



SAN FRANCISCO PLANNING DEPARTMENT

September 27, 2019

Ms. Angela Calvillo, Clerk
Honorable Supervisor Haney
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

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**Re: Transmittal of Planning Department Case Number 2019-011975PCA:
Jobs Housing Linkage Fee
Board File No. 190548
Planning Commission Recommendation: Approval**

Dear Ms. Calvillo and Supervisor Haney,

On September 19, 2019, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance, introduced by Supervisor Haney that would amend Planning Code to modify the Jobs Housing Linkage Fee. At the hearing the Planning Commission recommended approval of the Ordinance.

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c)(2) and 15378 because they do not result in a physical change in the environment.

Please find attached documents relating to the actions of the Commission. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron D. Starr".

Aaron D. Starr
Manager of Legislative Affairs

cc:
Austin M. Yang, Deputy City Attorney
Courtney McDonald, Aide to Supervisor Haney
Erica Major, Office of the Clerk of the Board

Attachments:
Planning Commission Resolution
Planning Department Executive Summary



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 20522

HEARING DATE SEPTEMBER 19, 2019

Project Name: **Jobs Housing Linkage Fee**
Case Number: **2019-011975PCA** [Board File No. 190548]
Initiated by: Supervisor Haney / Introduced May 14, 2019; Substituted September 10, 2019
Staff Contact: **Diego Sanchez**, Legislative Affairs
diego.sanchez@sfgov.org, 415-575-9082
Reviewed by: Aaron D Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362

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RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD MODIFY THE JOBS HOUSING LINKAGE FEE BY ALLOWING INDEXING OF THE FEE, ADDING OPTIONS FOR COMPLYING WITH THE FEE, REQUIRING PAYMENT OF THE FEE NO LATER THAN AT THE TIME OF FIRST CERTIFICATE OF OCCUPANCY, DEDICATING FUNDS FOR PERMANENT SUPPORTIVE HOUSING AND THE PRESERVATION AND ACQUISITION OF AFFORDABLE HOUSING, AND TO REMOVE THE MONETARY LIMIT FOR THE SMALL SITES FUNDS UNDER THE INCLUSIONARY HOUSING PROGRAM; ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, PLANNING CODE SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND PLANNING CODE SECTION 101.1.

WHEREAS, on May 14, 2019 Supervisor Haney introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 190548, which would amend the Planning Code to update the Jobs Housing Linkage Fee;

WHEREAS, on July 9, 2019 Supervisor Haney introduced a proposed Resolution under Board File Number 190770 to extend the prescribed time within which the Planning Commission may render its decision on an Ordinance (File No. 190548) amending the Planning Code to update the Jobs Housing Linkage Fee which would amend the Planning Code to update the Jobs Housing Linkage Fee by 90 days;

WHEREAS, on September 10, 2019 Supervisor Haney introduced a substitute Ordinance under Board of Supervisors (hereinafter "Board") File Number 190548, which would amend the Planning Code to modify the Jobs Housing Linkage Fee by allowing indexing of the Fee, adding options for complying with the Fee, requiring payment of the Fee no later than at the time of first certificate of occupancy, dedicating funds for permanent supportive housing and the preservation and acquisition of affordable housing, and to remove the monetary limit for the Small Sites Funds under the Inclusionary Housing program;

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on September 19, 2019; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c) and 15378; and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the Custodian of Records, at 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

WHEREAS, the Planning Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; and

MOVED, that the Planning Commission hereby **approves** the proposed ordinance.

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The City needs to periodically analyze its development impact fees to assure that they reflect the latest relationship between non-residential uses and the demand for goods and services they create.
2. Updating the JHLF rate is important given that the fee rate has not been analyzed holistically in approximately two decades.
3. **General Plan Compliance.** The proposed Ordinance and the Commission's recommended modifications are consistent with the following Objectives and Policies of the General Plan:

HOUSING ELEMENT

OBJECTIVE 7

SECURE FUNDING AND RESOURCES FOR PERMANENTLY AFFORDABLE HOUSING, INCLUDING INNOVATIVE PROGRAMS THAT ARE NOT SOLELY RELIANT ON TRADITIONAL MECHANISMS OR CAPITAL.

Policy 7.1

Expand the financial resources available for permanently affordable housing, especially permanent sources.

Updating and increasing the Jobs-Housing Linkage Fee will help expand the financial resources available for permanently affordable housing.

WESTERN SOMA AREA PLAN

OBJECTIVE 3.5

ENSURE THAT NEW RESIDENTIAL DEVELOPMENTS SATISFY AN ARRAY OF HOUSING NEEDS WITH RESPECT TO TENURE, UNIT MIX AND COMMUNITY SERVICES.

