

CITY OF GLENDALE, CALIFORNIA
REPORT TO THE:

Joint City Council Housing Authority Successor Agency Oversight Board

August 14, 2018

AGENDA ITEM

Report: Request for Direction on Preparation of an Inclusionary Zoning Ordinance and / or a Development Impact Fee for the Benefit of Providing Affordable Housing.

1. City Council Motion Directing Staff to Prepare an Inclusionary Zoning Ordinance and In-Lieu Fee Resolution.
2. City Council Motion Directing Staff to Prepare Legislation Adopting a Commercial Development Impact Fee.
3. City Council Motion Directing Staff to Prepare a Draft Ordinance Revising the Affordable Housing Exemption for the Parks and Library Impact Fee.

COUNCIL ACTION

Public Hearing <input type="checkbox"/>	Ordinance <input type="checkbox"/>	Consent Calendar <input type="checkbox"/>	Action Item <input checked="" type="checkbox"/>	Report Only <input type="checkbox"/>
Approved for <u>Aug. 14, 2018</u> calendar				

ADMINISTRATIVE ACTION

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RECOMMENDATION

Community Development staff recommends that the City Council Provide Direction on the Preparation of a City-Wide Inclusionary Zoning Ordinance and a Commercial Linkage Fee to benefit the development of affordable housing.

BACKGROUND/ANALYSIS

At its December 5, 2017 meeting and as part of the approval of the City's Affordable Housing Strategy, the City Council directed staff to enter into a Professional Services Agreement with Keyser Marston and Associates (KMA) to study the possible implementation of two new housing programs to assist with development of affordable housing: Inclusionary Zoning and Commercial Development Impact Fees.

Inclusionary Zoning is a strategy that falls under the category of "Land Use Tools" in the City's adopted Affordable Housing Strategy. Inclusionary Zoning is a legal standard requiring the inclusion of affordable housing units in new residential development projects. Recent studies support that inclusionary zoning is an increasingly prevalent tool for producing affordable housing. Additionally, local inclusionary housing programs are: (1) prioritizing on-site affordable housing development, which may be an effective strategy to place affordable housing in neighborhoods of opportunity; and (2) ensuring long-term affordability, which is an effective way to maintain community assets and the affordable housing stock. Inclusionary Zoning Ordinances must allow for an In-Lieu fee as an option for the developer, rather than building the affordable units.

A Development Impact Fee (DIF) is a strategy identified in the "Dedicated Revenue" category in the City's Affordable Housing Strategy. DIFs are a one-time fee(s) charged to new developments that is used to defray the costs of mitigating development's impact on public facilities such as schools, roads, sewer lines, etc. Numerous cities within the State have implemented such a fee(s) for mitigating development's impact on affordable housing. Some cities (mainly in Northern California) have required the fee for both new residential development and new commercial developments, linking it to a jobs/housing imbalance. A commercial fee application is less frequently applied by cities because of concerns with business attraction and retention issues.

In 2007, Glendale adopted a DIF for park and library facilities for all new residential developments in Glendale which, to date, has generated over \$16 million in revenue. Considering that such DIF revenue for housing would be generated locally, the allocation, priorities, and use of it would be governed locally by the City Council and Housing Authority. Exhibit 1 to this report is a memo generated by KMA which discusses in further detail both Inclusionary Zoning and Commercial Linkage or Impact Fee Programs.

If the City Council directs staff to prepare an Inclusionary Zoning Ordinance and/or Commercial Development Impact Fee legislation, staff will prepare and submit draft legislation to the Planning Commission for review and recommendation, since the proposals will require amendments to the Zoning Code. The legislation would then be submitted to Council for its consideration

Inclusionary Zoning:

When considering the adoption of an Inclusionary Zoning Ordinance (IZO), it is important to understand the interplay between inclusionary zoning and the State Density Bonus Law (Density Bonus Law). Under current law, applicants required to provide affordable units in a new development will likely have the opportunity to utilize the Density Bonus Law for additional density and incentives and concessions.

The Density Bonus Law allows property owners to build more residential units on their property than the local zoning code normally allows in exchange for reserving a percentage of the units as affordable units at rents or sales prices that are below market. In addition, a density bonus applicant is entitled to “incentives or concessions” – deviations from the zoning code or site development standards. Examples include maximum height and stories, minimum set-backs from the street and minimum open space requirements. Density bonus applicants are also entitled to certain parking concessions by right. Further, applicants may be entitled to waivers or modifications of development standards that physically preclude an applicant from building at the density and with the concessions authorized by the Density Bonus Law.

The amount of the density bonus and the number of incentives/concession vary based on the number of affordable units and level of affordability. The maximum required density bonus is 35% and the maximum number of required concessions is three. A density bonus request meeting the statutory requirements cannot be denied. Also, a request for incentives or concessions cannot be denied unless there is an identifiable, objective health or safety concern associated with the application. A California court has held that the affordable units required to be constructed by an IZO can be applied to meet the affordability thresholds necessary to trigger the Density Bonus Law. Thus, depending on the requirements of the IZO, some applicants who comply with the IZO by building affordable units will also be able to utilize the Density Bonus Law for additional density and zoning incentives.

An IZO must provide developers with the option of paying an In-Lieu Fee. This fee could be paid in-lieu of building the required units. One strategy to reduce the number of projects seeking a density bonus in combination with Inclusionary Zoning is to adjust the In-Lieu fee so that the developer will opt to pay it versus building additional units beyond what code allows. Discussion of the In-Lieu fee can be found further in this report.

In order to develop an IZO, a number of policy decisions will need to be made. The attached worksheet (Exhibit 2) and the following section of the report discuss these policy considerations and in some cases provide staff recommendations.

- Geographic Coverage
 - Does the City Council wish to implement a city-wide IZO?; or
 - Is the preference to target portions of the City?

Staff recommends, for consistency of implementation, adoption of a citywide IZO. Whichever direction the City Council prefers, however, staff recommendation is that a new IZO replace the IZO already in effect in the San Fernando Road Corridor. As stated in previous staff reports, the San Fernando Road Redevelopment Project Area has an inclusionary housing requirement tied to old Redevelopment Law.

- Type of Development
 - Does the City Council wish to apply an IZO strictly on rental projects; strictly on ownership projects, or on both?

