



Good Neighbors

San Diego
Housing Commission

MEMORANDUM

ITEM 6

TO: The Chair and Members of the Planning Commission

FROM: D. Todd Philips, Policy Advisor to the President and CEO
San Diego Housing Commission

DATE ISSUED: June 8, 2005
For the Agenda of June 16, 2005

SUBJECT: Update to Housing Impact Fees on Commercial Development

At the May 12, 2005 Planning Commission hearing, the issue of updating the housing impact fees on commercial development was presented to the Commissioners in Housing Commission Report No. PC-05-091 (Attachment 1). A number of outstanding issues were discussed at that hearing and the Commission asked for the entire discussion be continued to June 16, 2005 allowing for staff to conduct subsequent meetings in an effort to obtain consensus and policy direction on the following items:

Research and Development – A large amount of Commission discussion and public testimony centered around how the Research and Development (R&D) building type should be defined and charged under the new fee structure. On May 13, 2005 representatives from the Housing Commission, the City’s Economic Development Department, the Chamber of Commerce, Qualcomm, BIOCOM, Ligand and GenProbe met to discuss how R&D should be defined. Consensus was reached by utilizing the existing definition as defined in Section 131.0112 (a) 10 D of the City’s Land Development Code:

“Uses engaged in scientific research and testing leading to the development of new products and processes.”

City policies encourage such companies to locate or expand within San Diego. Therefore, much of the discussion also centered around the impact of linkage fees on R&D companies and the rate that the R&D land use should be charged under any new fee structure. Originally, it was envisioned that an R&D developer would submit their plans to the City and based upon the look and design of the building space, the structure would be charged either the Office rate, or the Manufacturing rate. This presented problems for non-manufacturing R&D companies such as Qualcomm. Although their planned facilities look like office space, the function of the building is primarily R&D.

Additionally Qualcomm is an R&D company that does not manufacture any of the products they research, design or develop. Therefore, it was suggested that the R&D building type be retained in any new fee structure.

As an alternative to retaining R&D as a separate use and in an effort to simplify matters, it is suggested that all R&D uses be charged the Manufacturing rate. This treatment would avoid the need for a subjective determination each time an R&D facility is processed and the potential for inconsistent determinations.

Exemptions/Waivers – At the May 13, 2005 stakeholder meeting, the issue of waivers and exemptions was discussed. A consensus was reached on recommending the elimination of blanket exemptions and any waivers should be determined on a case-by-case basis. What criteria the City should utilize in determining the basis for a variance was where consensus fell apart.

The Economic Development Department drafted a proposal (Attachment 2) whereby a waiver should be granted if the development's primary use is light manufacturing, warehouse, wholesale distribution, R&D or if it is within a Redevelopment Project Area and the developer agrees to pay at least 80% of the employees a living wage. As to R&D developments seeking a waiver, they further suggest the project must have an anticipated accessory use of either light manufacturing or an agreement to manufacture some of the products resulting from their R&D.

The business community took exception with some of the City's language and the requirements a development would have to meet in order to get a variance. They also felt that developments that are the product of a contract with the Department of Defense as well as any development that provides advancement in the areas of science, technology and electronics should be granted a waiver.

Although the Housing Commission is not prepared to make specific recommendations at this time, it is believed the City's recommended criteria are a good baseline to begin the policy discussion. The Housing Commission also suggests the policy discussion consider the following issues:

- Criteria should be developed to determine the appropriateness of waiving the fee
- Blanket exemptions are not recommended
- Case-by-case evaluation is appropriate
- Waivers of the fee should be the exception and not the rule
- Applicants for a waiver should provide their employees with a living wage
- Ultimate waiver authority on subjective waivers (e.g. R&D uses) should reside with the City Council while ministerial waivers (e.g. developments with low employment densities) should reside with the Housing Commission

We welcome any policy input the Planning Commission might have.

Indexing – The original 1990 Housing Trust Fund ordinance provided a mechanism for the linkage fee to be tied to an established index to allow for the fee to grow as inflation and the cost of living rose. Originally, the fees were tied to the percentage increase or decrease as reflected in the cost index of the Cost Indices for Twenty Cities published by M.C. McGraw-Hill, Inc. It is universally

accepted that the fees should be indexed, but to what index the fees should be tied is under consideration.

Representatives of the Building Industry Association (BIA) suggested the city should continue to utilize the 20 Cities Indices, also known as the Engineering News Record (ENR). Another alternative would be to use the Consumer Price Index (CPI). The Land Use and Housing Committee (LU&H) suggested staff look into utilizing a local economic performance measure.

Of the cities in California that have a linkage fee only five of them use an index to increase or decrease their fees. Of those five, four use the CPI while the last one ties theirs to residential construction cost (ENR). Staff is in the process of determining if there is an established and recognized local economic performance measure to utilize. Staff does not yet have a recommendation as to which index should be used to increase or decrease the fee.

