay an in-lieu fee of \$1,292. However, note that single family homes that are built and sold at a cost affordable to “low income” families (construction cost of no more than about \$125 per square foot and/or sale price of \$200,000, are exempt from paying the in-lieu fee (see below).

As another example, as noted in the table, a small subdivision of 8 for-sale single family homes would be required to pay an in-lieu fee of \$10,336. A four-plex of four apartment units would be required to pay an in-lieu fee of \$7,044. Again, if these projects qualify as affordable to “low income” families, they would be exempt from the fee.

Time of Payment

The fee is to be collected by the county prior to the filing of a Final Subdivision or Parcel Map, or issuance of the first building permit, whichever comes first.

Exempted Residential Units

The following residential projects are exempt from providing affordable units or paying an in-lieu fee:

- Individual single family dwellings (such as mobile homes) for which construction costs do not exceed those meeting the “low income” or below requirements as defined by the ordinance, which is equal to about \$125 per square foot. . (According to state and federal housing agencies, in 2009 a “low income” four-member household earns no more than \$58,100 annually. This low income family could afford a three-bedroom house priced at no more than approximately \$200,000, or a construction cost of about \$125 per square foot for a 1,600 square foot house.)
- Replacement of a structure with a new structure of the same gross floor area and use at the same site or lot when such replacement occurs within twelve (12) consecutive months of the demolition or destruction of the prior residence.
- Replacement of a structure with a new structure that does not exceed five-hundred (500) square feet.
- Housing constructed in a self-help housing program that serves owner-occupants below 80% of area median income.

More Information about the Inclusionary Housing Program

The Board of Supervisors adopted the Inclusionary Housing program and ordinance in October, 2005. The Inclusionary Housing ordinance is included as Chapter 2 of Title 8 (Land Development and Zoning) of the County Code. The full text of the ordinance may be viewed at the Yolo County Web site (www.yolocounty.org, click on “Government,” then click

on “Board of Supervisors,” and then click on “County Codes”).

The Inclusionary Housing ordinance requires that residential for-sale development projects of 10 or more units (e.g., typical subdivisions) must include 20% of the units for affordable sales prices, with 10% of the units affordable to “low income” families and 10% of the units affordable to “moderate income” families. Multiple family rental projects (such as apartments) over 20 units must include 35% affordable units (25% of the units for “very low income” families and 10% of the units for “low income” families). Rental projects between 7 and 19 units must provide 15% and 10% of the units to “very low income” and “low income” families, respectively. Smaller projects of less than 10 single family units or eight multiple family units are eligible to pay the in-lieu fee.

If you have questions, or for more information, contact Eric Parfrey, Principal Planner, at (530) 666-8043 or eric.parfrey@yolocounty.org.

ORDINANCE NO. 09-_____
AN ORDINANCE ESTABLISHING THE YOLO COUNTY
INCLUSIONARY HOUSING IN-LIEU FEE

The Board of Supervisors of the County of Yolo, State of California, ordains as follows:

SECTION 1. AUTHORITY

This Ordinance is adopted pursuant to Article 11, Section 7 of the California Constitution and California Government Code sections 66000 et seq., which establish the County's authority to impose and collect fees for the purpose of mitigating impacts related to development projects, as well as the County's police power to adopt ordinances that protect and promote public health, safety, and welfare.

SECTION 2. PURPOSE

The existing Yolo County Inclusionary Housing Requirements (Chapter 9 of Title of the Yolo County Code) require residential projects within unincorporated Yolo County to include a defined percentage of housing affordable to very low, low and moderate income households within each development project. Section 8-9.402 of the existing ordinance allows small projects of less than ten (10) units for single family developments and seven (7) units for multifamily developments to meet the Inclusionary Housing Provisions by the payment of in-lieu fees pursuant to an adopted fee schedule, rather than compliance with the affordable housing on-site construction requirement. This Ordinance establishes and sets forth regulations relating to the imposition, collection, and use of in-lieu fees for the provision of affordable housing. A related and companion ordinance (**ORDINANCE NO. 09-_____**) makes modifications to the Inclusionary Housing Requirements to implement the in-lieu fee alternative set forth herein.

