

City of Los Angeles Proposes Linkage Fee Ordinance to Fund Affordable Housing

City Planning Commission recommends adopting new affordable housing linkage fee ordinance affecting new development, project budgets and property owners.

A number of new fees, taxes and restrictions on development have been proposed within the City of Los Angeles in recent months, which have the potential to significantly impact new development, project budgets and property owners in the region. One of the major proposals currently under the City Planning Commission's review is a new Affordable Housing Linkage Fee ordinance. Mayor Eric Garcetti originally introduced the linkage fee concept in October 2015 as part of a comprehensive set of new fees and regulations to help fund affordable housing in the City. Los Angeles is among the country's least affordable cities to live in,¹ and the Mayor has announced a range of strategies to tackle this issue, with the goal of building 100,000 new housing units by 2021, including 15,000 new affordable units.

On February 23, 2017, the City Planning Commission voted unanimously in favor of adopting a draft Affordable Housing Linkage Fee ordinance prepared by the Planning Department with a few changes that broaden the ordinance's proposed reach.² Under the new ordinance, the linkage fees would be levied on developers building residential and commercial projects, who would be required to pay \$5 per square foot of commercial space built, and \$12 per square foot of residential space. The ordinance also recognizes various waivers and exemptions based primarily on project size and type. The fees are expected to generate an estimated \$75 million to \$92 million annually, which would fund the construction of new affordable housing units as well as the rehabilitation and preservation of existing affordable units. The Planning Commission's recommendation to approve the new Affordable Housing Linkage Fee ordinance allows the City Council to consider the ordinance.

Background

Linkage fees are a mechanism to impose inclusionary housing requirements on new developments by requiring developers to pay into a permanent, dedicated source of funding for affordable housing. The fees must be justified by a link, or nexus, between new development and the demand it creates for affordable housing. Such justification is typically centered around the need for more low-wage workers to support the new uses proposed by new commercial and residential development, with the fee acting as an offset to the additional need for affordable housing for such low-wage workers who cannot afford to live in market-rate units. To justify the new fees, the Planning Department contracted with BAE Urban Economics for an Affordable Housing Linkage Nexus Study, which examined the affordable housing impacts created by new development in the City; the feasibility of implementing a linkage fee program; the maximum legally justifiable feasible fees that could be imposed; and the practices of other jurisdictions on the issue, which was completed in September 2016.³ The Nexus Study concluded that the City could establish a legal nexus for a linkage fee in the range of \$42 to \$74 per square foot for

residential developments and \$118 to \$309 for nonresidential developments. The Department of City Planning prepared a draft ordinance based on the Nexus Study for the Planning Commission's consideration, following a number of public hearings and meetings and receiving public comment.

Various cities across the country have imposed linkage fees, including San Francisco, Oakland, Sacramento, West Hollywood, Santa Monica, San Diego, Chicago and Boston. The City's proposed fee of \$5 per square foot of commercial space and \$12 per square foot of residential space is on the low-end of the range of linkage fees adopted by other cities.

Summary of the New Affordable Housing Linkage Fee Ordinance

Under the proposed ordinance, the linkage fee amount would differ based on building use and apply to all market-rate projects that result in additional housing units or new nonresidential floor area, or result in a change of use from commercial or industrial to residential. The fee schedule under the draft ordinance proposes an assessment of \$5 per square foot for commercial use (including office, retail, hotel and warehouse/distribution uses) and \$12 per square foot for residential use (including apartments and condominiums). An annual adjustment for inflation would be made beginning on July 1, 2018, according to the change in the CPI.

During its February 23, 2017, public hearing, the Planning Commission unanimously recommended adopting the proposed ordinance, after making a few changes to limit or remove exemptions allowed under the original ordinance and revising the proposed implementation date. The revised draft of the Affordable Housing Linkage Fee ordinance would allow for targeted waivers and exemptions to accommodate certain categories of projects. The proposed fees would not apply to the following types of development:

- New construction of, or additions to, a single-family detached home resulting in an increase of less than 1,500 square feet
- Nonresidential development with less than 15,000 square feet of new floor area
- Any ground floor nonresidential floor area that the City Planning Department requires be included in a project through a zoning ordinance, Specific Plan, Community Plan, Pedestrian Overlay Zone or other set of development standards
- Residential projects containing restricted affordable units where at least 40% of the total units or guest rooms are dedicated for moderate-income households; or at least 20% of the total units or guest rooms are dedicated for low-income households; or at least 11% of the total units or guest rooms are dedicated for very low-income households, for at least 55 years
- Public institutions, including school buildings
- Accessory Dwelling Units and Second Dwelling Units
- A grocery store, so long as there is no other existing grocery store within a third of a mile of the site
- Any Adaptive Reuse Project that is a Historic-Cultural Monument
- Any multiple-dwelling building with five or fewer units shall only be required to pay \$1 per square foot rather than \$12 per square foot

- Any project located within the boundaries of the Central City West Specific Plan Area, which is otherwise subject to linkage fee and replacement housing obligations
- Any residential portion of a project located in the Coastal Zone, which is already subject to inclusionary affordable housing obligations under the Mello Act
- Any residential or mixed-use project subject to greater affordable housing requirements as a result of any superseding land use policy or zoning ordinance
- Any residential or mixed-use project subject to affordable housing and labor requirements under Measure JJJ (*i.e.*, Los Angeles Municipal Code, Sect. 11.5.11)

In addition, the ordinance lists the following set of deductions and credits, which can be subtracted from the total linkage fee required:

- In a change of use from commercial or industrial to residential, the fee can deduct the amount of the fee that would have otherwise been required (or was previously paid) based on the pre-existing use
- Any affordable units rented to a household with very low or low-income residents or very low-income senior citizens, may be deducted from the total number of dwelling units or guest rooms in determining the required fee
- For mixed-use projects, the first 25,000 square feet of nonresidential use can be excluded from the calculation of floor area
- For projects proposing land dedications for the purpose of building affordable housing, the value of the land may be deducted from the required fee amount

Conclusion

The linkage fee proposal represents a dramatic new step in the City's approach to providing affordable housing by requiring new development to help fund affordable housing costs. Some have voiced concern, however, about the unintended consequences of increasing the costs of new development and the subsequent impact on housing supply and affordability.

The ordinance will now move forward to the City Council for consideration and a public hearing. If adopted by the City Council, the effective date of the Affordable Housing Linkage Fee ordinance would be 180 days after its approval.

Latham will continue to monitor and provide updates on the City's consideration of the proposed ordinance.

If you have questions about this *Client Alert*, please contact one of the authors listed below or the Latham lawyer with whom you normally consult:

[Peter J. Gutierrez](#)
 peter.gutierrez@lw.com
 +1.213.485.1234
 Los Angeles

Daniel J. Aleshire

danny.aleshire@lw.com

+1.213.891.8294

Los Angeles

Colin S. Duffy

colin.duffy@lw.com

+1.213.891.8956

Los Angeles

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¹ See <http://www.anderson.ucla.edu/Documents/areas/ctr/ziman/2014-08WPrev.pdf>.

² See <http://planning.lacity.org/ordinances/docs/AHLF/UpdatedDraftOrdinance.pdf>.

³ See <http://planning.lacity.org/ordinances/docs/AHLF/StaffReport.pdf>.