

**ORDINANCE NO. \_\_\_\_\_ (2022 SERIES)**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN LUIS OBISPO, CALIFORNIA, AMENDING AMEND TITLE 4 OF THE CITY OF SAN LUIS OBISPO MUNICIPAL CODE TO ADD CHAPTER 4.60 TO ESTABLISH A COMMERCIAL LINKAGE FEE WITH AN EXEMPTION FROM ENVIRONMENTAL REVIEW (CEQA)**

**WHEREAS**, the City of San Luis Obispo (“City”) aims to provide sufficient levels of affordable housing for its residents; and

**WHEREAS**, development of new commercial projects encourages new residents to move to the City, and some of the employees needed to meet the needs of new commercial development earn incomes only adequate to pay for affordable housing; and

**WHEREAS**, because there is a need for additional affordable housing within the City, these employees might otherwise be forced to live in less-than-adequate housing within the City, pay a disproportionate share of their incomes to live in adequate housing within the City, or commute ever-increasing distances to their jobs from housing located outside of the City, thereby harming the City’s ability to attain goals articulated in the City’s General Plan; and

**WHEREAS**, the City Council of the City of San Luis Obispo conducted a web-based public hearing via teleconference on November 17, 2020, for the purpose of final adoption of the sixth cycle update to the General Plan Housing Element that included Program 2.13, which provides, “Update the Inclusionary Housing Ordinance, including Table 2A, based on findings and recommendations in the 2020 Affordable Housing Nexus Study and conduct further feasibility analysis in order to evaluate the City’s ability to provide affordable housing in the proportions shown in the Regional Housing Needs Allocation, per Policy 2.4”; and

**WHEREAS**, on April 21, 2020, City Council reviewed a Nexus Study prepared by David Paul Rosen and Associates (DRA) which confirmed that both market-rate residential and commercial development are creating demand for affordable housing that is not being met by the current housing market; and

**WHEREAS**, pursuant to Government Code Section 66001, the Nexus Study establishes that there is a reasonable relationship between the commercial linkage fees and the commercial development on which it is imposed and between the need for affordable housing and the commercial development projects against which the fee is charged; and

**WHEREAS**, in April 2021, the City hired Economic & Planning Systems, Inc. (EPS) to conduct a feasibility analysis of the City’s inclusionary housing requirements based on the findings and recommendations included in the Nexus Study; and

**WHEREAS**, the City may adopt and impose commercial linkage fees to mitigate the impact of commercial development projects on available affordable housing in the City under the authority of Sections 66000 et seq. of the California Government Code (“Mitigation Fee Act”); and

**WHEREAS**, the commercial linkage fees will be placed in the City’s Affordable Housing Fund and the fees will be used solely to increase the supply of housing affordable to extremely low, very low, low, and moderate-income residents; and

**WHEREAS**, the State of California Office of Housing and Community Development, on September 3, 2021, certified the City of San Luis Obispo’s 6<sup>th</sup> Cycle General Plan Housing Element as in full compliance with State Law; and

**WHEREAS**, A Study Session was held by City Council on March 1, 2022, to review staff’s recommended amendments to Chapter 17.138, that were derived from the Nexus Study and the EPS financial analysis; and

**WHEREAS**, the City Council of the City of San Luis Obispo conducted a public hearing in the Council Chamber of City Hall, 990 Palm Street, San Luis Obispo, California on July 19, 2022, for the purpose of introducing an ordinance to implement commercial linkage fees; and

**WHEREAS**, notices of said public hearing were made at the time and in the manner required by law.

**WHEREAS**, the City Council has duly considered all evidence, including the testimony of the applicant, interested parties, and the evaluation and recommendations by staff.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of San Luis Obispo as follows:

**SECTION 1. Findings.** Based upon all the evidence, the City Council makes the following finding:

1. All recitals are true and correct and are incorporated herein by reference.
2. The proposed amendments to Title 4 are also consistent with the 6<sup>th</sup> Cycle Housing Element and implements program 2.13.

**SECTION 2. Environmental Determination.** The proposed amendments to the Municipal Code Title have been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the state CEQA Guidelines, and the environmental regulations of the City. Specifically, approval of fees and/or charges is not a “project” for the purposes of CEQA, pursuant to CEQA Guidelines, Section 15378(b)(4); and even if considered a “project” under CEQA, would be exempt from CEQA review pursuant to CEQA Guidelines Section 15061(b)(3), the “Common Sense” exemption, because the proposed ordinance will have no possibility of a significant effect on the environment and will not cause impacts.

**SECTION 3. Action.** The City Council hereby adds Chapter 4.60, entitled “Commercial Linkage Fees”, to the San Luis Obispo Municipal Code as set forth and incorporated herein.

### **Chapter 4.60: Commercial Linkage Fees**

Sections:

- 4.60.010 – Purpose.
- 4.60.020 – Definitions.
- 4.60.030 – Fees to be set by resolution.
- 4.60.040 – Payment of fees.
- 4.60.050 – Exemptions.
- 4.60.060 – Disposition and use of fees.
- 5.60.070 - Enforcement

#### **4.60.010 – Purpose**

- A. Encourage the development and availability of housing affordable to a broad range of households with varying income levels within the city as mandated by State law, California Government Code Section [65580](#) and following.
- B. Offset the demand for affordable housing that is created by new development and mitigate environmental and other impacts that accompany new commercial development by protecting the economic diversity of the City’s housing stock; reducing traffic, transit and related air quality impacts by allowing more residents to live near their workplace; promoting jobs/housing balance; and reducing the demands placed on transportation infrastructure in the region.
- C. Promote the City’s policy to provide an adequate number of affordable housing units to the City’s housing stock in proportion to the existing or projected need in the community, as identified by the Housing Element.
- D. Support the Housing Element goal of assisting in the development of new housing that is affordable at all income levels and the policies and actions that support this goal.
- E. Encourage the production of the very low, low, and moderate income units planned for in the Housing Element of the General Plan.

