Inclusionary Housing Policies

Brandon M. Weiss
UMKC School of Law
February 24, 2018
Inclusionary housing refers to a range of local policies that tap the economic gains from rising real estate values to create affordable housing—tying the creation of homes for low- or moderate-income households to the construction of market-rate residential or commercial development. In its simplest form, an inclusionary housing program might require developers to sell or rent 10 to 30 percent of new residential units to lower-income residents.
Inclusionary Housing Policies

• Inclusionary Zoning

• In-Lieu Fees

• Linkage Fees

• Impact Fees
## Inclusionary Zoning

**Table A: Variation Among IZ Programs in Our Three Study Areas**

<table>
<thead>
<tr>
<th></th>
<th>San Francisco Area (as of 2004)</th>
<th>Suburban Boston (as of 2004)</th>
<th>Washington D.C. Area (as of 2000)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Prevalence of IZ</strong> (# of all jurisdictions adopting)</td>
<td>7/10 counties 48/104 cities/towns*</td>
<td>99/187 cities/towns</td>
<td>5/23 counties</td>
</tr>
<tr>
<td><strong>Year program was adopted:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>% of programs that are mandatory</strong></td>
<td>93%</td>
<td>58%</td>
<td>80%</td>
</tr>
<tr>
<td><strong>Breadth of applicability to different types and sizes of developments</strong></td>
<td>Broad</td>
<td>Narrow</td>
<td>Fairly Broad</td>
</tr>
<tr>
<td><strong>% of programs providing density bonus</strong></td>
<td>67%</td>
<td>71%</td>
<td>160%</td>
</tr>
<tr>
<td><strong>% of programs allowing developers to pay fees in lieu of building units</strong></td>
<td>86%</td>
<td>38%</td>
<td>100%</td>
</tr>
<tr>
<td><strong>% of units that must be affordable</strong></td>
<td>15% 5-25%</td>
<td>10% 5-60%</td>
<td>8.13% 6.25-15%</td>
</tr>
<tr>
<td>Median Range</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Incomes targeted for affordable units</strong></td>
<td>Very low to moderate</td>
<td>Low to moderate</td>
<td>Low to moderate</td>
</tr>
<tr>
<td><strong>How long units must remain affordable</strong></td>
<td>The median length of affordability is 45 yrs.</td>
<td>One-third of the programs require permanent affordability, half don’t specify.</td>
<td>For owners, range is from 5-15 years; for renters range is 5-20.</td>
</tr>
</tbody>
</table>
Figure 4: Number of Inclusionary Housing Programs by the Incentives They Offer to Developers (n = 250)

- No Incentive: 63
- Other: 4
- Tax Relief Abatement (Excluding TIF): 8
- Direct Public Subsidy and/or TIF: 20
- Expedited Permitting: 49
- Fee Reduction/Waiver: 69
- Other Zoning Variances: 83
- Density Bonus: 146
The rationale for impact fees, sometimes referred to as linkage fees, is that they mitigate the impact of commercial and/or residential development on the increased demand for affordable housing that will result from the development.
Los Angeles Affordable Housing Linkage Fee Nexus Study

Prepared for City of Los Angeles
September 21, 2016
Figure 1: Summary of Commercial Fee Nexus Methodology

1. Define Land Uses
   - 8 categories based on building permit database analysis

2. Estimate Employment Density
   - By land use
   - Yields total number of workers

3. Estimate Worker Households
   - By land use
   - Yields total number of worker households

4. Identify Industries
   - Expected industries in each land use

5. Estimate Worker Household Income Distribution
   - By land use and its group of industry sectors

6. Estimate Worker Households by AMI Bands
   - Distribution of worker household incomes applied to number of worker households

7. Calculate Financing Gap for Aff Units Needed
   - Gap between cost to build affordable rental unit & HH's ability to pay

8. Calculate Maximum Linkage Fee to Mitigate Aff Housing Need
   - By land use per square foot of building

9. Conduct Feasibility Test
   - Max fee to maintain feasibility
   - Test by Low/Med/High Market Conditions

10. Formulate Fee Schedule
    - By Land Use Type
    - By Market Condition or Geographic Zone
### Smaller CA Cities with Fee

<table>
<thead>
<tr>
<th>City</th>
<th>Population</th>
<th>Floor Area</th>
<th>Average Fee/Year</th>
<th>Average Fee/Sq Ft</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>West Hollywood (1989/2014)</td>
<td>35,053</td>
<td>10,000 sq ft</td>
<td>$214,000/year</td>
<td>$8.00</td>
<td>(avg since 2002)</td>
</tr>
<tr>
<td>Palo Alto (1984/2016)</td>
<td>65,998</td>
<td>1,500 sq ft</td>
<td>$23,000/year</td>
<td>$15.47</td>
<td>Updated nexus study in 2016</td>
</tr>
</tbody>
</table>

### Major Cities Outside of CA with Fee

<table>
<thead>
<tr>
<th>City</th>
<th>Population</th>
<th>floor Area</th>
<th>Average Fee/Year</th>
<th>Average Fee/Sq Ft</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Boston (1986/2013)</td>
<td>639,594</td>
<td>100,000 sq ft</td>
<td>$5,1 M/year</td>
<td>$8.05</td>
<td>Incentive zoning program structured to generate units. Many exemptions for desired projects.</td>
</tr>
<tr>
<td>Seattle (2015)</td>
<td>637,850</td>
<td>NA (new)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Waivers, Exemptions, and Refunds