- Project Threshold Size
 - Does the City Council wish to implement an IZO on all residential developments regardless of size or is there a minimum size project, such as 5, 10, or more units that would be exempt from an IZO?
 - The City Council may also adopt an IZO that has a tiered effect, meaning more restrictive the larger the project size.
- Percentage of units to be reserved as affordable
 - Most IZOs throughout the state require between 10% and 20% of the units to be reserved as affordable with 15% commonly being used.
 - Note: An IZO requiring greater than 15% of the units to be reserved as affordable housing might trigger review by the State if the City has not satisfied 75% of its housing needs for above-moderate income households for the applicable reporting period as set forth in the Regional Housing Needs Assessment (RHNA); however, Glendale has satisfied its RHNA need for above-moderate income households.
 - The percentage of units to be reserved as affordable could differ between ownership projects and rental projects should the City Council wish to adopt an IZO on both types of residential projects.
- Affordability Level
 - For rental projects, the new State law identifies low income households earning up to 80% AMI as a threshold. Many cities that have adopted an IZO provide an incentive to owners to provide the reserved units to very low income households, up to 50% AMI.
 - Deeper income targeting than 80% AMI can trigger state review of the an IZO but, as noted above, the City has satisfied its above-moderate income housing need.
 - For ownership projects, targeting very-low and low-income households is not recommended. The unit would have to be sold at almost no cost for low-income and no cost or even with a subsidy for very low-income households. Additionally, households of lower income often don't have the financial capacity to deal with the inevitable costs (maintenance and capital replacement) associated with home ownership.
 - For ownership, moderate-income households (up to 120% AMI) are most commonly targeted in IZOs which is consistent with Density Bonus Law.
 - Additionally for ownership, higher incomes known as workforce housing which is generally accepted to be up to 150% AMI can also be targeted.

Staff's recommendation is to target very low and low-income households for rental projects and moderate-income households for ownership projects to be consistent with Density Bonus Law.

- Duration of Affordability
 - Commonly used covenant periods are 45 years as the minimum length of affordability for ownership projects and 55 years for rental projects. These timeframes are based on Redevelopment Law and also the Density Bonus Law for rental projects is also fifty-five years. However, the City Council could adopt any length of affordability it chooses and ownership and rental could be the same duration.
- Design Standards
 - In many jurisdictions the design standard for the units to be reserved for lower income households is an exact comparison of the market rate units to be built.
 - The City Council could elect a different standard for the lower income units such as smaller size, less expensive finishes, etc.
 - The City Council could also elect to have different design standards based on the affordability level, or for ownership versus rental units.

Staff's recommendation is to apply the same design standards to all the units so that all the restricted units, regardless of the income range they target, are of the same standard as the market rate units. This is the standard imposed on affordable units built under the City's density bonus requirements and it is also staff's opinion that this type of requirement will be more administratively efficient.

- Phase In Option – City Council will need to decide when the IZO will affect future residential development projects. Options include:
 - Projects that have submitted discretionary entitlement applications that have been deemed complete could be exempted; or
 - Projects that have approved discretionary entitlements could be exempted; or
 - Only projects with an issued Building Permit could be exempted; or
 - Only projects that have obtained a vested right to build would be exempted; or
 - The IZO could take effect in three months, six months, or some other timeframe.

Part of KMA's scope of work was to analyze both the maximum legally defensible and economically feasible limit of an In-Lieu Fee. The *maximum legally defensible* fee is the difference between market rate rent and affordable rent whereby the *maximum economically feasible* fee is the highest fee a project could support before the project is no longer financially feasible to build.

KMA analyzed three rental development scenarios, a low density 35 unit / acre project, a 35 unit / acre project with a 35% Density Bonus, and a high density 100 unit / acre project. KMA evaluated a 15% Inclusionary Housing requirement, and an economically feasible percentage, at low income for each of the scenarios. KMA's analysis concludes that an In-Lieu fee of between \$55.00 / square foot to \$59.10 / square foot on residential rental development is legally defensible. However, KMA concluded that an economically feasible In-Lieu Fee falls within the range of \$39 / square foot.

For residential ownership projects, KMA studied a low density scenario with a financially feasible Inclusionary Zoning requirement at moderate income and determined that a legally defensible fee of \$42.20 and an economically feasible fee of \$26.30 could be charged.

- In-Lieu Fee
 - Does the City Council wish to adopt an In-Lieu Fee at the maximum legally defensible amount of \$59.10 / square foot for residential rental projects or a lower amount?
 - Does the City Council wish to adopt an In-Lieu Fee at the maximum economically feasible amount of \$39 / square foot for residential rental projects or a lower amount?
 - Does the City Council wish to adopt an In-Lieu Fee at the maximum economically feasible amount of \$42.20 / square foot for residential ownership projects or a lower amount?
 - Does the City Council wish to adopt an In-Lieu Fee at the maximum economically feasible fee of \$26.30 / square foot for residential ownership projects or a lower amount?

Development Impact Fee:

KMA conducted a nexus study to establish the maximum allowable linkage fee amounts for commercial uses identified by the City for evaluation. Although many cities in California have adopted a commercial DIF, most of those cities are located in Northern California. Only four cities, Los Angeles, San Diego, Santa Monica and West Hollywood, have adopted commercial DIFs in Southern California. The scarcity of this type of fee in neighboring cities such as Pasadena and Burbank and its implementation in Glendale could reduce the competitiveness of Glendale to attract commercial development. The less the fee is, the more competitive Glendale remains. The higher the fee, the less competitive. Too high of a fee and the city risks impeding commercial development all together. More discussion on the fee itself is provided following policy considerations:

Similar to an IZO, the City Council would have to consider several policy options when considering adopting a commercial DIF. The first is if the City Council would even like to adopt a Commercial DIF. Others include:

- Geographic Coverage
 - Will the Commercial DIF be in effect city-wide or would the City Council prefer to target certain areas of the City?

