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REPORT NO. R 17 - 0 3 4 5

OCT 0 6 2017

**REPORT RE:**

**DRAFT ORDINANCES AMENDING SECTION 16.02 OF AND  
ADDING SECTION 19.18 TO THE LOS ANGELES MUNICIPAL CODE TO  
ESTABLISH AN AFFORDABLE HOUSING LINKAGE FEE; AND ADDING SECTION  
5.582 TO CHAPTER 176 TO THE LOS ANGELES ADMINISTRATIVE CODE TO  
CREATE THE HOUSING IMPACT TRUST FUND FOR THE RECEIPT AND  
USE OF LINKAGE FEE MONIES**

The Honorable City Council  
of the City of Los Angeles  
Room 395, City Hall  
200 North Spring Street  
Los Angeles, California 90012

Council File No. 17-0274

Honorable Members:

This Office has prepared and now transmits for your consideration the enclosed draft ordinances, approved as to form and legality. The first draft ordinance adds Section 19.18 to the Los Angeles Municipal Code (LAMC) and amends Section 16.02 of the LAMC to establish an Affordable Housing Linkage Fee (AHLF Ordinance). The second draft ordinance adds Section 5.582 to Chapter 176 to the Los Angeles Administrative Code (LAAC) to create the Housing Impact Trust Fund for the receipt and use of Affordable Housing Linkage Fee monies (Trust Fund Ordinance).

Background

At a meeting on February 23, 2017, the City Planning Commission (CPC) approved the Planning Department's proposed Affordable Housing Linkage Fee (AHLF)

ordinance, which levies a fee on new development projects, both residential and commercial, to mitigate the impacts of those projects on affordable housing.

On August 22, 2017, the Planning and Land Use Management (PLUM) Committee of the City Council considered the proposed ordinance, as well as several amendments introduced by the Committee members. The PLUM Committee requested that the City Attorney's Office prepare and transmit the final ordinance, incorporating the following amendments:

1. The establishment of four (4) residential market areas by Community Plan Area, with fee levels at eight dollars (\$8.00) per square foot (psf) for Low Market, ten dollars (\$10.00) psf for Medium Market, twelve dollars (\$12.00) psf for Medium-High Market, and fifteen dollars (\$15.00) psf for High Market;

2. The establishment of three commercial market areas by Community Plan Area, with fee levels at three dollars (\$3.00) psf for Low Market, four dollars (\$4.00) psf for Medium Market, and five dollars (\$5.00) psf for High Market;

3. The addition of a Project Labor Agreement provision in the Housing Impact Trust Fund (HITF) that is consistent with what the City Council has approved for projects funded with Proposition HHH bond proceeds (Council File No. 17-0090-S1);

4. An exemption for Floor Area obtained through a public benefit payment per LAMC Section 14.5.9;

5. An exemption for Low Market commercial areas in the South Los Angeles Transit Empowerment Zone, a federally designated Promise Zone, for three (3) years after effective date of the AHLF Ordinance;

6. A requirement for every five (5) years following the adoption of the AHLF Ordinance, for the Department of City Planning (DCP) and the Housing and Community Investment Department (HCID) to undertake a new market analysis and adjust market levels and geographies, where necessary, and also report on the revenues, spending, and recommended fee adjustments to the AHLF;

7. A requirement for a comprehensive study drafted by both the DCP and HCID, to be completed within 12 months after the adoption of the AHLF ordinance, to include information related to the impacts of the AHLF on housing production, housing costs, and commercial development, as well as the distribution of funds in the HITF, including types of housing supported/created, implementation of the fee (including information on the performance of the geographical component), and recommendations for ensuring the continued viability of the AHLF balanced against the need for continued robust housing production; and, thereafter, an annual reporting requirement on the effects of the AHLF on housing production and costs, with recommendations;

8. A requirement to report to City Council if economic, housing, or real estate conditions deteriorate to the point of imperiling housing production or the economic viability of charging the AHLF, and events that would trigger this study include, but are not limited to:

- a) housing production falling below ten thousand (10,000) units per year;
- b) an economic recession or depression;
- c) property values fall by five percent (5%) or more;
- d) housing and/or rental prices fall by five percent (5%) or more;
- e) housing and/or rental costs rise by more than ten percent (10%); and,
- f) natural disaster that impacts the economy.