Policy 3.5.5

Provide through the permit entitlement process a range of revenue-generating tools including impact fees, public funds and grants, assessment districts, and other private funding sources, to fund community and neighborhood improvements.

Updating and increasing the Jobs-Housing Linkage Fee will help provide new resources to fund community improvements such as affordable housing.

MISSION AREA PLAN

OBJECTIVE 2.1

ENSURE THAT A SIGNIFICANT PERCENTAGE OF NEW HOUSING CREATED IN THE MISSION IS AFFORDABLE TO PEOPLE WITH A WIDE RANGE OF INCOMES.

Policy 2.1.2

Provide land and funding for the construction of new housing affordable to very low- and low-income households.

An updated and increased Jobs-Housing Linkage Fee will contribute new resources to construct affordable housing, including for very low- and low-income households.

OBJECTIVE 2.3

ENSURE THAT NEW RESIDENTIAL DEVELOPMENTS SATISFY AN ARRAY OF HOUSING NEEDS WITH RESPECT TO TENURE, UNIT MIX AND COMMUNITY SERVICES.

Policy 2.3.5

Explore a range of revenue-generating tools including impact fees, public funds and grants, assessment districts, and other private funding sources, to fund community and neighborhood improvements.

Updating and increasing the Jobs-Housing Linkage Fee will help provide new resources to fund community improvements such as affordable housing.

BAYVIEW HUNTERS POINT AREA PLAN

OBJECTIVE 6

ENCOURAGE THE CONSTRUCTION OF NEW AFFORDABLE AND MARKET RATE HOUSING AT LOCATIONS AND DENSITY LEVELS THAT ENHANCE OVERALL RESIDENTIAL QUALITY OF BAYVIEW HUNTERS POINT.

Policy 6.1

Encourage development of new affordable ownership units, appropriately designed and located and especially targeted for existing Bayview Hunters Point residents.

An updated and increased Jobs-Housing Linkage Fee will augment the resources available to construct affordable housing, including ownership units, in the Bayview Hunters Point neighborhood.

4. **Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

The proposed Ordinance would not have a negative effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail because the Ordinance proposes to modify the fee rate and implementation procedures for a development impact fee on office and laboratory uses.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

The proposed Ordinance would have a beneficial effect on housing and neighborhood character as the new resources for affordable housing it can generate will help preserve the cultural and economic diversity of the City's neighborhoods.

3. That the City's supply of affordable housing be preserved and enhanced;

The proposed Ordinance would have a beneficial effect on the City's supply of affordable housing because it proposes to increase the resources available to develop and preserve affordable housing.

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking because it proposes to amend development impact fee rates and implementation procedures.

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired as the Ordinance proposes to modify development impact fees on office uses.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake as the proposed Ordinance seeks to modify development impact fee rates and their implementation procedures.

7. That the landmarks and historic buildings be preserved;

Because the proposed Ordinance would modify development impact fee rates and implementation procedures, it would not have an adverse effect on the City's Landmarks and historic buildings.

8. That our parks and open space and their access to sunlight and vistas be protected from development;

The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas because the Ordinance proposes to modify development impact fee rates and their implementation procedures.

5. **Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby APPROVES the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on September 19, 2019.



Jonas P. Ionin
Commission Secretary

AYES: Fung, Koppel, Melgar, Moore, Richards

NOES: None

ABSENT: Johnson

ADOPTED: September 19, 2019



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Amendment

HEARING DATE: SEPTEMBER 19, 2019
EXTENDED DEADLINE: NOVEMBER 13, 2019

Project Name: Jobs Housing Linkage Fee
Case Number: 2019-011975PCA [Board File No. 190548]
Initiated by: Supervisor Haney / Introduced May 14, 2019
Staff Contact: Diego Sanchez, Legislative Affairs
diego.sanchez@sfgov.org, 415-575-9082
Reviewed by: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362
Recommendation: **Approval with Modifications**

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PLANNING CODE AMENDMENT

The proposed Ordinance would amend the Planning Code to modify the Jobs Housing Linkage Fee by allowing indexing of the fee, adding options for complying with the fee, requiring payment of the fee no later than at the time of first certificate of occupancy, dedicating funds for permanent supportive housing and the preservation and acquisition of affordable housing, and to remove the monetary limit for the Small Sites Funds under the Inclusionary Housing Program.

The Way It Is Now:

Fee Rates

1. The Jobs Housing Linkage Fee for Office uses is currently \$28.57/gross square foot (gsf).
2. The Jobs Housing Linkage Fee for Research and Development (Laboratory) uses is currently \$19.04/gsf.