- Type of Development
 - The fee could be applied evenly to all commercial developments; or
 - Certain types of commercial developments could be subject to differing fees or be exempt all together.
 - Hotel (exempt from Glendale's Park and Library Fee)
 - Office
 - Retail
 - Auto dealerships (exempt from Glendale's Park and Library Fee)
- Project Threshold size
 - Is there a minimum size of development the City Council would like to exempt from the fee? Los Angeles exempts projects 15,000 square feet and less while West Hollywood exempts projects smaller than 10,000 square feet. The City of Glendale's Park and Library Fee exempts projects of 1,250 square feet or less.
- Fee
 - KMA has determined that the legally defensible limit to a commercial DIF varies depending on the type of commercial development. These limits are as high as \$379.40/square foot for ground floor retail, to as low as \$131.60/sq. ft. on hotel uses.
 - KMA has determined the economically feasible fee limit falls within the range of \$5 to \$15/square foot.
 - The recently adopted fee in the City of Los Angeles includes a range from \$3 to \$5/square foot. West Hollywood applies an \$8/square foot fee and Santa Monica applies a range of \$3 to \$11/square foot.
 - Glendale's Parks and Library Fee are as following:
 - Auto Dealership – Exempt
 - Hotel – Exempt
 - Office - \$7.92 / square foot
 - General Commercial - \$6.50 / square foot
 - Industrial - \$3.24 / square foot

Neither KMA nor staff recommends implementing a Commercial DIF at anywhere near the legal limit. Instead, a fee of approximately \$3 - \$5/square foot, which is at the low end of the economically feasible range, would be more appropriate. Any type of commercial development the City Council would like to promote in terms of development may be exempted from any fee.

- Phase In Option – City Council will need to decide when the Commercial DIF will affect future commercial development projects. Options include:

- Projects that have submitted a complete discretionary entitlements application could be exempted;
- Projects that have approved discretionary entitlements could be exempted;
- Only projects with a pulled Building Permit are exempted; or
- The Commercial DIF could take effect in three months, six months, or some other timeframe.

Park and Library Impact Fee:

Adoption of an IZO will have an immediate impact on the Park and Library Impact Fee for residential projects. The Park and Library Impact Fee for multi-family residential projects ranges between \$17,006 to \$18,751 per unit. But this fee is reduced for projects providing some level of affordability. The reduction in fee is as follows:

- 5% of units reserved as affordable is granted a 25% Park and Library Impact Fee reduction;
- 10% affordability gets a 50% reduction;
- 15% affordability gets a 75% reduction; and
- 20% of the units are reserved for affordable housing, the Park and Library Impact Fee is waived.

Therefore, if the City Council were to adopt an IZO, all multi-family residential projects would have to provide some percentage of affordable units. Should the City Council elect to require 15% of all units to be reserved as affordable units, these same projects would have a 75% reduction in the otherwise applicable Park and Library Fee.

Staff recommends the City Council re-visit the Park and Library Impact Fee, and in particular the level of affordability that needs to be provided in multi-family residential projects to exempt a project from paying all or part of the Fee. The Park and Library Fee exemption of 25% would need to start at a higher percentage of affordability than what the City Council ultimately selects for its IZO in order for there to be little or no impact on the Parks and Library Fee.

FISCAL IMPACT

There is no fiscal impact associated with this report.

ALTERNATIVES

Alternative 1: The City Council may direct staff to draft language for an Inclusionary Zoning Ordinance;

Alternative 2: The City Council may direct staff to draft language for the possible adoption of a Commercial Development Impact Fee;

Alternative 3: The City Council may direct staff to return with additional information; or

Alternate 4: The City Council may consider any other alternative not currently proposed by staff.

EXHIBITS

- Exhibit 1 April 23, 2018 KMA Memo – Inclusionary Housing and Linkage Fee Programs
- Exhibit 2 Inclusionary Zoning Ordinance and Commercial Development Impact Fee Worksheet.

MOTION

Moved by Council Member _____, seconded by Council Member _____, that the Council hereby directs the staff to prepare an Inclusionary Housing Ordinance and a In-Lieu Fee Resolution as set forth in the Joint Report to Council and Housing Authority dated August 14, 2018, and per further direction provided by Council at the joint meeting of the same date. Staff is further directed to submit the Ordinance and Resolution to the Planning Commission for review and recommendation and then to the Council for its consideration.

Vote as Follows:

Ayes:

Noes:

Absent:

Abstain:

APPROVED AS TO FORM


CITY ATTORNEY

DATE 8/9/18

MOTION

Moved by Council Member _____, seconded by Council Member _____, that the Council hereby directs the staff to prepare, for Council consideration, appropriate legislation adopting a commercial linkage fee for affordable housing, as set forth in the Joint Report to the Council and Housing Authority dated August 14, 2018, and per additional direction provided by the Council at the Joint Meeting of the same date.

Vote as Follows:

Ayes:

Noes:

Absent:

Abstain:

APPROVED AS TO FORM



CITY ATTORNEY

DATE 8/9/18

MOTION

Moved by Council Member _____, seconded by Council Member _____, that the Council hereby directs the staff to prepare, for Council consideration, an ordinance amending the Parks and Library Impact Fee Ordinance (G.M.C. Chapter 4.10) to revise the exemption for certain affordable housing projects, as set forth in the Joint Report to the Council and Housing Authority dated August 14, 2018, and per additional direction provided by the Council at the Joint Meeting of the same date.

Vote as Follows:

Ayes:

Noes:

Absent:

Abstain:

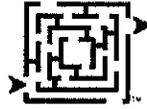
APPROVED AS TO FORM



CITY ATTORNEY

DATE 9/9/18

EXHIBIT 1



KEYSER MARSTON ASSOCIATES.
ADVISORS IN PUBLIC/PRIVATE REAL ESTATE DEVELOPMENT

MEMORANDUM

ADVISORS IN:
Real Estate
Redevelopment
Affordable Housing
Economic Development

SAN FRANCISCO
A. Jerry Keyser
Timothy C. Kelly
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David Doezema

LOS ANGELES
Kathleen H. Head
James A. Rabe
Gregory D. Soo-Hoo
Kevin E. Engstrom
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SAN DIEGO
Paul C. Marra

To: Peter Zovak, Deputy Director of Housing
City of Glendale

From: Kathleen Head

Date: April 23, 2018

Subject: Inclusionary Housing & Linkage Fee Programs

At your request, Keyser Marston Associates, Inc. (KMA) prepared a summary of affordable housing programs that could potentially be adopted by the City of Glendale (City). This summary focuses on the characteristics of the following program types:

1. Inclusionary Housing programs;¹
2. Residential Linkage Fee programs; and
3. Commercial Linkage Fee programs.

The following memorandum is organized as follows:

1. A description is provided of the affordable housing program that are currently available for use in Glendale.
2. The characteristics of Inclusionary Housing program and Residential Linkage Fee program characteristics are compared and contrasted. This comparative analysis includes:

¹The City has an existing Inclusionary Housing program that is currently not in force. This analysis discusses the potential for updating the existing program.

