

**Linkage Fee (aka Jobs Tax)**  
**Presentation by the San Diego Jobs Coalition**  
**With major support by BOMA San Diego**  
**& NAIOP San Diego**

**BACKGROUND**

- In 1990 the San Diego City Council approved the Commercial Housing Impact Fee, commonly referred to as the “linkage fee” under the premise that commercial buildings produce low-paying jobs which require a public subsidy for affordable housing.
- The fee was set at 1.5% of 1990 construction costs, was cut in half in 1996 to spur economic development and remains at that same level today.
- Affordable housing advocates have repeatedly tried to increase the fee including a 2011 proposal to gradually double the linkage fee (20% per year from 2013 – 2018) which failed on a 4-4 vote at the San Diego City Council.
- Since 2011 political dynamics have changed – the City Council expanded to 9 members as a result of the 2010 census and now has a 5-4 democratic majority due to a special election this past spring, with the new council member having voiced support for increasing the fee.
- Seizing on the opportunity, the San Diego Housing Commission brought forward a proposal earlier this summer to increase the fee immediately from 1.5% of 1990 construction costs to 1.5% of 2013 construction costs, as determined by their "nexus study" consultant, KMA. The impact is shown below:

Impact Of Linkage Fee Increase	Current Cost Per Square Foot	Cost W/Increased Fee	Current Cost on 100,000 Sq Ft Project	Cost W/Increased Fee	Immediate Fee Increase
OFFICES	\$1.06/sq ft	\$5.32/sq ft	\$106,000	\$532,000	\$426,000
HOTELS	\$.80 cents/sq ft	\$4.73/sq ft	\$64,000	\$473,000	\$409,000
RETAIL	\$.64 cents/sq ft	\$4.96/sq ft	\$64,000	\$496,000	\$432,000
MANUFACTURING	\$.64 cents/sq ft	\$3.05/sq ft	\$64,000	\$305,000	\$241,000
RESEARCH & DEVELOPMENT	\$.80 cents/sq ft	\$4.14/sq ft	\$80,000	\$414,000	\$334,000
WAREHOUSES	\$.27 cents/sq ft	\$2.28/sq ft	\$27,000	\$228,000	\$201,000

## THE JOBS COALITION

- In response to the 2011 proposed increase, NAIOP and BOMA led the effort to create the JOBS Coalition, a group of more than 25 businesses and trade organizations who came together in opposition to what the group deemed a tax increase aimed at the jobs creators of the region.
- The coalition successfully fought off the proposal to increase the fee in 2011, arguing that an alternative funding source should be found and utilized.
- The Coalition worked over the last two years to find a more stable, sufficient source or sources of funding that did not solely target jobs creation. Those ideas were presented, but ultimately rejected by the Housing Commission and, therefore, never got a fair hearing by the City Council.
- When the latest, more extreme proposal was released this past summer, the Coalition expanded to more than 50 business and trade organizations and led the fight to oppose this dramatic increase.
- The Coalition raised significant funds, primarily through NAIOP, BOMA and the San Diego County Apartment Association to support public opinion research, a legal analysis and technical review of the proposal and associated nexus study
- Despite overwhelming opposition to the proposal the City Council approved the fee increase 5-4 on Monday, November 4.

## NEXT STEPS – REFERENDUM AND LEGAL CHALLENGE

- Due to the extreme financial impact to the commercial real estate industry and regional economy, the JOBS Coalition has decided to pursue a two pronged strategy to legally challenge the fee and referend the City Council action.
- In order to referend, the Coalition must gather the signatures of 5% of the registered voters in the City of San Diego within 30 days of the final action (approximately 34,000 signatures). With error rates, we will likely need over 50,000 signatures to safely qualify the referendum. Once gathered, the clerk will certify, and if certified, the Council must docket the item for consideration within 10 days.
- At that hearing the Council has three options: 1) rescind their action; 2) place the item on the next regularly scheduled election (which would be the June 2014 primary); or 3) materially change their decision.
- We anticipate the ordinance will receive final approval by the Council on December 9th or 10th, with the 10 day clock expiring on December 24th or 25th, thus initiating the signature gathering period of 30 days. **12-11: The Council did indeed vote for final approval of the ordinance.**

## **BUDGET**

- The total projected budget for the two pronged strategy is approximately \$300,000.
  - The signature gathering is approximately \$250,000.
  - Approximately \$50,000 in costs for legal work to set up the committee, file our documents, ensure compliance with state and local campaign finance laws and also file litigation on the action by the council to preserve our rights to pursue remedy in the courts should the referendum fail in some manner.
- NAIOP, BOMA and the San Diego County Apartment Association have raised \$95,500 for the initial legal work and technical review that went into our official comments submitted for the hearing record. This preliminary work will be used to put together the previously mentioned litigation. It also went into public opinion research that was conducted by Competitive Edge Research and Communications to understand how the public viewed the issue.
- NAIOP San Diego, BOMA San Diego (through the BOMA International IDF), The San Diego Regional Chamber of Commerce and the Building Industry Association of San Diego County have raised or committed to approximately \$200,000.
- We are actively fundraising to cover the rest and would appreciate your chapters/organizations support for this important effort.

## **IMPACT & BENEFIT TO OTHER CHAPTERS/ORGANIZATIONS**

- There are many cities, primarily in Northern California, in the Bay Area, as well as Sacramento, portions of Los Angeles and Malibu that have these fees, or some variation of these fees in place and charged against commercial-industrial development.
- If the litigation is successful, it would allow for the potential invalidation of all of these fees and force jurisdictions, if locally challenged, to potentially have to put these fees to a public vote under the terms of Prop 26.
- The main issue for jurisdictions is the reliance of outdated nexus standards that loosely justify these fees.
- The Supreme Court, under a decision called "Koontz" appeared to set a higher standard of "nexus" for these kinds of fees, and if applied using the decision's rationale, it would place these types of fees in a category that would require a public vote as a tax.



## **Assault on San Diego Economy Cannot Stand**

U-T San Diego Editorial Board, November 6, 2013

There are 45,000 San Diegans on a waiting list for subsidized housing. “We have to do something,” said Interim Mayor Todd Gloria. So what did Gloria and the City Council do on Monday? The worst thing possible. They approved the phase-in of a monster fee increase, hundreds of thousands of dollars in some cases, on the very businesses responsible for creating jobs, growing the economy and helping those 45,000 people to afford better housing on their own.

Virtually every business group in town opposed the increase in the so-called linkage fee, the revenues from which are used to help finance the acquisition or development of housing for San Diegans with low or very low incomes. An outside legal expert said the increase is “illegal and unconstitutional.” The council’s own budget analyst called the fee hike excessive and said it will increase the cost of commercial, industrial and retail construction, which could in turn lead to developers deciding to build or expand outside the city limits where there is no such fee. Even the city’s Housing Commission, the agency responsible for affordable housing, declined to endorse the increase, deciding to merely forward the commission staff’s recommendations on to the council without a recommendation.

But the council’s Democratic majority, in its progressive wisdom, approved it anyway. “If you don’t want to pay the fee ... don’t create low-paying jobs,” lectured Councilman David Alvarez. “We need to just do it,” said Councilwoman Marti Emerald. Nobody even mentioned the fact that, in the 5-4 vote, the council also agreed to cede its authority over future fee increases to a Housing Commission staff formula.

We urge business leaders to take the fee increase directly to the voters through a referendum, and to challenge it in court. This assault on the still-fragile San Diego economy cannot stand.