With the aforementioned report to include an analysis of what precipitated this event, if the AHLF exacerbated it, the impacts to housing production, overall performance of the AHLF, and recommendations on whether the fee should be suspended, lowered, or addressed in other ways, to be submitted to the City Council within 90 days of this economic event;

9. An increase to the residential AHLF, irrespective of geographical market area, by three dollars (\$3.00) psf for any project that results in a net loss of housing units from what previously existed on-site;

10. A removal of the exemption for small multi-family buildings in the geographical areas that are deemed high markets, while leaving the exemption in place for all other market areas;

11. A requirement for any future expenditure plan for the HITF to include funding for the creation and preservation of moderate, workforce, and middle income housing to ensure a sustainable production of housing for our "missing middle"; and, for the DCP, in conjunction with HCID, to produce recommendations for ways to incentivize these types of housing and create a plan for leveraging the funds from the AHLF to create more of these housing types;

12. The implementation of the AHLF through a phased-in approach, with the first six months after adoption of the AHLF Ordinance at zero fee levels, the seventh through twelfth months being one half of the adopted fee levels, and the full amount of adopted fees effective after the first year of adoption of the AHLF Ordinance;

13. An exemption for all hospitals, subject to City Council or Committee consideration of a report back from the DCP for additional information on hospitals

located in the City, including, but not limited, to operator categories such as private, government-run, and non-profit; and,

14. An exemption for turnkey projects intended for public use.

#### Summary of Ordinance Provisions

The CPC's transmittal report to the City Council, dated March 9, 2017 (CPC Transmittal Report), includes the Planning Department's staff report, which provides a detailed description of the LAMC and LAAC regulations effectuated by the draft ordinance. However, this Office incorporated the amendments approved by the PLUM Committee at their August 22, 2017, meeting, as requested. Therefore, the draft AHLF Ordinance imposes a variable fee based on the geographic location of a project, specifically the type of market area within which the project falls, and the draft Trust Fund Ordinance includes reporting requirements to inform the Council about the implementation of the AHLF and its effect, if any, on development in the City.

This Office made additional revisions during our review of the ordinances' form and legality. The most obvious change was the actual sections of the LAMC being added or amended by the ordinances. In reviewing the provision of the AHLF Ordinance in the context of Volume 1 of the LAMC, this Office determined that adding the AHLF provisions to Article 9 of Chapter 1 of the LAMC (which is entitled "Fees") made the most sense. This technical change does not affect the findings in the nexus studies completed to support the establishment of the AHLF, other than the numeric citations used in reference to the AHLF sections.

A process for protests, adjustments and waivers of the fee was also added to the draft AHLF Ordinance, to limit the possibility of the ordinance's requirements being unconstitutionally applied. This is consistent with the requirements of state law and with the practice of other cities throughout California in establishing affordable housing linkage fees as well as other development and mitigation fees, such as San Francisco, Santa Monica and San Diego.

Pursuant to the supplemental nexus analysis completed by BAE Urban Economics, the consultants retained by the City to complete the fee study supporting the AHLF, the draft AHLF Ordinance includes an exemption for certain single-family detached home projects. Specifically, applicants seeking permits for projects that either (1) add 1,501 square feet or more to an existing single-family detached home located in a single-family zone; or (2) replace a single-family detached home in a single-family zone with a larger home resulting in a net increase of 1,501 square feet or more from the prior home that existed on the property are exempt from paying the AHLF if they record a covenant against the property prior to the issuance of a building permit. That covenant affirms that the owner shall not sell the home for three years, at which point the covenant expires. If the owner sells the home prior to the expiration of the



covenant, then the AHLF, calculated based on the fee schedule in effect at the time of payment, must be paid in full. The purpose of this requirement is to impose the AHLF on those projects that create the impact on affordable housing as established by the nexus study, and not on the applicant-owners who, in enlarging their properties, are not engaging in the type of development activity that creates the need for affordable housing.