Mixed Use Projects – At the May 25, 2005 LU&H hearing on this matter the issue was raised as to how the fee would be charged on a mixed use project. The linkage fee is designed to mitigate a commercial development's impact on the local housing market by charging a fee that will be utilized to provide housing opportunities for low income families. If a mixed use development were proposed whereby the residential component of the project complies with the City's Inclusionary Housing Ordinance (by building the affordable units onsite), then the need for charging the commercial component the linkage fee could be redundant.

It is suggested however, that some guidelines be established to avoid projects where the linkage fee would be waived and the project builds a large commercial component (e.g. in excess of 100,000 square feet) and a negligible residential component (e.g. 20 total residential units and two affordable units). A ratio of residential units to commercial space could be used.

Grandfather Clause – At the May 25th hearing, LU&H gave direction to staff to draft an ordinance that reflects the 15% mitigation level at 80% AMI. It is important to note: LU&H did not adopt the 15% fee level, but asked staff to prepare an ordinance with the 15% fee structure and provide the Committee with data on the 10% and 12.5% levels for further discussion. Part of LU&H's direction also asked for inclusion within the ordinance of a grandfathering clause to allow for projects that have their financing in line and are currently in the pipeline at the City to be relieved of any new fee structure that is adopted. The question presented is: at what point in the development review process should the benefits of the grandfathering clause be limited?

Discussions with the City Attorney's office indicate no established methodology for providing for a grandfathering clause with regards to new fee structures. Among the various alternatives would be to apply the new fee structure to any project without a Building Permit when the new fee is adopted, or do not apply the new fee structure to any projects that have had their development permit application already deemed complete when the new fee structure takes effect.

It is suggested that those projects that could fall under a grandfather clause be given a timeframe by which their building permit must be pulled or else be subjected to the new fee structure. It is felt that this form of sun setting the grace period would prevent developers from holding onto an

approved development but not building it for many years—such a situation could result in projects unjustly benefiting from an inappropriately low linkage fee.

Phased Payment – LU&H also directed staff to look into allowing for a phased payment schedule for developers to pay their linkage fees. Because the fees will be dramatically increasing for certain uses it was felt that phasing the fee payment over three equal installments might provide a developer with a cash flow by which to pay the fee. The suggestion from LU&H was to allow for the first 1/3 payment at the time the building permit is issued for a project. The second 1/3 payment would be due at the issuance of the Certificate of Occupancy and the final 1/3 payment would be due two years after the Certificate of Occupancy is issued.

Staff is in the process of discussing this suggestion with the Development Services Department. The concern with this methodology is that once the Certificate of Occupancy is issued, the City's control over the project and developer ceases. Trying to collect the final 1/3 payment two years after the developer has had their final dealing with the City might prove difficult to enforce. Alternative payment dates could be established if the Commission would prefer (e.g. 1/3 equal payments due at: development permit deemed complete status, building permit issuance and issuance of Certificate of Occupancy). Staff does not have a position on this issue at this time and welcomes any policy input offered by the Commissioners.

As a further consideration, a phased payment option raises the issue of the time value of money. Depending on how the future years' payments are discounted, the phased payment option could adversely impact the Housing Trust Fund and its ability to provide more affordable housing opportunities for low, very low and extremely low income families in San Diego.

Finally, in addition to obtaining Commission input on the above-referenced issues, staff is also seeking action on the following original recommendations from Report No. PC-05-091:

Direct staff to prepare an ordinance amending the Housing Impact Fees on Commercial Development (San Diego Municipal Code Chapter 9 Article 8 Division 6), as further described herein, including:

1. Use the most recent nexus study data in preparing amendments;
2. Adjust building type categories used in the fee schedule and provide that buildings be assessed for the predominant use so long as the primary use constitutes at least 75% of the proposed development;
3. Focus on low income housing needs for people earning less than 80% of Area Median Income;
4. Base adjustments to the fee schedule on mitigating 10% of actual housing impacts as further adjusted within the Report; adopt the fee schedule for all uses as reflected in Attachment 6 of the Report; apply an annual adjustment factor, based on a recognized index, and mandate the fee amounts be reviewed at least every ten years;
5. Allow the current housing impact fee exemptions in San Diego's two enterprise zones to expire in 2006; allow case-by-case exemptions for offices or manufacturing in redevelopment project areas; when City Council Policy 900-12 is updated, incorporate criteria for case-by-case waivers for manufacturing and research and development, similar to

current policy, and provide an opportunity for Housing Commission input on proposed amendments to the policy; exempt in-patient acute care hospital development.

6. Continue to authorize the Housing Commission to approve variances for applicants if they meet the specified findings.

ATTACHMENTS:

1. Report No. PC-05-091 and Attachments 2-6*
2. City of San Diego Economic Development Department Suggested Waiver Criteria

* The distribution of Attachment 1 is limited due to its length. Copies are available at the Housing Commission Office, 1625 Newton Avenue.