

ORDINANCE NO. _____

An ordinance adding Section 19.18 and amending Section 16.02 of the Los Angeles Municipal Code to establish an Affordable Housing Linkage Fee.

WHEREAS, the City Council of the City of Los Angeles (“Council”) recognizes that the City of Los Angeles (“City”) is facing a housing crisis, and further acknowledges the need to facilitate the availability of housing products at different levels of affordability in order to address the housing needs of the entire community;

WHEREAS, the Council desires to adopt a fee to help address the increased need for affordable housing connected with new commercial development and the development of new market rate residential units (“Affordable Housing Linkage Fee”);

WHEREAS, the Council has caused a study to be prepared that analyzes whether there is a reasonable relationship between the development of commercial projects and new market rate residential units and the need to increase the supply of new affordable housing;

WHEREAS, that study, prepared by BAE Urban Economics, entitled “Los Angeles Affordable Housing Linkage Fee Nexus Study” dated September 2016 (“Nexus Study”), demonstrates that such a nexus exists, and that the use of an Affordable Housing Linkage Fee for the purpose of increasing the supply of affordable housing in the City is justified;

WHEREAS, the Council has determined that the Affordable Housing Linkage Fee should be established consistent with the requirements applicable to fees for public facilities in California Government Code Section 66000 *et seq.*, commonly referred to as the Mitigation Fee Act, without determining that it is required to do so;

WHEREAS, the Council has published advance notice of the public hearing concerning the Affordable Housing Linkage Fee in a manner consistent with the Mitigation Fee Act, and during that period made available for public review and comment data indicating the estimated cost required to provide affordable housing and the potential revenue sources;

WHEREAS, the Council has determined that the Affordable Housing Linkage Fee is consistent with and implements the goals and objectives of the City’s General Plan;

WHEREAS, the Affordable Housing Linkage Fee is intended to create a funding mechanism to increase the supply of affordable housing in the City without reference to a specific development or property;

WHEREAS, the City will not expend funds from the Affordable Housing Linkage Fee on any specific development prior to the completion of any required environmental

review for such specific development, thus the adoption of this Ordinance is not a project under the California Environmental Quality Act guidelines found in Title 14 of the California Code of Regulations at Section 15378(b)(4);

WHEREAS, the Affordable Housing Linkage Fee is authorized pursuant to Section 240 of the City Charter and Section 7, Article XI of the California Constitution as a police powers measure to improve the public welfare of the City; and

WHEREAS, consistent with the Mitigation Fee Act and the City Charter, the Affordable Housing Linkage Fee may be established by ordinance and resolution.

NOW, THEREFORE,

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. A new Section 19.18 is added to Article 9 of Chapter I of the Los Angeles Municipal Code to read as follows:

SEC. 19.18. AFFORDABLE HOUSING LINKAGE FEE.

A. Definitions.

Terms shall have the meaning ascribed to them in Sections 12.03 or 12.22 of this Code. For the purposes of this section only, certain terms and words are defined as follows:

1. **"Additional Housing Units"** means a net increase in the number of dwelling units or guest rooms to be added on a parcel or parcels of land by issuance of a building permit, after subtracting the number of dwelling units or guest rooms legally removed from the same parcel of real property during the year preceding the issuance of the building permit.

2. **"Additional Nonresidential Floor Area"** means the net increase in the amount of Floor Area, as defined in Section 12.03 of this Code, to be added on a parcel or parcels of land by issuance of a building permit, less the amount of Floor Area legally removed from the same parcel of real property during the year preceding the issuance of the building permit.

3. **"Applicant"** means any individual, person, firm, partnership, association, joint venture, corporation, limited liability company, entity, combination of entities or authorized representative thereof, who undertakes, proposes or applies to the City for a Planning or zoning entitlement approval or building permit related to a Development Project.

4. **“Building Permit Application”** means plans submitted to the Department of Building and Safety pursuant to Section 12.26 A.3. of this Code.

5. **“Development Project”** means any activity involving or requiring the issuance of a building permit that results in Additional Housing Units, Additional Nonresidential Floor Area, additional single-family residential Floor Area meeting one of the provisions of Section 19.18 B.2.d., or a change of use from non-residential to residential.