- a. The analyses that must be undertaken in support of the creation of both program types are identified;
 - b. The potential for fee revenue generation is described; and
 - c. Based on the characteristics of each type of program a recommendation is made on which course to pursue.
3. The basic parameters of an Inclusionary Housing program are described:
- a. Structuring issues are identified.
 - b. The options for fulfilling the defined affordable housing requirements are identified.
 - c. The issues associated with the potential for affordable housing to be produced are discussed. This discussion includes:
 - i. A description of the potential development constraints; and
 - ii. The potential impacts of the density bonus provided by California Government Code Sections 65915 – 65918 (Section 65915).
 - iii. Inclusionary Housing program design recommendations are provided.
4. A Commercial Linkage Fee program summary is presented, and is organized as follows:
- a. An overview of the Commercial Linkage Fee concept is provided.
 - b. The analytical methodology that must be used to establish Commercial Linkage Fees is described.
 - c. An order-of-magnitude estimate of the potential Commercial Linkage Fee revenue is provided.
 - d. Commercial Linkage Fee program design recommendations are provided.

TOOLS FOR ATTRACTING AFFORDABLE HOUSING UNITS

The 2012 termination of redevelopment in California eliminated the most significant financial resource used by local jurisdictions to assist in the production of affordable housing. In addition, over the past several years the amount of Federal funding for affordable housing has steadily decreased. The primary tools that are currently available to assist in the production of affordable housing are:

1. The HOME and Community Development Block Grant (CDBG) programs offered by the United States Department of Housing and Urban Development (HUD). These funding sources are appropriated to the City by HUD annually on a formulaic basis.
2. The Low-Income Housing Tax Program (Tax Credits) offered under Internal Revenue Code Section 42.
3. State funding sources such as the Affordable Housing and Sustainable Communities (AHSC) Program.
4. Affordable housing programs offered by the Community Development Commission of the County of Los Angeles, which are primarily focused on permanent supportive housing and homeless populations.
5. State and local bond issues targeted to the production of affordable housing and the provision of supportive services.

As Federal and State affordable housing program resources continue to decline, it has become increasingly important to identify alternative methods for providing affordable housing. Inclusionary Housing programs and Linkage Fee programs are tools that are commonly used by communities to add to the supply of affordable housing. Inclusionary Housing programs are directly tied to new residential development. Linkage Fee programs can be imposed on both new residential and commercial development.

INCLUSIONARY HOUSING PROGRAMS VS RESIDENTIAL LINKAGE FEE PROGRAMS

Both Inclusionary Housing programs and Residential Linkage Fee programs impose requirements on market rate residential development, and both have the fundamental objective of adding to the supply of affordable housing. However, the two types of programs approach the affordable housing issue in the following different ways:

1. Inclusionary Housing Programs:
 - a. Inclusionary Housing programs are focused on requiring the developers of new residential projects to fulfill affordable housing production requirements.
 - b. An Inclusionary Housing program's affordable housing requirements can be imposed in a variety of different ways, including on-site production within the market rate project, off-site production, payment of a fee in lieu of producing affordable housing, land donation, and the acquisition and rehabilitation of existing market rate units.
 - c. Inclusionary Housing programs can be used to fulfill a community's existing and future need for affordable housing.
2. Residential Linkage Fee Programs:
 - a. A Residential Linkage Fee must comply with the requirements imposed by the "Mitigation Fee Act".² This means that the Fee must be directly tied to the increased need for affordable housing created by new market rate residential development.
 - b. The affordable housing need created by market rate housing is directly tied to the demand for goods and services created by the residents in the new residential development projects. The concept is as follows:
 - i. As the needs for goods and services increases, the demand for low and moderate income workers increases.

² The Mitigation Fee Act is codified in California Government Code §66000 et seq.

- ii. The increased number of low and moderate income households creates demand for housing that is affordable to those households.
- c. Residential Linkage Fees are revenue based. They do not include an affordable housing production option.
- d. Residential Linkage Fees cannot be used to fulfill existing affordable housing needs within a community.

It is not advisable to adopt both an Inclusionary Housing program and a Residential Linkage Fee program, because that would likely impose an untenable financial burden on residential development. It is KMA's opinion that it would be more advantageous to create an Inclusionary Housing program than a Residential Linkage Fee program for the following reasons:

1. Inclusionary Housing programs have the flexibility to be focused on the development of affordable housing units and/or the collection of in-lieu fee revenues. Residential Linkage Fee programs must focus on revenue production.
2. In-lieu fee requirements can be structured to generate equal to or greater revenues than Residential Linkage Fee revenues, for the following reasons:
 - a. Because Inclusionary Housing programs can be used to meet existing and future affordable housing needs, there is more flexibility in setting the in-lieu fee amount than is available to Residential Linkage Fee programs.
 - b. In both Inclusionary Housing programs and Residential Linkage Fee programs, it is important to set the fee amount at a level that does not constrain development. As a practical matter, the financially feasible fee level does not vary between Inclusionary Housing programs and Residential Linkage Fee programs.
 - c. The fee amount that is ultimately applied will need to be set at the lesser of the legally supportable amount and the financially feasible amount. Given the additional flexibility accorded to Inclusionary Housing programs, it is extremely likely that the in-lieu fee supported in Glendale will be equal to or higher than the supportable Residential Linkage Fee.

INCLUSIONARY HOUSING PROGRAMS

Over 170 jurisdictions in California currently include an Inclusionary Housing program as a component in their overall affordable housing strategy. While the unifying foundation of these programs is the objective to attract affordable housing development, the characteristics of these programs vary widely from jurisdiction-to-jurisdiction. The following sections of this analysis describe typical characteristics of Inclusionary Housing programs.