**4.60.020 – Definitions**

For the purposes of this Chapter, the following words and phrases shall have the meaning set forth below.

- A. “Administrator” means Below Market Rate Program Administrator which may either be the City itself or a third party administrator acting as an agent for the City in connection with all aspects of the operation of the City's Below Market Rate program pursuant to an Agreement entered into between the City and the Administrator, as such agreement may be amended or replaced from time to time.
- B. “Affordable housing agreement” means a written agreement between a builder and the City as provided by Section 17.138.080.B.
- C. “Below Market Rate (BMR)” means that the affordability level of an inclusionary unit is below the cost of what a current market rate unit would be and is affordable to extremely low-, very low-, low-, or moderate-income households.
- D. “Commercial development project” shall mean development projects which result in the subdivision of land and/or the construction or conversion of structures for the purpose of conducting business, including but not limited to hotels, retail sales, restaurants, offices, gas stations, research and development uses and manufacturing.
- E. “Commercial linkage fee” means the fee paid by applicant of commercial development projects to mitigate the impacts that such developments have on the demand for affordable housing in the City.
- F. “First approval” means the first discretionary approval to occur with respect to a commercial development project or, for commercial projects not requiring a discretionary approval, the issuance of a building permit.
- G. “Inclusionary housing plan” means a plan for a residential development project submitted by an applicant as provided by Section 17.138.070.
- H. “Planning permit” means any discretionary approval of a residential or mixed use project, including but not limited to a comprehensive or specific plan adoption or amendment, rezoning, tentative map, parcel map, conditional use permit, variances, or architectural review.

**4.60.030 – Fees to be Set by Resolution**

The amount of commercial linkage fee imposed on applicants of commercial development projects shall be determined by resolution adopted by the City Council and may be adjusted annually by the percentage change in the Consumer Price Index for all Urban Consumers (CPI-U). Commercial linkage fees shall not exceed the cost of mitigating the impact of the commercial development projects on the availability of affordable housing in the city.

**4.60.040 – Payment of Fees**

- A. A commercial linkage shall be applied to commercial development projects involving new construction and additional gross square footage to existing commercial buildings. If a development is exempt from the fee at initial construction, but later converts to a commercial development project, the converted square footage will be subject to the fee.
- B. Any commercial linkage fee shall be paid in full prior to the issuance of the first building permit for the commercial development project subject to the fee or at a time otherwise specified by Council Resolution. If no building permit is required, the fee shall be paid before a conversion of use may take place. The fee shall be calculated based on the fee schedule in effect at the time the building permit is issued as adopted by the City Council.

**4.60.050 – Exemptions**

- A. The following commercial projects are exempt from the provisions of this chapter.
  - 1. City buildings and facilities and those public facilities entitled to an exemption under state law.
  - 2. Schools, places of public assembly, cultural institutions, childcare facilities, nursing homes, residential care facilities, and skilled nursing facilities.
  - 3. Projects which replace or restore a structure damaged or destroyed by fire, flood, earthquake, or other disaster within three years prior to the application for the new structure(s) (see Chapter 17.92 Nonconforming Structure).

**4.60.060 – Disposition and Use of Fees**

Commercial linkage fees collected shall be deposited into the Affordable Housing Fund. The fund shall be administered by the Finance Director and shall be used exclusively to provide funding for the provision of affordable housing and for reasonable costs associated with the development of affordable housing, at the discretion of the Council.

**4.60.070 – Enforcement**

- A. Payment of the commercial linkage fee is the obligation of the builder of a commercial development project. The City may institute any appropriate legal actions or proceedings necessary to ensure compliance herewith, including, but not limited to, actions to revoke, deny, or suspend any permit or development approval.
- B. The City Attorney and Community Development Director shall be authorized to enforce the provisions of this chapter and all affordable housing agreements, regulatory agreements, by civil action and any other proceeding or method permitted by law.

- C. Failure of any official or agency to fulfill the requirements of this chapter shall not excuse any builder or owner from the requirements of this chapter. No permit, license, map, or other approval or entitlement for a commercial development project shall be issued, including without limitation a final inspection or certificate of occupancy, until all applicable requirements of this chapter have been satisfied.
- D. The remedies provided for in this chapter shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relieve to which it otherwise would be entitled under law or equity.

**INTRODUCED** on the \_\_\_\_ day of \_\_\_\_\_, 2022, AND FINALLY ADOPTED by the Council of the City of San Luis Obispo on the \_\_\_\_ day of \_\_\_\_\_, 2022, on the following vote:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
Mayor Erica A. Stewart

ATTEST:

\_\_\_\_\_  
Teresa Purrington,  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
J. Christine Dietrick,  
City Attorney

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the official seal of the City of San Luis Obispo, California, on \_\_\_\_\_.

\_\_\_\_\_  
Teresa Purrington,  
City Clerk

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