



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Councilmember Dev Davis

SUBJECT: SEE BELOW

DATE: March 29, 2022

Approved

Date 3/29/2022

SUBJECT: COMMERCIAL LINKAGE FEE

RECOMMENDATION:

Accept staff recommendations with the following modifications:

1. Review current commercial leases in 18 months to see if there are enough data points for a fee study to be conducted.
2. If the fee is not paid up front, change the fee collection timeline to:
 - 15% of the fee collected upon permit issuance
 - 35% of the fee collected upon final permit sign off
 - 25% of the fee collected when the building reaches 75% occupancy
 - 25% of the fee collected when the building reaches 90% occupancy
3. Explore alternatives to securing a letter of credit or bond for the fee payment.
4. Direct staff to return to Council with a fee reduction outside of the CLF for historic preservation to help in overall cost of development.
5. Direct staff to return to Council with an incentive for Environmental Leed Zero and/or ILFI zero carbon certification(s) outside of the CLF now, not waiting for Environmental Services update.

DISCUSSION:

A Commercial Linkage Fee (CLF) serves a critical function in raising funds for affordable housing. However, our city must not neglect the needs of our commercial development partners and how this fee affects their ability to finance and build. As the staff memo points out, San Jose is underperforming in major office development. Pandemic-related economic conditions for commercial developers have made the construction market leery at best. There's a rising cost of construction, partly due to supply chain issues, that does not seem to be abating anytime in the near future. We can look at what's in our development pipeline now, but we can't measure how many projects weren't submitted because the project "doesn't pencil out." Zero percent of zero is zero. If they don't build it, we won't receive the affordable housing funds anyway.

We need to offer as much flexibility as possible for the payment of CLF fees. This is a common request from developers. Stretching the fee payment is better for the project's pro forma. Also, exploring alternatives to the letter of credit or a bond would help the financing of large commercial projects.

Developers want to operate in San Jose, but they need to know that City Hall hears their concerns. The fiscal health of our city depends on the development of both commercial and housing products, but

especially commercial development. Commercial development offers critical tax revenue that cannot be ignored. This revenue provides for more city services, which all our residents deserve. We all agree we need more affordable housing; we just need to find the best path that encourages commercial development to move forward and enable them to contribute to the affordable housing fund and our city's wellbeing.

Outside of the CLF fee schedule, we should be proposing incentives to achieve historic preservation and environmental goals. For projects that retain historic elements that help maintain some original look and feel of the buildings, incentives, similar to building department fee reductions in the Downtown Highrise Incentive Program, should be crafted to help offset the significant cost of retaining and incorporating historic elements within commercial projects. This would help to stimulate growth in some of the hardest to develop areas of the City while preserving historic beauty. Additionally, we should be encouraging new development to align with our Climate Smart San Jose plan. By offering some financial incentive for Environmental Leed Zero and/or ILFI zero carbon certification(s), we would be giving developers the opportunity to help us advance our climate goals.

Given the very long cycle time of commercial development, which can take upwards of a decade from planning to stabilization, it is strongly suggested that once a CLF program is set in place, it is allowed to remain unchanged for 10 or more years. This in and of itself would help catalyze projects simply by providing predictability of cost.

While our city emerges from the pandemic, new economic realities will remain and we cannot ignore them. The cost of construction continues to increase, projects have been delayed due COVID, and our city is in desperate need of new commercial development to help provide the revenue for vital city services. As a Council, we need to make sure that San Jose positions itself as an attractive place to do business, and we do this by making policy decisions that make it easier to get projects off the ground. The recommendations that I am putting forward achieves this goal, while also bringing the CLF into alignment with other city priorities such as historic preservation and environmental sustainability.