Basic Inclusionary Housing Program Parameters

1. The vast majority of the California Inclusionary Housing programs impose affordable housing requirements on a mandatory basis. However, some programs limit the requirements to projects that are requesting a General Plan modification, a zone change, a density bonus, and/or other variances from the jurisdiction's zoning code requirements.
2. Recognizing that Inclusionary Housing programs are intended to reduce the unmet need for affordable housing, it is useful to base the requirements on the need for affordable housing identified by tools such as the RHNA.
3. As a result of the following court rulings and recent State legislation, Inclusionary Housing requirements can be imposed on both ownership housing and rental housing:
 - a. In 2015, the California Supreme Court ruled that Inclusionary Housing obligations that are imposed on ownership housing developments are land use restrictions that are a valid exercise of a jurisdiction's zoning powers.³
 - b. Rental Housing Development:
 - i. In 2009, the California Court of Appeal ruled that affordable housing requirements being imposed by the City of Los Angeles on rental housing development violated the Costa-Hawkins Rental

³ *California Building Industry Association v. City of San Jose*, 61 Cal 4th 435 (San Jose).

Housing Act.⁴ That ruling effectively acted to prohibit the imposition of Inclusionary Housing requirements on rental housing developments.

- ii. Assembly Bill (AB) 1505, which is otherwise known as the “Palmer Fix”, was signed into law in September 2017.⁵ This new legislation provides jurisdictions with the ability to adopt ordinances that impose Inclusionary Housing requirements on rental projects.
4. Historically, the courts have determined that the affordable housing requirements imposed by an Inclusionary Housing program cannot deprive property owners of “all economically beneficial use” of their property. However, since the courts have not defined all economically beneficial use, it is advisable to apply standards that are similar to those applied by other California jurisdictions that have implemented Inclusionary Housing programs.

Inclusionary Housing Program Structuring Issues

1. In California, the majority of Inclusionary Housing programs include a threshold project size below which projects are not subject to the affordable housing production requirements. Common thresholds fall between three and 10 units.
2. It can be advantageous to establish different affordable housing requirements for ownership and rental development:
 - a. The income and affordability restrictions for ownership housing projects are generally set at the moderate income level. This is done as a reflection of the fact that moderate income households are likely to have more discretionary income to devote to the ongoing costs associated with home ownership than that of lower income households.
 - b. Rental housing developments are well suited for affordable housing requirements that are set at the very-low and low income levels.

⁴ *Palmer/Sixth Street Properties L.P. v. City of Los Angeles*, 175 Cal. App. 4th 1396 (*Palmer*).

⁵ AB 1505 amends California Government Code Section 65850 and adds Section 65850.01.

3. The affordability standards imposed by Inclusionary Housing programs vary widely throughout California. The majority of programs have established standards in the range of 10% to 20% of the units in projects that will be subject to the requirements. However, the following policy issues must be considered:
 - a. For rental projects, AB 1505 provides the California Housing and Community Development Department (HCD) with a review right if the program imposes requirements that exceeds 15% percent of the units in the project, and/or the income level is set at a more stringent standard than 80% of the area median income.
 - b. An Inclusionary Housing program's income and affordability standards should be set at levels that do not constrain residential development. As a best practice, a financial feasibility analysis should be prepared as part of the Inclusionary Housing program's adoption process.
 - c. Inclusionary Housing requirements have a disproportionate impact on smaller projects, because there are fewer market rate units available to spread the impact created by the income and affordability standards. A sliding scale requirement can mitigate these impacts.
4. The length of the covenant period imposed on Inclusionary Housing units varies from jurisdiction-to-jurisdiction. The California Health and Safety Code Section 33413 standard of 45 years for ownership housing units and 55 years for rental units is commonly used. However, both shorter and longer covenant periods are imposed on Inclusionary Housing programs throughout California.

Inclusionary Housing Program Options

Inclusionary Housing programs focus on the production of affordable housing units by imposing specific requirements on new development. To comply with the findings in the *San Jose* case, and the requirements imposed by AB 1505, Inclusionary Housing programs must offer developers a range of options for fulfilling the affordable housing requirements. The following options are commonly provided:

1. For the on-site production of Inclusionary Housing units, the following wide range of requirements are imposed by jurisdictions throughout the State:

- a. On-site affordable housing units are sometimes required to be indistinguishable from the market rate units.
 - b. In some programs, the comparability is limited to the exterior improvements and the number of bedrooms included in the unit.
2. AB 1505 requires Inclusionary Housing requirements imposed on rental units to include an option to fulfill the affordable housing requirement in an off-site location. This option may be difficult to use in Glendale due to the built-out nature of the city. However, it is useful to understand the requirements commonly imposed under this option:
 - a. The site for the affordable housing units are required to be located within a defined distance from the market rate project.
 - b. Specific scope, design, building quality and maintenance standards are imposed on all off-site affordable housing development. The off-site development is required to reflect the housing needs of the local low and moderate income population.
 - c. Recognizing that the affordable housing product type will likely vary significantly from the market rate housing development, the required percentage of affordable housing units is sometime increased by a defined amount for projects that exercise an off-site option.
3. A fee can be paid in lieu of producing any affordable housing units. In some communities the in-lieu fee option is provided by right, while other communities require the developer to prove that producing the affordable housing units would create an untenable financial burden.
4. A land donation option is sometimes provided. For this to be successful, the land should be required to be located in an area that is conducive to residential development, and that does not already have an over concentration of affordable housing units.
5. Some Inclusionary Housing programs allow developers to fulfill the affordable housing requirements by acquiring an existing apartment project, rehabilitating

the units, and then imposing income and affordability covenants. This option should only be allowed under the following circumstances.

- a. The existing units in the project should be subject to substantial building code violations;
- b. All of the units should be required to have been vacant for a defined time period;
- c. The direct rehabilitation costs should be required to exceed 25% of the market value of the units after the rehabilitation is completed;⁶ and
- d. The rents charged for the designated affordable units in the project should be a defined percentage less the achievable market rents for the units.

Inclusionary Housing Production Potential

Development Constraints

There is a commonly held theory that the adoption of an Inclusionary Housing program will have a negative impact on the production of residential units. To test this theory KMA compiled building permit data from Pasadena, Santa Monica, West Hollywood and San Diego for the 10 years preceding and following the adoption of an Inclusionary Housing program.

The result of that analysis was that there is no evidence that the adoption of an Inclusionary Housing program had any impact on development activity. Housing production increased and decreased before and after Inclusionary Housing requirements were adopted. These swings are clearly attributable to factors unrelated to the imposition of affordable housing requirements.

⁶ Based on the California Health and Safety Code Section 33413(2)(A)(iv) definition of substantial rehabilitation.

