



Memorandum

TO: HOUSING AND COMMUNITY
DEVELOPMENT COMMISSION

FROM: Leslye Corsiglia

SUBJECT: HOUSING IMPACT FEE

DATE: October 2, 2014

RECOMMENDATION

It is recommended that the Housing and Community Development Commission forward to the City Council its recommendation regarding a Housing Impact Fee incorporating the parameters outlined in this report.

BACKGROUND

In June 2013, the Council directed staff to initiate a nexus analysis to determine whether an impact fee on market-rate residential development to finance affordable housing development is justified. For this purpose, Keyser Marston Associates, Inc. (KMA) was selected as the consultant to prepare the nexus analysis.

On July 1, 2014, the current draft of the "Residential Nexus Analysis, San Jose, California" dated June 2014, and the "Supplement to the Residential Nexus Analysis" – both prepared by KMA – were released to the public, followed by a 90-day review period during which staff held a series of public outreach meetings. The Nexus Analysis examines the potential for an impact fee on market-rate rental housing only. The impacts of for-sale housing development are addressed in the Citywide Inclusionary Housing Ordinance (which is currently in litigation).

Feedback from outreach efforts led the Housing Department to frame its recommendations for provisions for the Housing Impact Fee Program (the Program) using the following principles:

- **Simplicity** – The Program should be easy for the developers to understand.
- **Efficiency** – The Program should be efficient for the City to administer and should cover staff costs to the extent possible.
- **Certainty** – The Program should provide advance notice of what is required and how it will apply with clear rules and procedures.

ANALYSIS

The Nexus Analysis concludes that the maximum fee that could be charged on rental housing developments is \$28.28 per net, rentable square foot in low-rise apartment buildings and \$27.78 per net, rentable square foot in high-rise apartment developments.

The question of adopting a Housing Impact Fee Program involves seven policy issues. An attachment to this report lists each of those policy questions and lays out alternative ways to address each.

Staff is recommending that the following provisions be incorporated into the Ordinance or the accompanying Fee Resolution adopted by the City Council:

1. Fee Level -- \$17.00 per net, rental square foot since this is what is currently being charged to for-sale developers under the Redevelopment Area Inclusionary Housing Policy (and was charged to rental housing developers until this requirement was suspended by the City Council in response to the *Palmer* decision). Staff is recommending a square-footage-based fee since smaller units imply smaller household sizes, with correspondingly smaller spending impacts in the community (and larger units would have a larger spending impact).
 2. Applicability by Tenure and Construction Type – Charge the full \$17/foot fee on all rental building types.
 3. Fee Adjustment – After the first year following the operative date of the Ordinance, increase fee levels 2.4% annually based on the historic trend in the Consumer Price Index (CPI) over the past decade.
 4. Timing of Fee Collection – Prior to either a Temporary Certificate of Occupancy or a Certificate of Occupancy, with a Fee Agreement between the developer and the City being required for issuance of building permits.
 5. Operative Date and Grandfathering/Exemptions – Option 1, as outlined in the Attachment, is designed to minimize negative financial impacts on development projects in the pipeline.
 6. Offsets to the Fee – Provide an offset for a portion of the fee to developers who enter into a 55-year affordability restriction enforceable by a Government entity.
 7. Work/Live Preference – The Department will prioritize funding for affordable housing developments that provide a tenant selection preference to applicants who live in San Jose or are employed in San Jose.
-

HOUSING AND COMMUNITY DEVELOPMENT COMMISSION

October 2, 2014

Subject: Housing Impact Fee

Page 3

Staff will be available for questions and further discussion of these issues at the Commission's meeting on October 9, 2014.

/s/

LESLYE CORSIGLIA
Director of Housing

Attachment

Housing and Community Development Commission
Housing Impact Fee Key Policy Considerations
October 2, 2014