6. **“Grocery Store”** means a project that is for a retail use of which greater than one half of the Floor Area is devoted to the sale of food items intended for consumption or use off the premises, excluding alcoholic beverages.

7. **“Linkage Fee”** means the fee assessed, pursuant to this section, on certain Development Projects in order to mitigate the impact of the additional demand for affordable housing caused by such activity.

B. Applicability.

The regulations, requirements and provisions of this section shall apply to any Development Project. Unless a Development Project is exempt from this section, an Applicant must pay to the City the required Linkage Fee as a condition of the building permit for which a Building Permit Application has been submitted in order to mitigate the need for affordable housing that is generated by or attributable to such projects. The provisions of this section are subject to the requirements set forth in California Government Code Section 66000, *et seq.*

1. Phased Implementation.

a. For the first 120 days following the effective date of this ordinance, no Linkage Fee shall be imposed on any project for which a Building Permit Application or complete planning or zoning entitlement application is submitted. For purposes of this Section, a complete planning or zoning entitlement application is an application that has been accepted by the Department of City Planning and for which the application fees have been paid. If an Applicant submitted a Building Permit Application or a complete planning or zoning entitlement application for a Development Project prior to the effective date of this ordinance, that Development Project shall not be subject to a Linkage Fee.

b. An Applicant for a Development Project who submits a Building Permit Application or a complete Planning or zoning entitlement application (whichever is first) 121 days after the effective date of this ordinance shall pay half the Linkage Fee in effect at the time of building permit issuance.

c. An Applicant for a Development Project who submits a Building Permit Application or a complete planning or zoning entitlement application (whichever is first) 305 days or more after the effective date of this ordinance shall pay the Linkage Fee in effect at the time of building permit issuance.

2. Exemptions.

The Department of Building and Safety shall determine whether any of the following exemptions apply to a Development Project based on documentation submitted by the Applicant prior to the issuance of the building permit. The fee imposed by this section shall not apply to construction that includes any the following:

a. Less than 15,000 square feet of Additional Nonresidential Floor Area in any nonresidential building, other than parking garages and parking facilities, as determined by the Department of Building and Safety.

b. Any for-sale or rental housing development 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, or at least 8% of the total units or guest rooms are dedicated for extremely low income households, for at least 55 years, where a covenant has been made with the Housing and Community Investment Department (HCIDLA) and required covenant and monitoring fees have been paid. Such a covenant shall also subject projects using this exemption to the replacement policies in Government Code Section 65915(c)(3), as that section may be amended from time to time, and to HCIDLA fees related to housing replacement determinations pursuant to state law, as set forth in this Code. For the purposes of this section, total units includes any units added by a density bonus or other land use incentive, consistent with the affordability levels defined in Government Code Section 65915, as that section may be amended from time to time.

c. Any Development Project being constructed by, or on behalf of: 1) a government or public institution such as a hospital, school, museum, homeless shelter or other similar projects that are intended for community use; or 2) any private Elementary and/or High School.

d. A single-family detached home meeting one or more of the following conditions:

(1) Any addition of less than 1,500 square feet to an existing single-family detached home located in a single-family or multiple-family zone.

(2) New construction of any single-family detached home located in a single-family zone that is less than 1,500 square feet.

(3) Any replacement of a single-family detached home resulting in a net increase of less than 1,500 square feet from the prior home that existed on the property.

e. Either (1) an addition of 1,501 square feet or more to an existing single-family detached home located in a single-family zone, or (2) a replacement of a single-family detached home resulting in a larger single-family detached home with a net increase of 1,501 square feet or more from the prior home that existed on the property; provided, however, in either event, a covenant shall be recorded against the property prior to the issuance of a building permit for such addition or replacement requiring the owner of the property to pay the Linkage Fee if the home is sold within three years of the issuance of such building permit. The covenant shall automatically expire at the end of such three-year period, if no sale of the property has occurred during such three-year period. However, in the event of a sale of the property within such three-year period, the covenant shall not expire until a notice of covenant termination is recorded. A notice of covenant termination shall be provided by the City upon full payment of Linkage Fee due, based on the fee schedule in effect at the time of payment. The covenant shall run with the land and bind all successive owners of the property until the Linkage Fee is fully paid.