Section 65915 Density Bonus

General Requirements

Section 65915 provides density bonuses based on the percentage of income-restricted units proposed to be included in a project. The affordability percentage is calculated against the number of units permitted under the property's base zoning standards.

The density bonuses and affordability requirements are shown in the following table:

	Income Standard		
	Very-Low	Low	Moderate ⁷
Minimum Density Bonus	20%	20%	5%
Affordable Housing %	5%	10%	10%
Maximum Density Bonus	35%	35%	35%
Affordable Housing %	11%	20%	40%

Section 65915 requires the affordable rents and sales prices to be set using the calculation methodologies defined in California Health and Safety Code Sections 50053 and 50052.5, respectively. The net affordable rents and sales prices that are currently applicable to Section 65915 density bonus projects are as follows:

	Income Standard		
	Very-Low	Low	Moderate
<u>Rental Units</u>			
Two-Bedroom Units	\$680	\$826	N/A
Three-Bedroom Units	\$750	\$912	N/A
<u>Ownership Units</u>			
Two-Bedroom Units	\$67,400	\$118,100	\$266,300
Three-Bedroom Units	\$73,200	\$129,600	\$294,200

⁷ Section 65915 only allows moderate income units to be used to obtain a density bonus for ownership housing projects.

Section 65915 Density Bonus Coupled with an Inclusionary Housing Requirement

The City of Glendale Housing Element 2014 – 2021 identifies the potential for between 3,219 and 3,352 units to be constructed. For illustrative purposes, based on the 3,285 unit average, and a 15% Inclusionary Housing requirement, 493 affordable units could be generated. However, it is important to take the following issues into account:

1. If an Inclusionary Housing program is enacted, it is very likely that some developers will use the Section 65915 density bonus to mitigate the impact created by the program's requirements. If the 35% maximum bonus is applied to the 3,285 unit potential growth estimate, residential development would total 4,435 units.
2. An Inclusionary Housing production requirement must be calculated against the number of units permitted under the property's base zoning standards. The affordable housing requirement cannot be applied to density bonus units.⁸ Thus, under the production scenario being discussed, residential production would include 3,942 new market rate units and 493 affordable housing units.

It is important to note that even if the City does not enact an Inclusionary Housing program, it is possible that some developers may apply for Section 65915 density bonuses. For analysis purposes, if it is assumed that the developers of all 3,285 units being evaluated apply for the 35% maximum Section 65915 density bonus, the following production of residential units would occur:

1. A total of 4,435 residential units would be developed.
2. To meet the affordability standards imposed by Section 65915, the following number of affordable units would need to be provided within the 4,435 unit total:
 - a. 362 very-low income rental or ownership units; or
 - b. 657 low income rental or ownership units; or
 - c. 1,314 moderate income ownership units.

⁸ *Latinos Unidos del Valle de Napa y Solano v. County of Napa*, 217 Cal. App. 4th 1160 (Napa).

Inclusionary Housing Program Recommendations

The following concepts should be considered in designing an Inclusionary Housing program:

1. The public good created by the provision of affordable housing should be balanced against the economic impact that will be experienced by property owners.
2. Any alternatives offered to the provision of on-site affordable housing units should be economically comparable to the net cost associated with providing the Inclusionary Housing units on site within proposed market rate projects.
3. A phase-in period should be provided to mitigate the impacts experienced by developers that purchased properties before the Inclusionary Housing program was adopted. For example:
 - a. The City of Pasadena phased in the Inclusionary Housing Ordinance under the following terms:
 - i. Projects that had received discretionary approvals prior to the adoption of the Inclusionary Housing Ordinance were exempted from the affordable housing requirements if the project was completed within the timeline identified in the discretionary approval.
 - ii. For the 12 months following the effective date of the Inclusionary Housing Ordinance, the affordable housing requirement was reduced from 15% to 6%.
 - b. The Linkage Fees recently adopted in the City of Los Angeles provided the following phase-in provisions:
 - i. All projects that had filed a complete entitlement application when the program was adopted were exempted from the Fee payment requirement.

- ii. The requirement is being phased in over a six-month period. This provides developers with lead time to negotiate land prices with full knowledge of the program requirements.

The key components that should be included in an Inclusionary Housing program are:

1. The minimum project size that will trigger the Inclusionary Housing requirements should be identified. As mentioned previously, minimum project size requirements commonly fall within the range of three to 10 units.
2. The income and affordability covenants that will be imposed on ownership and rental housing projects should be identified.
3. The length of the covenant periods that will be imposed on ownership and rental units should be established.
4. The options to the on-site production of the Inclusionary Housing units should be defined, and parameters for use of the options should be identified.
5. The most successful Inclusionary Housing programs are based on a clear set of administrative procedures. Consistent application of clear guidelines allows developers to factor in the programs' impacts as part of the due diligence process related to property acquisition:
 - a. An administrative procedures manual should be created and updated periodically to reflect changes in economic and demographic characteristics that occur over time.
 - b. Economic and demographic conditions will change over time. The parameters imposed by an Inclusionary Housing program should be reviewed and updated periodically. It may be advisable to time the updates to coincide with each Housing Element update.
6. A staffing plan should be created for managing the development process and the ongoing monitoring of the Inclusionary Housing units once they are built.

COMMERCIAL LINKAGE FEE PROGRAMS

A Commercial Linkage Fee is an Impact Fee that is subject to the requirements imposed by the Mitigation Fee Act. To that end, it is necessary to identify the impact that the development of new commercial uses in a community has on the demand for additional affordable housing. The fundamental concept is that the development of new commercial uses will generate new employment, and that a percentage of the new employees will create an increased demand for affordable housing units.

The purpose of a Commercial Linkage Fee is to apportion the financial responsibility for a part of the increased need for affordable housing to the commercial uses that create that additional demand. Commercial Linkage Fee revenue can only be used to meet the community's future needs for affordable housing. It is therefore necessary to identify the nexus between new commercial development and the increased need for affordable housing.

It is important to note that Commercial Linkage Fee programs are primarily found in Northern California jurisdictions. Currently, only four Southern California jurisdictions have enacted Commercial Linkage Fee programs.⁹

Overview

To adopt and implement a Commercial Linkage Fee program, it is necessary to document the linkages among:

1. The construction of new commercial uses;
2. The employees that work in the new commercial uses; and
3. The increased demand for affordable housing.