- Most cities waive the fee for 100 percent affordable housing projects.
- Most cities offer a “units in lieu of fee” and/or land donation in lieu of fee option.
- All cities waive publicly-owned projects.
- Some cities waive non-profit buildings, and/or churches, schools (public and private), universities and colleges, and other similar categories of land use.
- Some cities exempt smaller buildings. For example, San Francisco does not charge a fee on commercial buildings smaller than 25,000 square feet.
- Many cities have created lower fees or offer exemptions to decrease the potential dampening effects of fees on certain types of development that are strongly desired to meet other policy objectives. An example of this approach includes San Francisco’s exemptions for local grocery stores and pharmacies that provide needed neighborhood services.
- Some cities have established clear refund processes if projects are subsequently not constructed, while others allow for refund requests decided on a case-by-case basis.
• During economic downturns, cities have either created special deferral programs or lowered fees across the board. These approaches demonstrate that these kinds of fees can be customized to adapt to downturns in the economic cycle.
• All cities in California have a “hardship” exemption available per legal requirements. Some cities render a hardship decision administratively; others have a more formal process.
• In general, cities collect these types of fees either prior to, or at the point of building permit issuance. Several cities allow partial payment at permit issuance, with the balance paid at Certificate of Occupancy.
• Many cities have built-in annual increases for commercial fees, tied to the CPI or the Construction Cost Index published by Engineering News Record. Staff generally report a preference for this approach, instead of relying on a city council’s periodic review.
NOW, THEREFORE, BE IT RESOLVED that the City Council adopts the following fee schedule for the assessment of a Linkage Fee on eligible projects pursuant to LAMC Section 19.18, et seq.:

<table>
<thead>
<tr>
<th>Type of Use</th>
<th>Low Market Area</th>
<th>Medium Market Area</th>
<th>Medium-High Market Area</th>
<th>High Market Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nonresidential Uses including Hotels</td>
<td>$3</td>
<td>$4</td>
<td>n/a</td>
<td>$5</td>
</tr>
<tr>
<td>Residential Uses (6 or more units in a Development Project)</td>
<td>$8</td>
<td>$10</td>
<td>$12</td>
<td>$15</td>
</tr>
<tr>
<td>Residential Uses (2-5 units or less units in a Development Project)</td>
<td>$1</td>
<td>$1</td>
<td>$1</td>
<td>$15</td>
</tr>
<tr>
<td>Residential Uses (single-family detached home)</td>
<td>$8</td>
<td>$10</td>
<td>$12</td>
<td>$15</td>
</tr>
<tr>
<td>Development Projects that Result in a Net Loss of Housing Units (In addition to any other fees)</td>
<td>$3</td>
<td>$3</td>
<td>$3</td>
<td>$3</td>
</tr>
</tbody>
</table>
Los Angeles Linkage Fees
Los Angeles Linkage Fees

- **Phase-In Period**
  - 120 days = no fee
  - 121-305 days = 1/3 of fee
  - 306-484 days = 2/3 of fee
  - 485+ days = full fee

- **Annual Inflation Adjustment**

- **Five-Year Market Area Adjustment**

- **Option to Build On-Site Affordable**
Since 1985, DRA has been a nationally recognized expert in the creation and economic analyses required for the adoption of commercial development linkage fees in support of local housing trust funds. DRA has assisted more than twenty jurisdictions in conducting linkage fee analyses consistent with the provisions of state law, as well as the United States Supreme Court decisions in Nollan v. California Coastal Commission and Dolan v. City of Tigard. DRA has conducted commercial development nexus analyses and drafted linkage fee ordinances to support local housing trust funds. DRA provided expert economic litigation support to defend the adoption of nexus fees before the U.S. Supreme Court.

**City of San Diego Nexus Study**
DRA led the effort by the City of San Diego to conduct an economic nexus analysis and housing assistance policy study to support a fee on commercial development to mitigate resultant demand for affordable housing. DRA assisted the City in complex, technical analysis and extensive negotiations with a citizens’ advisory task force. DRA performed a detailed housing affordability gap analysis, provided the overall housing policy framework for structuring the linked development fee ordinance and housing assistance programs supported by linkage fee revenues, drafted the City ordinance, and provided guidance and strategic planning assistance for the City citizens’ advisory task force and the City Council. The Council adopted DRA’s recommendations.

**City of Oakland Nexus Study**
DRA completed a nexus analysis for the creation of a commercial linkage fee for the City of Oakland. DRA conducted an affordable housing gap analysis, developed implementable nexus fee calculations and economic impact analyses, and proposed...
• 886 jurisdictions with inclusionary housing programs located in 25 states and the District of Columbia at the end of 2016

• 373 jurisdictions have reported a total of $1.7 billion in impact or in-lieu fees for the creation of affordable housing

• Jurisdictions have reported creating a total of 173,707 units of affordable housing
Inclusionary Housing Policies

Brandon M. Weiss
UMKC School of Law
February 24, 2018