SECTION 3. FINDINGS

The Board of Supervisors, having reviewed and considered the "Yolo County Inclusionary Housing In-Lieu Fee" memorandum dated March 3, 2009 from Economic & Planning Systems (the "In-Lieu Fee Analysis") attached hereto as **Exhibit A**, finds and determines as follows:

- A. The State of California requires local governments to plan to meet the housing needs of all income groups. Specifically, "local governments have the responsibility to use their powers to facilitate the improvement and development of housing to meet the housing needs of all economic segments of the community (Government Code Section 65580) and to assist in the development of adequate housing to meet the needs of low and moderate income households (Government Code Section 65583(c)(2))."
- B. It is a public purpose of the County, as expressed in the Housing Element of the County's General Plan, "to provide for the county's regional share of new housing for all income groups (Yolo County General Plan, Goal One)."
- C. As documented in the Housing Element of the County's General Plan, there is a

housing shortage for very low and low income households in the County and a shortage of ownership housing for moderate income households. Increasingly, very low, low and moderate income persons who work or live within the County are unable to locate suitable housing at prices they can afford and are increasingly excluded from living within the County. Federal and State housing subsidy programs are not sufficient by themselves to satisfy the housing needs of very low, low-income and moderate-income households.

- D. The County finds that newly constructed housing does not, to any appreciable extent, provide housing affordable to very low, low and moderate income households. New development, which does not include or otherwise provide for affordable housing will further aggravate the current housing shortage for very low and low income households and the shortage of ownership housing for moderate income households, as it will reduce the supply of developable land and increase land costs, thus making affordable housing prohibitively difficult and expensive to develop.
- E. This Ordinance implements the adopted Housing Element of the County General Plan and carries out the mandates of State Housing Element law, meeting the regional fair share housing requirements by ensuring that the benefits of economic diversity are available to the residents of the County. It is essential that new residential development contain housing opportunities for all income levels, and that the County provide a regulatory and incentive framework, which ensures development of an adequate supply and mix of new housing to meet the future housing needs of all income segments of the unincorporated Yolo County population.
- F. The County further finds that the housing shortage for very low and low-income households, and the shortage of ownership housing for moderate income households, is detrimental to the public health, safety and general welfare of the County.
- G. This Ordinance establishes an Inclusionary Housing In-Lieu Fee, consistent with policies and implementation programs of the Housing Element, and with the Inclusionary Housing Requirements.
- H. There is a reasonable relationship between the anticipated uses of the in-lieu fees established by this Ordinance and the type of development projects on which the fees are imposed. This relationship is described in the Board letter that accompanies this item and is reflected in the text of this Ordinance.
- I. There is a reasonable relationship between the need for affordable housing and the type of development projects on which the fees are imposed. For a variety of reasons, it is necessary and desirable to ensure the provision of affordable housing opportunities as the County increasingly urbanizes.
- J. There is a reasonable relationship between the in-lieu fees that will be collected from the projects subject to this Ordinance and the cost of providing affordable housing opportunities. The fee established by this Ordinance is based on Exhibit A hereto (the In-Lieu Fee Analysis). The cost estimates set forth in the In-Lieu Fee Analysis are reasonable estimates of the costs to construct affordable housing units.

Those cost estimates are based on the recent values direct construction costs of product types typical of affordable housing projects in Yolo County.

- K. The cost of providing affordable housing is appropriately borne, in part, by the developers of residential projects that do not include affordable units within the projects. The fees established by this Ordinance do not exceed the total fair share cost to the development projects that are covered by its provisions, and the fees are reasonable, equitable, and do not unfairly burden new development.

SECTION 4. INCLUSIONARY HOUSING IN-LIEU FEE

A. Title 8, Chapter 9 of the County Code, as amended by the related and companion ordinance (**ORDINANCE NO. 09-_____**), establishes the Yolo County Inclusionary Housing Requirements. The program requires residential development projects to include affordable housing in proportion to the size of the project. Small projects may instead pay an in-lieu fee that would fund construction of affordable housing or related programs to provide affordable housing opportunities within the County.

B. The Yolo County Inclusionary Housing Requirements specifies that small projects of less than ten (10) units for single family developments and seven (7) units for multifamily developments shall be allowed to pay an in-lieu fee as a means of satisfying the requirements of the ordinance, based on a per unit calculation of the affordable construction costs.