Since the jobs in commercial projects cover a range in compensation levels, and the workers' households range in size, housing needs are generated at all affordability levels. To fulfill the Mitigation Fee Act requirements, a nexus analysis must be prepared that quantifies the need for affordable housing created by each type of commercial use.

⁹ The City of Los Angeles recently adopted a Commercial Linkage Fee program. The cities of Santa Monica, West Hollywood and San Diego have existing programs.

Nexus Analysis Methodology

A nexus analysis must be prepared to determine the maximum Commercial Linkage Fee amount that can be assessed to each commercial building type. Some other key concepts that must be considered in a nexus analysis prepared in support of a Commercial Linkage Fee are:

1. An Impact Fee can only address the housing needs of a new population. It cannot be used to mitigate existing needs for affordable housing.
2. Commuting patterns influence the locations where the new employees will choose to live.
3. The development of new commercial uses can generate indirect employment growth, which in turn generates the need for additional affordable housing units.
4. Labor force participation can change over time. This impacts the number of persons per household that are members of the workforce.
5. Economic cycles influence the amount and type of commercial growth that will occur in an area over time.

A nexus analysis prepared in support of a Commercial Linkage Fee to be imposed by the City would be based on prototype retail and office developments of types that are anticipated to be developed in Glendale. The analysis methodology can be described as follows:

1. An estimate of the total number of employees working in each prototype project is made based on data pertaining to average employment densities.
2. Occupation and income information is compiled for the typical job types in the retail and office uses being studied, and then the information is used to calculate how many of those jobs pay compensation at the Extremely Low to Moderate Income levels.¹⁰

¹⁰ The data is provided for Los Angeles County by the California Employment Development Department and the United States Bureau of Labor Statistics.

3. Many workers are members of households where more than one person is employed, and household sizes vary. To account for this, factors are derived from the United States Census to translate the number of workers into households of various sizes in each income category.
4. The number of Extremely Low, Very-low, Low and Moderate Income households associated with the project is estimated. These numbers are divided by the prototype project's size to arrive at coefficients of housing units per square foot of building area.
5. In the last step, the identified number of households is multiplied times the net cost per square foot associated with producing housing units affordable to these income groups. This represents the maximum Commercial Linkage Fee amounts that can be charged for retail and office uses.

Potential Commercial Linkage Fee Revenue Generation

For reference purposes, KMA prepared an order-of-magnitude estimate of the Commercial Linkage Fee revenue that could potentially be generated in Glendale annually. The fee estimate is based on the following assumptions:

1. Between 2013 and 2017, 1,358,911 square feet of commercial space was developed in Glendale. This equates to an average of 271,782 square feet per year.
2. For analysis purposes, KMA applied the \$5.00 per square foot of building area Commercial Linkage Fee that was recently adopted by the City of Los Angeles.
3. When a \$5.00 per square foot fee is applied against 271,782 square feet of commercial development, the Commercial Linkage Fee revenue would total approximately \$1.36 million per year.

It is important to understand that the amount of commercial development in Glendale varies widely from year-to-year. For example, between 2013 and 2017, commercial development ranged from 530,704 square feet to 1,765,512 per square feet per year. Therefore, it should be assumed that Commercial Linkage Fee revenue will increase and decrease annually based on economic and market conditions.

It is also important to note that a Commercial Linkage Fee can only be assessed on net new development. As such, the Commercial Linkage Fee revenue will be reduced for any project that involves the demolition of existing commercial space.

Commercial Linkage Fee Recommendations

If the City decides to adopt a Commercial Linkage Fee, the following structuring issues should be considered:

1. The Commercial Linkage Fee amounts for retail and office projects should be set at the lesser of the following amounts:
 - a. The amounts supported by a nexus analysis prepared under the applicable requirements of the Mitigation Fee Act; or
 - b. Amounts that are deemed financially feasible based on analyses prepared as an adjunct to the nexus analysis; or
 - c. Amounts that do not constrain the competitiveness of Glendale to attract desired development types. In evaluating this factor, it is important to remember that only four Southern California jurisdictions currently impose Commercial Linkage Fee requirements.
2. The allowable uses of the Commercial Linkage Fee revenues should be identified when the program is adopted. One potential use of the funds is to provide financial assistance to the housing developed under the requirements imposed by an Inclusionary Housing program.
3. As a practical matter, the amount of Commercial Linkage Fee revenue that will be collected is completely dependent on the timing of commercial development. It may take an extended time period to collect sufficient revenue to be able to assist in the production of affordable housing units. However, it should be noted that the Mitigation Fee Act does not impose a specific deadline on the expenditure of Impact Fees that are collected.
4. A phase-in period should be provided to mitigate the impacts experienced by developers that purchased property before the obligations were adopted. The phase-in should mirror the period used in an Inclusionary Housing program.

5. The Commercial Linkage Fee amounts should be adjusted annually to keep pace with upward and downward changes in economic conditions. Commonly used adjustment indexes are:
 - a. The Building Cost Index published by the Engineering News Record;
 - b. The Construction Cost Index published by the Engineering News Record;
and
 - c. The Consumer Price Index published by the United States Bureau of Labor Statistics.

EXHIBIT 2



Inclusionary Housing Program Design Worksheet

This worksheet gives you the tools to design the basic structure of an inclusionary zoning ordinance (IZO). The worksheet helps you define need, outline a basic program structure, plan policy choices, describe incentives, and decide alternatives.

