



Linkage Fees: Local Funding for Affordable Housing

Linkage fees are a way for local governments to collect monies from commercial development and/or high-end market rate residential development to be placed in a housing trust fund for others to use in building affordable housing. Cities such as Jupiter, Winter Park and Coconut Creek have all implemented linkage fees in Florida.

Commercial and high-end market rate residential development increase the need for employment of low wage workers who will be in need of affordable housing within the community. For example, in the San Francisco Bay area, one study shows that every high-tech job produces 4 other jobs across all income levels, including lower income jobs such as retail clerks and restaurant workers.¹ A similar report shows that manufacturing jobs in Florida produce 2.5 additional jobs.² High-end market rate residential development has a similar effect, in that residents of such development often demand services such as lawn care, maids, pool servicers and other lower-income jobs.

Linkage fees are upheld by both federal and state law³. The legal basis of linkage fees is the two-part Supreme Court test:

- The nexus between what the government wants the landowner to do and a legitimate state interest. Nollan v. California Coastal Comm'n, 483 U.S. 825 (1987); and
- The requirement on the private landowner must be related "in nature and extent to the impact of the proposed development." Dolan v. City of Tigard, 512 U.S. 374

Linkage fees are generally charged on a per square foot basis. Rates vary from less than \$1 per square foot to upwards of \$25 per square foot. Linkage fees are set based on a balance between funding needed to meet a locality's affordable needs and ensuring development remains financially feasible. Fees are usually paid upfront at permitting. However, some localities allow payments to be made over time. Some also have allowable exceptions and exemptions for smaller developments or certain types of development.⁴

The basic steps to establish a linkage fee include:

- **Nexus and Feasibility Studies** – in accordance with Nollan and Dolan, cities must first complete a nexus study to determine the actual impact of new development of various types on demand for affordable housing as well as the maximum feasible fees development types can support in light of existing fees and other factors.
- **Implementation Plan** – determine how the fees will be used, who will administer the fees, timing and basis for adjustments to the fees, and any alternatives offered for paying the fees (including developers actually building the housing)
- **Adoption** – Draft and adopt the actual ordinance and regulations for the fee. The ordinance and regulations should be reviewed annually and revised as economic conditions changed.

¹ See the 2012 report *Technology Works: High Tech Employment and Wages in the United States*. Bay Area Council Economic Institute at: <http://documents.bayareacouncil.org/TechReport.pdf>. Retrieved 5/3/2017.

² See multiplier information in the state publication *Building Up Florida Manufacturing: A Plan for Florida Jobs* at: <http://www.flgov.com/wp-content/uploads/2013/03/manufacturing-FINAL.pdf>. Retrieved 5/3/2017.

³ At the state level, linkage fees are upheld by Florida law, see J. Nicholas, *Practitioners Guide to Development Impact Fees*, Chicago: American Planning Association, 1991. Contractors and Builders v. Dunedin, 329 So.2d 314 (Fla.1976).

⁴ Avault, J., Lewis, G. and Consalvo, R. 2000. *Survey of Linkage Programs in Other U.S. Cities with Comparisons to Boston*. Boston Redevelopment Authority, Boston, MA; includes information on linkage fees in Boston, which allows payments over time and various exemptions to no charges on retail in Sacramento, CA due to hardship. At: <http://www.bostonplans.org/getattachment/8440bf23-afa7-40b0-a274-4aca16359252/>. Retrieved 5/3/2017.