



# Memorandum

**TO: HONORABLE MAYOR & CITY COUNCIL**

**FROM: Councilmember Johnny Khamis**

**SUBJECT: COMMERCIAL LINKAGE FEE**

**DATE: August 30, 2020**

Approved

Date

08/30/2020

**RECOMMENDATIONS:**

Accept the Memorandum from Office of Economic Development with the following direction:

1. Approve the modified Commercial Linkage Fee structure as provided in attached Exhibit A, using a phased-in approach over three years that allows for the recovery of the San José economy, including the following:
  - a. Exclude retail buildings and all retail square footage in mixed-use buildings from the new fee for the first three years.
  - b. Exclude senior living facilities and all senior living square footage in mixed use projects for the first three years.
  - c. Exclude Hotels as they, when operating, contribute millions of dollars to the City in Transient Occupancy Tax to support important arts and cultural activities throughout San José, our travel and tourism efforts, our cultural facilities, and the operations of Team San José, for the first three years.
2. Adopt the exemption for small office projects - Item 2. From the Memorandum dated August 28, 2020 from Mayor Liccardo, et al, - but adjust the square footage for the exemption to 50,000 square feet for ease of administration and to simplify calculations.
3. Allow developers to whose projects the new fee applies to build or buy affordable housing and deed restrict it to ensure the rents remain affordable as an alternative to fulfilling the Commercial Linkage Fee requirement, as discussed in Item 1. Option 3 in the Memorandum dated August 28, 2020 from Mayor Liccardo, et al, and in Item 6.a.i. of the Memorandum dated August 28, 2020 from Councilmember Peralez.
4. Staff to explore incentives of up to 20% of assessed fees for historic preservation and sustainability measures as discussed in Item 8. of the Memorandum dated August 28, 2020 from Mayor Liccardo, et al, and in Item 6.a.ii. of the Memorandum dated August 28, 2020 from Councilmember Peralez.

5. Staff to initiate a new feasibility study during the second year of the phase-in before the implementation of year three increase to the adopted fees to the levels specified in Exhibit A, and as discussed in Item 9. of the Memorandum dated August 28, 2020 from Mayor Liccardo, et al, and in Item 2. of the Memorandum dated August 28, 2020 from Councilmember Peralez.
6. Adopt Item 10. of the Memorandum dated August 28, 2020 from Mayor Liccardo, et al, to establish a “single point of contact” within the existing Development Services staff.
7. Adopt Item 6.b. of the Memorandum dated August 28, 2020 from Councilmember Peralez that directs Staff to develop a fee structure for projects of 1,000,000 square feet or more.
8. Require that the Commercial Impact Fee be paid by no later than the date of the issuance of the Occupancy Permit.

### **BACKGROUND**

The recent Nexus Study for a Commercial Impact Fee completed by Keyser Marston Associates at the direction of the City Council was administered during one of the most robust economies our country has experienced in a century. The City of San José was experiencing high-rise development in its downtown core like we had never seen in our lifetimes and swaths of the Downtown were purchased with plans to build additional high-rise mega-projects containing retail, housing, and commercial square footage. With the onset of a Global Pandemic – COVID-19 – everything has changed.

As a result, I am not convinced that this study is even relevant today. Our economy is vastly different: Big employers have told employees to work from home into mid-2021, retail in big box buildings is dead and/or dying, hotels are vacant (except for those assisting fire evacuees and those housing the unhoused), and we are looking at losing up to half of the Downtown’s storefront businesses. To make matters worse, all of our large convention and cultural events for 2020 have been canceled and longstanding businesses that haven’t failed are hanging on by a thread – some through the help of government or charitable subsidies.

The last thing the City should be doing in times like these is making it more difficult for commercial developers to build in San José. San José continues to suffer from a jobs/housing imbalance that produces inadequate resources for the services our population needs and demands. While it’s true that we have great challenges to house the homeless in our community and to build enough housing that is affordable by the full range of our workforce, we already have several new taxes/fees that are providing money for housing – the County’s Measure A and our own Measure E, as well as the Housing Impact Fee. I realize that the majority of my Council colleagues are determined to create a new Commercial Linkage Fee to fund housing, however, so I have pieced together what I feel are some of the best elements of my colleagues’ proposals to come up with a compromise that will have the least negative effect on the prospects for San José’s future over the next few years.

The City Council will certainly revisit this issue once our economy begins to recover. However, if we continue to impose fees, or impose fees that are too high, we may be hindering recovery efforts when we need to be helping.

**EXHIBIT A**  
**Page 1 of 3**

<b>YEAR 1</b>			
<b>Nexus Category</b>	<b>Fee Category</b>	<b>Downtown &amp; Diridon</b>	<b>Rest of City</b>
Office	Office Development less than 100,000 square feet	\$1.50/SF	\$0/SF
	Office Development greater than or equal to 100,000 square feet.	\$5/SF	\$0/SF
Retail	Retail/Commercial Development	\$0/SF	
Hotel	Citywide Hotel Uses	\$0/SF	
Industrial (combined Research and Development)	Industrial Development less than 100,000 square feet	\$0/SF	
	Industrial Development greater than or equal to 100,000 square feet	\$1/SF	
Warehouse	Warehouse/Distribution less than 100,000 square feet	\$1.50/SF	
	Warehouse/Distribution greater than or equal to 100,000 square feet	\$5/SF	
Residential Care	Residential Care	\$0/SF	

**EXHIBIT A**  
**Page 2 of 3**

<b>YEAR 2</b>			
<b>Nexus Category</b>	<b>Fee Category</b>	<b>Downtown &amp; Diridon</b>	<b>Rest of City</b>
Office	Office Development less than 100,000 square feet	\$2.50/SF	\$0/SF
	Office Development greater than or equal to 100,000 square feet.	\$10/SF	\$2.50/SF
Retail	Retail/Commercial Development	\$0/SF	
Hotel	Citywide Hotel Uses	\$0/SF	
Industrial (combined Research and Development)	Industrial Development less than 100,000 square feet	\$0/SF	
	Industrial Development greater than or equal to 100,000 square feet	\$2/SF	
Warehouse	Warehouse/Distribution less than 100,000 square feet	\$2.50/SF	
	Warehouse/Distribution greater than or equal to 100,000 square feet	\$5/SF	
Residential Care	Residential Care	\$0/SF	

**EXHIBIT A**  
**Page 3 of 3**

<b>YEAR 3</b>			
<b>Nexus Category</b>	<b>Fee Category</b>	<b>Downtown &amp; Diridon</b>	<b>Rest of City</b>
Office	Office Development less than 100,000 square feet	\$5/SF	\$0/SF
	Office Development greater than or equal to 100,000 square feet	\$15/SF	\$5/SF
Retail	Retail/Commercial Development	\$0/SF	
Hotel	Citywide Hotel Uses	\$0/SF	
Industrial (combined Research and Development)	Industrial Development less than 100,000 square feet	\$0/SF	
	Industrial Development greater than or equal to 100,000 square feet	\$3/SF	
Warehouse	Warehouse/Distribution less than 100,000 square feet	\$5/SF	
	Warehouse/Distribution greater than or equal to 100,000 square feet	\$5/SF	
Residential Care	Residential Care	\$0/SF	