Policy	Alternative Options								
<p>1. Fee Level refers to the level the fee will be set at. The fee can be set either based on the size of the apartment or each unit can pay the same amount. The fee cannot exceed the maximum fee allowed per the Nexus Study, \$28 per square-foot or \$28,000 per-unit.</p>	<p>The fee should applied based on:</p> <ol style="list-style-type: none"> 1. Square-foot 2. Per-unit fee <table border="1" data-bbox="488 512 1474 655"> <thead> <tr> <th data-bbox="488 512 980 548">Square-Foot Fee</th> <th data-bbox="980 512 1474 548">Per-Unit Fee</th> </tr> </thead> <tbody> <tr> <td data-bbox="488 548 980 583">a. \$25</td> <td data-bbox="980 548 1474 583">a. \$25,000</td> </tr> <tr> <td data-bbox="488 583 980 619">b. \$17</td> <td data-bbox="980 583 1474 619">b. \$17,000</td> </tr> <tr> <td data-bbox="488 619 980 655">c. \$13</td> <td data-bbox="980 619 1474 655">c. \$13,000</td> </tr> </tbody> </table> <p>Additional Comments: Fees may be adjusted to reflect contributions to support Urban Village Infrastructure and amenities as may be adopted by the City Council in the future.</p>	Square-Foot Fee	Per-Unit Fee	a. \$25	a. \$25,000	b. \$17	b. \$17,000	c. \$13	c. \$13,000
Square-Foot Fee	Per-Unit Fee								
a. \$25	a. \$25,000								
b. \$17	b. \$17,000								
c. \$13	c. \$13,000								
<p>2. Applicability refers to the tenure and construction type that the fee applies to.</p>	<ol style="list-style-type: none"> 1. Full fee applies to all developments that contain market-rate residential rental housing. 2. Full fee applies to market-rate rental housing that contains only residential use. 3. Up to fifty-percent of the fee applies to high-rise developments, based on feasibility. 4. Up to fifty-percent of the fee applies to mixed-use developments, that contain both residential use and a minimum of 0.5 Floor-Area Ratio (FAR) (i.e., the equivalent of half or more of the lot size) is used for commercial or retail serving uses, based on feasibility. 								
<p>3. Fee Adjustment refers to how the fee will be adjusted annually to offset the effects of inflation. In no case can the fee exceed \$28/foot, the maximum fee allowed per the Nexus Study.</p>	<ol style="list-style-type: none"> 1. Increase annually by 3%. 2. Adjust the fee annually based on an index such as a construction cost index with a cap of 3% per year. 3. Adjust the fee annually based on an index but do not cap the annual increase. 4. Do not adjust the fee at all until the next Nexus Study is completed. <p>Comments: The Nexus Study will be updated at least every five years to reflect any changes in the funding gaps to provide workforce housing for extremely low-income, very low-income, low-income and moderate-income households.</p>								
<p>4. Timing of the fee refers to when the fee will be collected.</p>	<p>Enter into a fee agreement at the time the building permit is applied for. Collect the fee prior to the issuance of either the Temporary Certificate of Occupancy or the Certificate of Occupancy, whichever occurs first.</p> <p>Comment: No alternatives are allowed as the timing of the collection of the fee is prescribed per the Government Code.</p>								

<p>5. Operative Date and Grandfathering/ Exemptions are situations in which developments will not be required to comply with the ordinance.</p>	<p>Option I: Minimizes impacts on pipeline projects Operative Date: July 1, 2016 Development must meet all of the following criteria:</p> <ol style="list-style-type: none"> 1. Prior to the Operative Date, a proposed rental housing development has received City approval for one of the following entitlements and that the entitlement has not expired: <ul style="list-style-type: none"> - PD Zoning - PD Permit - Site Development Permit - Conditional Use Permit - Special Use Permit 2. Prior to the earlier of, the expiration of the entitlement (with no extensions of entitlement expiration date allowed) or two years, <ol style="list-style-type: none"> a. For a one-phase project: <ol style="list-style-type: none"> 1. Building/foundation permits have been issued and 2. Start of foundation work (not just grading) and/or construction work for the primary residential structure(s) and 3. Construction activity is continuous with no break in construction. b. For a phased project, commencement of 50+% of the total, permitted number of residential units in the project meeting #2 a. above will exempt the remaining phases of the project. Should fewer than 50% of the units meet #2 above, the remaining phases will not be exempt from the Ordinance. 3. Developer applies to the Housing Department, before the Operative Date, for an Exemption, accompanied by a fee in a cost-recovery amount for staff to track compliance with exemption process and milestones. 4. Developer applies to the Housing Department, before the Operative Date, for an Exemption, accompanied by a fee for staff to track compliance with the exemption process and milestones. The fee will be established during the annual schedule of fees and charges. 5. The City Manager has discretion to extend the timelines when a change in federal, state or local law causes the need for a material redesign of the project. <p>Option II: Phased-In Fee Approach Operative Date: July 1, 2015 Phase in the fee incrementally. The applicable rate of the housing impact fee is based on when building permits are pulled. Operative Date: 25% of the rate One year after the operative date: 50% of the rate Two years after the operative date: 100%</p>
<p>6. Offsets to the Fee refers to what other options the Developer can voluntarily select to meet the requirements of the Ordinance.</p>	<ol style="list-style-type: none"> 1. If the developer has entered into a 55-year affordability restriction, for a portion of a mixed-income development enforceable by a government entity, the developer may claim an offset of a portion of the fee. 2. Do not allow any alternatives to the fee.

<p>7. Work/Live Preference refers to a preference for funding the affordable developments that receive funds generated from the Housing Impact Fee.</p>	<p>For Policy and Procedures only:</p> <ol style="list-style-type: none">1. Funding priority for affordable housing projects that develop a tenant selection process that gives a preference to people who work in San Jose or already live in San Jose.2. Do not implement any preferences.
--	--