f. A Second Dwelling Unit as defined by Section 12.03 of this Code, or an Accessory Dwelling Unit as defined by California Government Code Section 65852.2.

g. Any project located within the boundaries of the Central City West Specific Plan Area, as defined in Ordinance No. 163,094, if the Applicant agrees by covenant and agreement or by development agreement to abide by the linkage fee and replacement housing obligations set forth in the Specific Plan for the Central City West Area.

h. A residential project that is subject to a greater affordable housing fee requirement or is required to provide one or more physical housing units pursuant to the Mello Act in order to satisfy its inclusionary housing obligations. In that case, the residential component of the project shall be exempt from the Linkage Fee requirements of this Section. Commercial portions of mixed-use Coastal Zone projects shall be analyzed separately from residential portions of mixed-use projects for

the purposes of the Linkage Fee requirements of this section. Commercial portions of such projects shall be subject to this section. The provision of housing units or in-lieu fees to satisfy replacement housing obligations under the Mello Act (as opposed to inclusionary housing obligations) shall not exempt a project from the Linkage Fee requirements of this section.

i. A residential or mixed-use Development Project that is subject to affordable housing requirements pursuant to any land use policy or ordinance or development agreement that exceeds the Linkage Fee requirements of this section in either fee amount or on-site affordable housing percentages provided in paragraph 19.18.B.2.b.

j. A residential or mixed-use Development Project that is subject to affordable housing and labor requirements pursuant to LAMC 11.5.11.

k. Any Grocery Store, provided there is no existing Grocery Store within a one-third (1/3) mile radius of the Development Project site.

l. Any Adaptive Reuse Project that is a designated Historic-Cultural Monument and is being converted to a residential use.

m. Any Development Project that provides public benefit payments pursuant to LAMC 14.5.9 when acquiring additional Floor Area.

n. Any non-residential Floor Area within a Development Project that is located in the South Los Angeles Transit Empowerment Zone, also referred to as the "Slate-Z" Promise Zone Area, located in Low Market Areas according to the commercial area map.

3. Protests, Adjustments and Waivers.

a. An Applicant may protest the imposition of the Linkage Fee and request that the requirements of this section be adjusted or waived pursuant to Government Code Section 66020, *et seq.*, based on a showing that the application of the requirements of this section would effectuate an unconstitutional taking of property or otherwise have an unconstitutional application to the Development Project. Protests shall be filed with the Director.

b. On or before the date on which payment of the Linkage Fee is due, the Applicant shall pay the amount required by this section and serve a written notice to the Director with all of the following information: (1) a statement that the required payment is tendered, or will be tendered when due, under protest; and (2) a statement informing the Director of the

factual elements of the dispute and the legal theory forming the basis for the protest or request for adjustment or waiver, along with the substantial evidence that supports the protest or request, including any supporting documentation. The protest must be filed at the time of approval or conditional approval of the Development Project or within 90 days after the imposition of the Linkage Fee. The City shall provide the Applicant with written notice as required by Government Code Section 66010(d)(1), as that section may be amended from time to time.

c. If the Director determines that application of the requirements of this section would effectuate an unconstitutional taking of property or otherwise have an unconstitutional application to a Development Project, the fee requirements shall be adjusted or waived to reduce the obligations under this section to the extent necessary to avoid an unconstitutional result. The Director shall render a decision within 75 days from the date the protest was received.

d. If an adjustment or waiver is granted, any change in the Development Project shall invalidate the adjustment or waiver. If the Director determines that no violation of the federal or state constitution would occur through application of this section, the requirements of this section shall remain fully applicable.

e. Failure of an Applicant to comply with the protest requirements of this Section or Government Code Section 66020, *et seq.*, shall bar that Applicant from any action or proceeding or any defense of invalidity or unreasonableness of the imposition of the Linkage Fee.

C. Fee Calculation.

1. The City Council shall adopt, by resolution, a Linkage Fee schedule based on an analysis of the cost of mitigating the impact of the additional demand for affordable housing caused by Development Projects, and on the varying levels of economic feasibility in different geographic areas of the City based on current market conditions. The City Council shall also adopt, by resolution, a map or maps establishing the respective market areas throughout the City that inform the amount of the Linkage Fee to be assessed for a given Development Project.

