



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Councilmember Cohen
Councilmember Jimenez
Councilmember Carrasco

SUBJECT: SEE BELOW

DATE: March 4, 2022

Approved

Date: 3/4/2022

SUBJECT: COMMERCIAL LINKAGE FEES

RECOMMENDATION

1. Accept recommendations (a)(1), (a)(2), (b)(3), and (b)(4) from the 2/24/22 memorandum from staff, with recommendation (a)(1) amended as follows:
 - a. Modify the payment timing to building permit issuance
2. Direct staff to return to Council no later than the June 28th Council meeting with options for increasing fees by the September 2 deadline set by Council when the fee was adopted in 2020.

BACKGROUND

We appreciate the tremendous work staff has put into the Commercial Linkage Fee Ordinance since it was first proposed back in 2014 and then approved by Council on September 2, 2020. We applaud the inclusion of credits for affordable housing production in staff's memo from February 24th, as well as its emphasis on encouraging developers to pay the fees up front rather than through a deferred payment plan. The memo suggests that our city does not currently have the infrastructure to track and enforce such a plan, and that the development of that infrastructure would impose a significant strain on staff capacity, time, and resources. That being said, we do not believe that the proposed discount model is the best way to address this problem and ensure the CLF program is an effective tool in addressing our housing crisis.

We propose instead that the Council require commercial linkage fees to be paid in full at the time of building permit issuance. This would align them with other development taxes and fees that are paid upon issuance of the permit, simplifying the process and relieving the city of the burden of tracking and monitoring deferred payment collection. It would also be in line with the vast

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majority of other cities that have implemented a commercial linkage fee; the memo from staff points out that over 70% of cities with a CLF collect the fees at the time of permit issuance, including large cities with significant development like San Francisco and Seattle. The memo also notes that just two cities have felt the need to introduce a phased payment option: Oakland and Livermore, both substantially smaller than San José. Setting the time of payment at permit issuance streamlines the fee collection process, reduces strain on staff time and capacity, and ensures we maximize revenue so that the CLF can do what it was designed to do: create more funding for affordable housing to respond to the increased need resulting from our economic growth.

We also note that the Council direction when the fee was adopted in 2020 was to return in 2022 to update the fee levels and geographies. It is important for the Council to revisit the discussion as our economy recovers from the worst of the COVID pandemic. According to the Colliers New Development Pipeline report from January of this year, there are 19 large commercial office developments that are already entitled in San Jose (not including Downtown West), for a total of close to 20 million square feet. The fees will need to be in place before these developments start construction or we will miss the opportunity to address the additional affordable housing needs created by this growth.

When the commercial linkage fee program was approved by Council in 2020, there was considerable controversy over the question of how high or low to set the rates. Ultimately, due in part to concerns about economic uncertainty during the pandemic, Council chose at that time to approve rates that were substantially lower than those recommended by the Fee Feasibility Study, and well below the levels in neighboring Santa Clara County cities with CLFs. Now, a year and a half after that initial decision, we believe it is important to consider whether higher rates would better equip San José to finally make progress on its affordable housing goals, and be prepared for the additional needs that will follow our economic recovery.

Our decision to approve a commercial linkage fee in 2020 was driven by a stark reality: we were not, and are still not, building enough affordable housing for our current residents, let alone keeping up with increased demand. Residents who grew up in San José, who went to school in San José, who work in San José, are increasingly unable to live in San José. The CLF is not a panacea—but if we implement it correctly, it is an important tool for making sure that, as we grow, we have a place in our city for those residents who most need it. The recommendations offered here will, we feel, bring us one step closer to accomplishing that goal.

The signers of this memorandum have not had, and will not have, any private conversation with any other member of the City Council, or that member's staff, concerning any action discussed in the memorandum, and that each signer's staff members have not had, and have been instructed not to have, any such conversation with any other member of the City Council or that member's staff.