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Los Angeles City Council
c/o Office of the City Clerk
City Hall, Room 395
Los Angeles, California 90012

Attention PLUM Committee:

Dear Honorable Members:

SECOND SUPPLEMENTAL REPORT ON THE PROPOSED AFFORDABLE HOUSING LINKAGE FEE ORDINANCE; CF 17-0274

On October 10, 2017, the Planning and Land Use Management (PLUM) Committee considered a supplemental report from the Department of City Planning (DCP) relative to a proposed Ordinance adding Section 21.18 and amending Section 16.02 of the Los Angeles Municipal Code (LAMC), as well as adding Section 5.578 of Chapter 172 of the Los Angeles Administrative Code, establishing an Affordable Housing Linkage Fee (AHLF).

Following the discussion, the PLUM Committee made several amendments to the proposed ordinance, forwarded the matter to the full City Council and requested the DCP to report back relative to the following issue:

Proposed language to include an exemption for non-profit philanthropic institutions

Non-Profit Philanthropic Institutions

The Department's October 5th report to the PLUM Committee provided options to include an exemption from the Affordable Housing Linkage Fee (AHLF) for new construction by certain nonprofit entities who build in Los Angeles. The PLUM Committee requested the option to study an existing definition of *philanthropic institution* used for similar purposes in the zoning code. The definition of *philanthropic institution* is below:

PHILANTHROPIC INSTITUTION. A nonprofit, charitable institution devoted to the housing, training or care of children, or of aged, indigent, handicapped or underprivileged persons, but not including the following: office buildings, except as an accessory to and located on the same lot with an institutional activity, as listed above; hospitals, clinics or sanitariums, correctional institutions, institutions or homes for the insane or those of unsound mind; lodging houses or dormitories providing temporary quarters for transient unemployed persons; organizations devoted to collecting and salvaging new or used

materials, or organizations devoted principally to distributing food, clothing or supplies on a charitable basis.

The definition of *philanthropic institution* requires the non-profit institution to be a charitable organization devoted to housing, training or caring for the underprivileged. It excludes office buildings (except when on the same lot as the institution) as well as clinics, jails, mental health institutions and salvage/recycling organizations. The definition is limited to non-profits that are engaged in community service and is therefore largely consistent with the current exemption language in LAMC 21.18.2 (b)3).

However, the definition of *philanthropic institution* uses some older terminology, which may cause confusion, and may also exclude some non-profit projects that otherwise would deserve similar consideration. For example, the phrase excluding “institutions or homes for the insane or those of unsound mind” may result in questions about residential community care facilities or other special needs facilities, which otherwise might warrant an exemption. Similarly, excluding “lodging houses or dormitories providing temporary quarters for transient unemployed persons” could be interpreted to result in fees being charged to transitional housing for the homeless, or for shelters for victims of domestic violence and/or human trafficking. Furthermore, non-profit recycling or food distribution organizations could be excluded by the last sentence in the current definition regarding salvaging. A policy decision would be required to include or exclude those sections if such an exemption is desired.

There are, therefore, at least three options before the City Council:

1. Do not include the exemption for *philanthropic institutions*.
2. Include the exemption for *philanthropic institutions* as currently defined in the LAMC.
3. Include a modified version of the exemption for *philanthropic institutions*, by removing one or all of the last three exceptions regarding mental health, temporary housing or salvage organizations.

Option 1 would require no change to the proposed AHLF ordinance.

Option 2 would be added to the ordinance in LAMC 21.18.2 (b)3) as follows:

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 High School, or 3) a Philanthropic Institution as defined in LAMC 12.03.

Option 3 could be accommodated by excluding certain phrases from the definition above, or by simply re-defining the term within the ordinance itself. An example of a modified definition is below:

PHILANTHROPIC INSTITUTION. *A nonprofit, charitable institution devoted to the housing, training or care of children, or of aged, indigent, disabled or underprivileged persons, but not including the following: office buildings, except as an accessory to and located on the same lot with an institutional activity, as listed above; or hospitals, clinics or sanitariums or correctional institutions.*

In all events, additional language would be required to specify that the philanthropic non-profit institution owns the land and is constructing the structure in question, and to specify a covenant that would run with the land to ensure that the philanthropic use remains in place for a set period of time, or otherwise the AHLF is paid. This covenant language can be similar to that already in place in the proposed AHLF ordinance in section 19.18 B(2)(f). Any exemption for philanthropic

non-profits should also be targeted only to construction resulting in non-residential floor area, since an exemption already exists for affordable housing projects that serve lower-income populations.

It is important to note that the linkage fee would apply only to new construction, not to the leasing or use of existing facilities by any non-profit. Furthermore, the establishment of a non-profit exemption, including a non-profit exemption more narrowly targeted at philanthropic institutions, may be prone to abuse. A philanthropic entity may be created solely for the purpose of erecting a building to avoid payment of the AHLF. Any philanthropic non-profit meeting the definition would qualify, regardless of length of time of operation, level of service, or community history.

Finally, unlike the existing exemption for hospitals, which are generally purpose-built structures that are somewhat impractical to easily convert to other uses, a philanthropic office building or institution may shift uses in the future to non-philanthropic or market rate uses. Changes in tenancy normally do not require subsequent City review or approvals, and could result in the loss of the philanthropic non-profit use that originally earned the exemption. Even with a covenant, enforcing a change of tenancy or use in the future may present challenges where no building permit is required and no City review is otherwise required.

The financial impacts of exempting non-profit philanthropic institutions are expected to be relatively minor, not accounting for any secondary abuse or other future expansions of construction activity by such non-profits. Currently LADBS and DCP do not directly track such developments and there is no existing data for past years. Reviewing overall development trends and volumes, it would be expected that this exemption could result in a diminished overall AHLF of less than \$1.5m annually, which is minimal given the overall anticipated revenue.

It may be desirable to continue to monitor and study the implementation of the Affordable Housing Linkage Fee and the applicability to philanthropic non-profits over time. In this manner, staff may also be directed to report back after the initial implementation of the ordinance as to impacts on philanthropic institutions and the consideration of a future exemption if warranted.

The Department is happy to continue to explore additional options for exemptions. If you have any questions on this report, please contact Matthew Glesne in the Department of City Planning at matthew.glesne@lacity.org or (213)978-2666.

Sincerely,



VINCENT P. BERTONI, AICP
Director of Planning

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