C. The formula for determining the amount of the per unit in-lieu fee to be paid shall be as follows, consistent with Table 1 of Exhibit A hereto, and as updated according to section (E), below:

**Table 1
Financing Gap per Affordable Unit
and In-lieu Fee**

Item	<i>Very Low Income</i>	<i>Low Income</i>	<i>Moderate Income</i>	<i>Total¹</i>
Rental Units				
Average Financing Gap per Affordable Unit	\$166,100	\$102,999	n/a	
In-Lieu Fee (no additional subsidy)	\$24,915	\$10,300	n/a	\$35,215
In-Lieu Fee (including 50% additional subsidy)	\$12,457	\$5,150	n/a	\$17,610
For-Sale Units				
Average Financing Gap Per Affordable Unit	n/a	\$1339,248	\$125,105	
In-Lieu Fee (no additional subsidy)	n/a	\$13,325	\$12,511	\$25,835
In-Lieu Fee (Including 50% additional subsidy)	n/a	\$6,662	\$6,255	\$12,920

Notes: 1. Rounded down to nearest \$5.

Notes to Table (con.)

“N/a” refers to not applicable. There is no inclusionary housing requirement for affordable rental units to be provided for moderate income households. Similarly, there is no inclusionary housing requirement for affordable for-sale units to be provided for very low income households.

**Table 2
Inclusionary Housing
In-Lieu Fee Schedule**

Number of Units in Project	Required Percentage of Fee	In-Lieu Fee for 1.0 unit	In-Lieu Fee to be Paid
1 unit	0.1	\$12,920 (for sale) \$17,610 (rental)	\$1,292 (for sale) \$1,761 (rental)
2 units	0.2	\$12,920 (for sale) \$17,610 (rental)	\$2,584 (for sale) \$3,522 (rental)
3 units	0.3	\$12,920 (for sale) \$17,610 (rental)	\$3,876 (for sale) \$5,283 (rental)
4 units	0.4	\$12,920 (for sale) \$17,610 (rental)	\$5,168 (for sale) \$7,044 (rental)
5 units	0.5	\$12,920 (for sale) \$17,610 (rental)	\$6,460 (for sale) \$8,805 (rental)
6 units	0.6	\$12,920 (for sale) \$17,610 (rental)	\$7,752 (for sale) \$8,805 (rental)
7 units	0.7	\$12,920 (for sale) \$17,610 (rental)	\$9,044 (for sale) \$12,327 (rental)
8 units	0.8	\$12,920 (for sale)	\$10,336 (for sale)
9 units	0.9	\$12,920 (for sale)	\$11,628 (for sale)

D. The fees collected pursuant to this Ordinance shall be used to pay the costs associated with construction of new affordable housing units or for other related purposes that directly facilitate the provision of affordable housing within the County.

E. The Inclusionary Housing In-Lieu Fees shall be updated on a regular basis, no later than every two years, by averaging the change in housing and land costs measured in two indices: the Office of Federal Housing Enterprise Oversight (OFHEO) housing price index for the Sacramento Metropolitan Statistical Area, which is a proxy for land costs; and the average construction cost per square foot as shown on the most recent edition of the Building Permit Valuation Table in use by the Yolo County Planning and Building Department (or other similar construction cost index for the Yolo County area).

SECTION 5. PAYMENT OF FEES

For any development project subject to this Ordinance, fees levied hereunder shall be paid to the County of Yolo prior to the acceptance of any final subdivision map, issuance of a conditional use permit or approval of a site plan, or issuance of building permit(s) or certificate(s) of occupancy, whichever occurs first. The Planning and Public Works

Department shall not accept any final subdivision map, issue any conditional use permit or approve any site plan, or issue any building permit(s) or certificate(s) of occupancy to any development subject to this Ordinance without first receiving payment of the required fees from the applicant.

SECTION 6. ACCOUNTING AND REGISTER OF PAYMENT

A. The fees collected pursuant to this Ordinance shall be placed by the Planning and Public Works Department in a separate interest bearing account for the Inclusionary Housing In-Lieu Fee Program, as further described in Section 9, below.

B. The Planning and Public Works Department shall maintain a register for each account indicating the date of payment of each fee, the amount paid, Assessor's Parcel Number and the name of the payor.