2. For each Development Project, the Linkage Fee shall be calculated as the amount of new or added Floor Area in the Development Project devoted to the uses described in the Linkage Fee schedule, as determined by the Department of Building and Safety, multiplied by the amount of the applicable fee, as found in the most recent Linkage Fee schedule adopted by City Council, at the time the building permit for the Development Project is issued, minus any deductions or credits.

3. **Fee Adjustments and Reports.**

a. **Annual Inflation Adjustment.** The Linkage Fee shall be adjusted annually for inflation beginning on July 1, 2018, by the Director in accordance with the latest change in year-over-year Consumer Price Index for Urban Consumers (CPI-U) for the Los Angeles-Riverside-Orange County area, or if such index ceases to be published, by an equivalent index chosen by the Director. An updated Linkage Fee schedule shall be maintained by the Department of City Planning, which shall provide a copy of the adjusted schedule to the Mayor and City Council each year.

b. **Five-Year Market Area Adjustment.** Every five years, beginning on July 1, 2018, the Director, in association with HCIDLA shall undertake a new market area analysis and adjust market areas and geographies, where necessary, to reflect the most up to date rental and sales price information for each of the market areas. Any change to the Linkage Fee schedule other than the Annual Inflation Adjustment described in Paragraph (a) above shall be adopted by resolution of the City Council.

4. **Deductions or Credits.**

a. **Change of Use.** If the Development Project is the result of a change of use from non-residential to residential, the Linkage Fee to be paid is the result of subtracting the equivalent fee amount that either was paid or would have been paid, based on the pre-existing use, from the fee amount required to be paid for the new use based on the most recent Linkage Fee schedule approved by the City Council. Deductions or credits shall not be applied to any portion of a Development Project comprised of additional Floor Area resulting from new construction. The calculation of a deduction or credit shall not result in a refund to an Applicant or be applied as a credit to another Development Project in a different location.

b. **Affordable Housing Units.** Any Restricted Affordable Units as defined in Section 12.22 A.25 of this Code may be subtracted from the total number of dwelling units or guest rooms in a building in determining the required Linkage Fee.

c. **Mixed Use.** The first 15,000 square feet of nonresidential use in a mixed-use building shall be excluded from the calculation of Floor Area.

d. **Land Dedication.** If the Housing and Community Investment Department accepts, on behalf of the City, an offer by an

Applicant to dedicate land offsite from the proposed location of the Development Project for the purpose of building affordable housing, the value of the land to be dedicated, to be determined as the average of two independent appraisals funded by the applicant, may be deducted from the Linkage Fee amount owed for the Applicant's Development Project. If the value of the dedicated land is more than the Linkage Fee owed for the Applicant's Development Project, the City shall bear no responsibility for the difference in value, nor shall that overage be applied as a credit to any future Development Project.

5. **Payment of Linkage Fee.** The Linkage Fee is due and payable by the Applicant prior to the issuance of a building permit for a Development Project. No additional fee shall be required for a project seeking an extension of an expired building permit.

6. **Refunds of Linkage Fee.** Any fee paid under the provisions of this section may be refunded to an Applicant if the application for the building permit has expired and was not utilized to begin construction of a Development Project.

D. **Severability.** If any provision of this ordinance is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions of this ordinance, which can be implemented without the invalid provisions and, to this end, the provisions of this ordinance are declared to be severable. The City Council hereby declares that it would have adopted each and every provision and portion thereof not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would subsequently be declared invalid or unconstitutional.

Sec. 2. Paragraph C is added to Section 16.02 of Article 6 of Chapter 1 of the Los Angeles Municipal Code to read as follows:

C. **Payment of the Linkage Fee pursuant to Section 19.18 of this Code.**

Sec. 3. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By 
ADRIENNE KHORASANEE
Deputy City Attorney

Date October 6, 2017

File No. CF 17-0274

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I hereby certify that the foregoing ordinance was passed by the Council of the City of Los Angeles.

CITY CLERK

MAYOR

Ordinance Passed _____

Approved _____