



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Councilmember Cohen  
Councilmember Jimenez  
Councilmember Carrasco

**SUBJECT:** SEE BELOW

**DATE:** March 25, 2022

Approved

Date: 3/25/2022

**SUBJECT: COMMERCIAL LINKAGE FEE**

## RECOMMENDATION

1. Accept recommendations (a) and (b) from the 2/15/22 staff memorandum.
2. Direct staff to expand stakeholder outreach broadly to include commercial real estate brokers, prospective commercial space tenants, and others as staff deems appropriate. The outreach should include feedback regarding constraints, barriers, and opportunities to incentivize the occupancy of commercial space in San José.
3. In accordance with Council direction from September 2020, and the feasibility study timeline described in staff's 3/7/22 supplemental memo, initiate a new feasibility study starting in the Spring of 2022.
4. Direct staff to include the following in the scope of work for the feasibility study:
  - a. An analysis of the credit for constructing affordable housing units or restricting market-rate units as affordable, to help determine the appropriate level to incentivize affordable housing development
  - b. An analysis of the effectiveness of the 20% discount in incentivizing payment at or prior to building permit issuance
  - c. An analysis of the efficacy of the deferred secured payment option as it relates to incentivizing earlier collection of the CLF, and recommendations for actions Council can consider to remove barriers to selection of this option by developers
  - d. Recommendations for identifying specific event milestones that would trigger the timing of the next feasibility study—for example, upon reaching a certain occupancy square footage in newly constructed office space, or upon reaching a certain dollar amount of fees collected through the CLF
5. Return to Council no later than December 2022 with actionable recommendations on the following:
  - a. The commercial linkage fee levels, based on the completed feasibility study
  - b. Refinement of the payment options, to incentivize earlier collection of the CLF
  - c. Options on potentially lowering or eliminating the discount for upfront payment at or prior to building permit issuance

- d. Specific event milestones that would trigger the timing of the next feasibility study

## **BACKGROUND**

As we consider the next steps in the implementation of our commercial linkage fee, our primary consideration should be finding ways to maximize its effectiveness as a tool for creating affordable housing, while ensuring we continue to build a foundation for a vibrant and active jobs market in San José. We appreciate that staff's recommendations reflect this balance, but we feel additional direction could help provide more context and analysis for future conversations regarding the CLF.

In particular, it is crucial that the next feasibility study proceeds in accordance with the timeline initially approved by Council in September of 2020, and that it can serve as the basis for a more comprehensive Council discussion about the CLF program towards the end of 2022. The study should include deeper analysis of the pay structures recommended by staff in their February memorandum, as well as recommendations on fee levels and payment options that will ensure we bring in as much CLF revenue up front as possible without unduly burdening developers. We are recommending the inclusion of these analyses and options not out of any preconceived notion of where they might lead, but because the context they will provide is critical in setting up a successful CLF program. It's also important that, moving forward, future feasibility studies and renewed discussions about the program are tied to measurable and relevant event milestones rather than arbitrary dates.

In 2014, when the Council first began exploring a commercial linkage fee, our city was staring down the barrel of a housing crisis that threatened to displace our most vulnerable residents and overturn years of economic progress. Eight years later, that crisis has only worsened. We still have families with deep roots in our city forced to leave San José because they simply do not have the means to keep up with the cost of living, and we still have workers in San José who must commute dozens of miles each day because they can't afford to live where they work. The CLF is, first and foremost, for them—for the residents who are living and struggling with the impacts of the housing crisis each day. We are confident that the recommendations offered here will help set up a program that meets their needs and lays a strong foundation for jobs and commercial development for years to come.

*The signers of this memorandum have not had, and will not have, any private conversation with any other member of the City Council, or that member's staff, concerning any action discussed in the memorandum, and that each signer's staff members have not had, and have been instructed not to have, any such conversation with any other member of the City Council or that member's staff.*