C. Pursuant to Government Code section 66006(b)(1), within 180 days after the last day of each fiscal year, the Planning and Public Works Department shall prepare an accounting of all fees paid into and withdrawn from the account during the prior fiscal year. This accounting shall include all of the information required by subdivision (b)(1) of section 66006, including but not limited to the source and amounts collected, the beginning and ending balance of the account, the interest earned during the prior fiscal year, the amounts expended from the account, and the projects for which such expenditures were made.

SECTION 7. INDEPENDENT FEE CALCULATIONS

A. Following a request made by an affected party, if in the judgment of the Director of the Planning and Public Works Department ("Director") none of the fee amounts set forth in the schedule in Table 1, above, appears to accurately correspond with the impacts resulting from issuance of the requested building permit or other approval subject to this Ordinance, the applicant shall provide to the Planning and Public Works Department for its review and evaluation an independent fee calculation, prepared by a consultant approved by the Director. The independent fee calculation shall show the basis upon which it was made and shall include, at a minimum, the costs of recent easement transactions in Yolo County. The Director may require, as a condition of the issuance of the requested permit, payment of an alternative impact fee based on this calculation. With the independent fee calculation, the applicant shall pay to the Planning and Public Works Department an administrative processing fee of eight hundred and forty (\$840) dollars per calculation or such amount that may be set in the County's Master Fee Resolution in effect at the time the project is submitted.

B. While there is a presumption that the calculation set forth in the Inclusionary Housing In-Lieu Fee study is correct, the Director shall consider the documentation submitted by the applicant. The Director is not required to accept as true the facts contained in such documentation. If the Director reasonably deems the facts in such documentation to be inaccurate or not reliable, he or she may require the applicant to submit additional or different documentation or, alternatively, refuse to accept any further documentation and apply the formula set forth in Section 4, above, to the development at issue. The Director is authorized to adjust the fee on a case-by-case basis based on the independent fee calculations or the specific characteristics of the permit (or certificate of occupancy if no building permit is required), provided the amount of the adjusted fee is consistent with the criteria set forth in Government Code section 66001(a)-(b) and other applicable legal

requirements.

SECTION 8. EXEMPTIONS

Residential projects that are exempted from this Ordinance and from payment of these in-lieu fees are as specific in Sec. 8-9.1101 of the Inclusionary Housing Requirements ordinance (Chapter 9, Title 8 of the Yolo County Code). These exempted residential projects include: individual single family dwellings for which construction costs do not exceed those meeting the low income or below requirements as defined in this ordinance; replacement of a structure with a new structure of the same gross floor area and use at the same site or lot when such replacement occurs within twelve (12) consecutive months of the demolition or destruction of the prior residence; replacement of a structure with a new structure that does not exceed five-hundred (500) square feet; and housing constructed in a self-help housing program that serves owner-occupants below 80% of area median income.

SECTION 9. ESTABLISHMENT OF IMPACT FEE ACCOUNT

A. An interest-bearing account has been established for the fees collected pursuant to this Ordinance and is entitled "Inclusionary Housing In-Lieu Fee Account". Collected fees shall be earmarked specifically and deposited in this account and shall be prudently invested in a manner consistent with the investment policies of the County. Funds withdrawn from this account shall be used in accordance with the provisions of this Ordinance. Interest earned on these fees shall be retained in the account and expended for the purpose for which the impact fees were collected.

B. On an annual basis, the Director shall provide a report to the Board of Supervisors on the account showing the source and amount of all moneys collected, earned, or received, and the improvements or other facilities or activities that were financed in whole or in part by the collected fees. This report may be identical in format and content with the report or other document prepared pursuant to Section 6.C of this ordinance and Government Code section 66006(b)(1).

C. In accordance with Government Code section 66001(d), for the fifth fiscal year following the first deposit of fees into the account and every five years thereafter, if some or all of the collected fees have not been expended, the Board of Supervisors shall make the findings set forth in Government Code section 66001(d) or take other measures provided in subdivisions (d) and (e) of section 66001, including a refund of any unexpended moneys pursuant to Section 11, below.

SECTION 10. REFUNDS

A. Except where the Board of Supervisors has timely made the findings set forth in Government Code section 66001(d), upon application of the property owner made pursuant to subsections C-E of this section, the County shall refund that portion of any fee collected pursuant to this Ordinance which has been on deposit over five years, whether committed or uncommitted. The refund shall be made to the then-current owner or owners of lots or units of the development project or projects, as reflected on the last equalized assessment roll.