RESIDENTIAL

Part 1: Program Structure

- | | |
|--|---|
| <p>1. Geographic Coverage</p> <p><input type="checkbox"/> City Wide</p> <p><input type="checkbox"/> Targeted Areas</p>
<p>2. Type of Development</p> <p><input type="checkbox"/> Ownership</p> <p><input type="checkbox"/> Rental</p> <p><input type="checkbox"/> Both</p>
<p>3. Project Threshold Size</p> <p><input type="checkbox"/> All Projects</p> <p><input type="checkbox"/> 5-10 Units</p> <p><input type="checkbox"/> 10+ Units</p> <p><input type="checkbox"/> Tiered*</p> <p><input type="checkbox"/> Other _____</p>
<p>4. Percentage of Rental Units Which Must be Affordable (Pick One)**</p> <p><input type="checkbox"/> 5%</p> <p><input type="checkbox"/> 10%</p> <p><input type="checkbox"/> 15%</p> <p><input type="checkbox"/> 20%</p> <p><input type="checkbox"/> 25%</p> <p><input type="checkbox"/> 30%</p> <p><input type="checkbox"/> Other _____</p> | <p>Most ordinances apply to the entire jurisdiction. Some places with specific market conditions and needs target parts of the jurisdiction using planning area designations or economic and market metrics.</p>
<p>Depending on the market conditions of a given community, Inclusionary Housing policies sometimes only apply to rental or homeownership types of projects. In most communities, both types are included in the ordinance.</p>
<p>Also known as the "trigger," this is the minimum size of project that is covered by the policy. 10 units is the most common trigger size, but it can vary widely and is sometimes different for rental and ownership types of projects.</p>
<p>This is the overall percentage of units within an otherwise market-rate development that must be affordable to households earning below some defined income level. Most policies require between 10 and 20 percent of all units to be affordable.</p> |
|--|---|

*A Tiered threshold would trigger different IZO requirements based on project size. For example, under a tiered trigger, projects that have 5-10 units must have 5% affordable units with affordability levels at 30% AMI. 10-20 Units must have 15% affordable units with affordability levels at 45% AMI etc. A Tiered threshold would allow greater customization of the program.

**For rental projects, AB 1505 provides the California Housing and Community Development Department (HCD) with a review right if the program imposes requirements that exceed 15% occupation by households earning 80% or less of AMI and failed to do either of the following: meet at least 75% of its share of above moderate income RHNA or submit a general plan annual report.



Inclusionary Housing Program Design Worksheet

Part 2: Detailed Policy Choices

5. Percentage of Ownership Units Which Must be Affordable (Pick One)

- 5%
- 10%
- 15%
- 20%
- 25%
- 30%
- Other _____

6. Rental Unit Affordability Level (Pick One)**

- 0-30% AMI
- 31-50% AMI
- 51-80% AMI
- Combination of multiple affordability levels

7. Ownership Unit Affordability Level (Pick One)

- 51-80% AMI
- 81-100% AMI
- 101-120% AMI
- 121-140% AMI
- Combination of multiple affordability levels

8. Duration of Affordability Requirements (Rental) (Pick One)

- Less than 30 years
- 55 Years
- 99 Years or In-Perpetuity

9. Duration of Affordability Requirements (Owner) (Pick One)

- Less than 30 years
- 45 Years
- 99 Years or In-Perpetuity

10. Design Standards (Pick One)***

- Exact Comparability
- Flexibility
- Based on affordability level
- Multiple Combinations
- Different Standards for Rental and Ownership?

..... This is the income level that households must earn in order to be eligible to live in inclusionary units. Affordability is most commonly defined as a percentage of Area Median Income (AMI) as defined by HUD. For rental units, affordability levels below 60% AMI are typical and for ownership units affordability levels between 80% to 100% of AMI are typical. AMI in excess of 100% can also be targeted.

..... This is the period during which inclusionary units must be maintained as affordable through deed restrictions or affordability covenants. In order to stretch scarce public resources, many jurisdictions are opting for longer affordability periods. Industry standard is 55 years for rental and 45 years for owner.

..... Many places require exact comparability between market-rate units and inclusionary units to ensure equity for lower-income renters and homeowners. Other places have found it practical to allow some flexibility, particularly in case where luxury unit finishes would result in extraordinary spending on inclusionary units that could be better leveraged in other ways.

*** Density Bonus requires comparability.



Inclusionary Housing Program Design Worksheet

Part 3: Compliance Alternatives (Yes or No)

In- Lieu Fees

Off-Site Performance:

Partnerships with Nonprofits: Yes No

Land Dedication: Yes No

For practical and legal reasons, many places allow developers to pay fees in-lieu of building inclusionary units on-site. These in-lieu fees can be leveraged by local jurisdictions and nonprofit developers to build affordable housing. Off-site performance is another alternative where developers arrange for the units to be built off-site, typically by either partnering with another developer or by dedicating or donating land.

Part 4: Phase-In Options to Consider

A phase-in period should be provided to mitigate the impacts experienced by developers that purchased properties before the Inclusionary Housing program is adopted.

- All projects that file a complete entitlement application when the program is adopted are exempt.
- Projects that have received discretionary approvals prior to the adoption of the Inclusionary Housing Ordinance are exempt from the affordable housing requirements if the project is completed within the timeline identified in the discretionary approval.
- Phase in over a six-month period. This provides developers with lead time.
- Projects that have pulled a building permit are exempt.
- Other: _____

Part 5: Inclusionary Housing Interaction with Density Bonus

Density Bonus allows developers to build additional market-rate units to offset the reduced revenues from inclusionary units. Density bonuses are typically given as an increase in allowed dwelling units per acre (DU/A) or floor area ratio (FAR). Adoption of an Inclusionary Housing Program would incentives density bonus.



Commercial Linkage Fee Design Worksheet

A commercial linkage fee is a type of impact fee that can be charged based on an assessment of the extent to which new commercial development generates additional demand for affordable housing.

COMMERCIAL

Part 1: Program Structure

1. Geographic Coverage (Choose One)

- City Wide
- Targeted Areas

Most ordinances apply to the entire jurisdiction. Some places with specific market conditions and needs target parts of the jurisdiction using planning area designations or economic and market metrics.

2. Type of Development

- Hotel
- Office
- Retail
- Auto Dealership
- All Commercial

Depending on the market conditions of a given community, linkage fee can apply to specific or all commercial development.

3. Project Threshold Size

- Above _____ Sq ft

Projects below desired threshold would not pay linkage fee.

4. Commercial Linkage Fee (Choose One)

- Below \$5
- \$5
- Above \$5

The financially feasible Linkage Fee for Glendale is roughly \$5.



Commercial Linkage Fee Design Worksheet

Part 2: Phase-In Options to Consider

A phase-in period should be provided to mitigate the impacts experienced by developers that purchased properties before the Inclusionary Housing program is adopted.

- All projects that file a complete entitlement application when the program is adopted are exempt.
- Projects that have received discretionary approvals prior to the adoption of the Inclusionary Housing Ordinance are exempt from the affordable housing requirements if the project is completed within the timeline identified in the discretionary approval.
- Phase in over a six-month period. This provides developers with lead time.
- Projects that have pulled a building permit are exempt.
- Other: _____