Additionally, in light of the amendments made by the PLUM Committee to have the Planning Department evaluate the market and update the fee accordingly, as well as the requirement to change the AHLF in response to any change in economic, housing or real estate conditions, the proposed AHLF Ordinance provides for the passage of a resolution by the City Council to set the AHLF schedule and the market area maps. By allowing the AHLF schedule and market area map updates by resolution, rather than by amendment of the entire ordinance, the process is streamlined and more efficient. However, we note that Council's consideration and passage of a resolution to amend the AHLF schedule and market area maps must still conform to the requirements of the state's Mitigation Fee Act, as the City has opted to establish the AHLF pursuant to those regulations. Therefore, any subsequent amendments must also follow those regulations found in California Government Code Section 66000, *et seq.*

Similarly, the implementation timeline of the AHLF was adjusted in the draft ordinance pursuant to the PLUM Committee's request. The PLUM Committee set the timeline based on the date the ordinance is adopted; however, when ordinances are published in the LAMC their effective dates are included in the language, not the adoption date. Additionally, Government Code Section 66017 mandates that a fee ordinance is not effective for 60 days after its adoption. Therefore, the timelines set forth in the draft AHLF Ordinance were adjusted accordingly to comply with this requirement.

#### California Environmental Quality Act (CEQA) Standard of Review

The CPC recommends that the City Council determine that the adoption of this ordinance does not constitute a "project," as defined by CEQA pursuant to CEQA Guidelines Section 15378(b)(4), which states that a "project" does not include "[t]he creation of government funding mechanisms or other government fiscal activities which does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment." Furthermore, even if it were found to be a project, the CPC recommends that the adoption of this ordinance is exempt from CEQA based upon CEQA Guidelines Section 15061(b)(3), which states that a project is exempt from CEQA if "[t]he activity is covered by the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that

the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.”

The CPC also recommends that the City Council adopt a negative declaration for this project. Adoption of a negative declaration is appropriate when the City Council, having considered the whole administrative record and exercising its independent judgment, determines the following: (1) the City has complied with all of the procedural requirements related to the preparation, noticing and distribution of the Notice of Intent to Adopt a Negative Declaration, the negative declaration and the initial study supporting the determination of a negative declaration, as set forth in Public Resources Code Section 21091 and CEQA Guidelines Sections 15071, 15072 and 15073; (2) there is no substantial evidence the project will have a significant effect on the environment; and (3) the negative declaration reflects the City Council’s independent judgment and analysis. If the City Council concurs, it should adopt these findings prior to or concurrent with its action on the ordinance.

#### Notice Requirements

We note that, because this ordinance would impose a new fee, notice of its proposed adoption should be given in accordance with the provisions of California Government Code Sections 66018 and 6062a. Those sections of State law require that prior to adoption of a new or increased fee a public hearing be held and notice of that hearing be published in a newspaper with two publications at least five days apart over a ten-day period. The notice period begins the first day of publication, and there must be at least five days intervening between the first and the second publications, not counting the dates of publication.

#### Council Rule 38 Referral

A copy of the draft ordinance was sent, pursuant to Council Rule 38, to the Department of Building and Safety and the Housing and Community Investment Department. The departments were requested to report their comments, if any, directly to the City Council or its Committee when this matter is considered.

If you have any questions regarding this matter, please contact Deputy City Attorney Adrienne Khorasanee at (213) 978-8246. She or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

MICHAEL N. FEUER, City Attorney

By   
DAVID MICHAELSON  
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DM:ASK:mgm  
Transmittal