B. The County may refund by direct payment, by offsetting the refund against other fees due for development projects by the owner on the same or other property, or otherwise by agreement with the owner. A person who receives a refund under this provision shall not

commence construction of the land development for which the refund was made without repaying the required fees.

C. If the County fails to expend the fees within five years of payment, or where appropriate findings have been made, such other time periods pursuant to Section 66000 et seq. of the Government Code, the current owner of the property for which impact fees have been paid may receive a refund of the remaining amount of the fee payment. In determining whether fees have been expended, fees shall be considered expended on a first in, first out basis.

D. The County shall notify potential claimants by first class mail deposited with the United States Postal Service at the last known address of such claimants.

E. Property owners seeking a refund of fees paid under this Ordinance must submit a written request for a refund of the fees to the Director of Planning and Public Works within one year of the date that the right to claim the refund arises or the date the notice described in subsection D of this Section is given, whichever is later.

F. Any fees for which no application for a refund has been made within the one year period shall be retained by the County and expended on the appropriate affordable housing programs.

G. Refunds of fees under this Ordinance shall include any interest earned on the impact fees by the County.

H. When the County terminates the fee program established by this Ordinance, all unexpended and unencumbered funds, including interest earned, shall be refunded pursuant to this ordinance. The County shall publish notice of the determination and the availability of refunds in a newspaper of general circulation at least two times and shall notify all potential claimants by first class mail to the last known address of the claimants. All funds available for refund shall be retained for a period of one year after the second publication. At the end of one year, any remaining funds shall be retained by the County, but must be expended for appropriate affordable housing projects or programs. This notice requirement shall not apply if there are not unexpended or unencumbered balances within the account.

I. The County shall also refund the fee paid plus interest to the current owner of property for which the impact fee had been paid if the development was never completed or occupied; provided, that if the County expended or encumbered the fee in good faith prior to the application for a refund, the Director may decline to provide the refund. If within a period of three years, the same or subsequent owner of the property proceeds with the same or substantially similar development, the owner can petition the Director for an offset against the fees previously paid to, and expended or encumbered by, the County. The petitioner shall provide receipts of impact fees previously paid for a development of the same or substantially similar nature on the same property or some portion thereof.

SECTION 11. USE OF FUNDS

A. The fees collected pursuant to this ordinance may be spent for the construction or creation of affordable housing in Yolo County, including any related administrative, planning, monitoring, and legal costs.

B. It is the intent of the County to transfer most, if not all, of the fees that are collected to a qualifying entity, that will construct or create affordable housing in Yolo County.

C. In-lieu fees may be used to recoup costs for affordable housing projects previously incurred by the County, provided the costs recouped by the County were incurred in connection with the Inclusionary Housing program.

C. In the event that bonds or similar debt instruments are or have been issued for the advanced construction of affordable housing, in-lieu fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the use of the bonds is consistent with the Inclusionary Housing program and this ordinance.

SECTION 12. PROTESTS AND APPEALS

Protests shall be filed in accordance with Sections 66020 and 66021 of the Government Code. At the time any fees are imposed pursuant to this Ordinance, County staff shall provide the project applicant written notice of the imposition of the fees, a statement of the amount of the fees, and notification of the commencement of the ninety (90) day period for filing a protest under Government Code section 66020(d)(1).

SECTION 13. SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors declares that it would have adopted this ordinance and each section, subsection, sentence, or clause.

SECTION 14. EFFECTIVE DATE

This ordinance shall be introduced by title and number only and the first reading waived. This ordinance shall take effect and be in force sixty (60) days after its passage, and prior to expiration of fifteen (15) days after its passage thereof, shall be published by title and summary only in the Davis Enterprise together with the names of members of the Board of Supervisors voting for and against the same.

I HEREBY CERTIFY that the foregoing ordinance was introduced before the Board of Supervisors of the County of Yolo, at the meeting of the Board of Supervisors of said County, held on the ___ day of _____, 2009, and finally adopted at a regular meeting of said Board held the ___ day of, _____, 2009, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

By _____
Mike McGowan, Chair
Yolo County Board of Supervisors

ATTEST:
Ana Morales, Clerk

APPROVED AS TO FORM:
Robyn Truitt Drivon, County Counsel

Board of Supervisors

By _____

By _____