Fulfilling the JHLF Requirements

3. To fulfill the Jobs Housing Linkage Fee (JHLF) requirements, Development Projects have the following three options:
 - a. contribute a sum or land in value at least equivalent to the in-lieu fee to one or more housing developers to construct housing units;
 - b. pay the in-lieu fee; or
 - c. combination of the first two.
4. Development Projects within the Central SOMA Special Use District may satisfy all or a portion of the JHLF requirements via dedication of land to the City for the purpose of constructing affordable housing units.

Implementation Procedures

5. For Development Projects subject to the JHLF, the fee rate owed is the fee rate in place at time of site permit issuance.

6. The Mayor's Office of Housing and Community Development (MOHCD) annually adjusts the JHLF rate according to an indexing methodology based on housing construction costs and the price of housing in the City.
7. The JHLF Fee Schedule includes rates for Integrated PDR and Research and Development uses.

MOHCD Managed Housing Funds

8. MOHCD does not currently designate a separate account for 10% of all fees that it receives under the JHLF to be used to support the acquisition and rehabilitation of rent restricted affordable rental housing
9. MOHCD does not currently designate a separate account for 30% of all fee that it receives under the JHLF to be used to support the development of permanent supportive housing
10. The Small Sites Fund that MOHCD manages requires MOHCD to divert 10% of all Affordable Housing Fees received under Planning Code Section 415 to the Small Sites Fund until the Small Sites Fund reaches a total of \$15 million, at which point MOHCD stops designating fees to the Small Sites Fund.

The Way It Would Be:

Fee Rates

1. The Jobs Housing Linkage Fee for Office uses would be \$69.60/gsf.
2. The Jobs Housing Linkage Fee for Laboratory uses would be \$46.43/gsf.

Fulfilling the JHLF Requirements

3. The first option to fulfill JHLF requirements would be to contribute land of equivalent value to the in-lieu fee to MOHCD. The second and third options would remain unchanged.
4. Development Projects anywhere in the City may fulfill their JHLF requirements via land dedication to the City for the purpose of constructing affordable housing units.

Implementation Procedures

5. Development Projects subject to the JHLF, receiving a Planning Commission or Planning Department approval on by December 31, 2019 stating that the project would be subject to any new JHLF adopted prior to procurement of a Certificate of Occupancy or a Final Completion, and not having procured a Certificate of Occupancy or Final Completion as of the effective date of the proposed Ordinance would be required to pay the difference between the amount of JHLF fees assessed at the time of site permit issuance and any additional amounts due under the new JHLF before the City issues a Certificate of Occupancy or Final Completion.
6. The Controller would annually adjust the JHLF rate based on the Annual Infrastructure Construction Cost Inflation Estimate.
7. The JHLF Fee Schedule would eliminate a rate for Integrated PDR uses, which are no longer defined in the Planning Code or allowed in any zoning district and rename the Research and Development use to "Laboratory" use.

MOHCD Managed Housing Funds

8. MOHCD would be required to establish an account into which 10% of all fees that it receives under the JHLF would be used to support the acquisition and rehabilitation of rent restricted affordable rental housing.

9. MOHCD would be required to designate a separate account for 30% of all fee that it receives under the JHLF to be used to support the development of permanent supportive housing
10. The size of the Small Sites Fund would no longer be limited to \$15 million and MOHCD would be allowed to designate larger amounts to the Small Sites Fund

BACKGROUND

San Francisco has applied development impacts fees on new non-residential uses since the mid 1980's. The Office Affordable Housing Production Program (OAHP), in effect until the mid-1990's, required office developers to either build affordable housing or pay an in-lieu fee. The magnitude of the fee was established in relation to the costs of offsetting the demand for housing that new office employment created.

The Jobs-Housing Linkage Fee (JHLF), in place since 1996, is the successor to the OAHP. The JHLF applies to development projects with environmental evaluation applications filed after January 1, 1999 that increase by 25,000 or more gross square feet (gsf) of any combination of Entertainment, Hotel, Integrated PDR, Office, Research and Development, Retail and/or Small Enterprise Workspace uses. Each of these use types has a different JHLF rate. Once the Planning Department has determined the net additional gsf of each use type subject to the JHLF, a project sponsor has three options to fulfill its JHLF requirements. The first is to contribute a sum or land in value at least equivalent to the in-lieu fee to one or more housing developers to construct housing units; the second is to pay the in-lieu fee; and the third is some combination of the first two. When an in-lieu fee option is elected, the fees typically become due prior to the issuance of the first construction document.

ISSUES AND CONSIDERATIONS

Updating and increasing the JHLF

The JHLF rate for each applicable use type is updated yearly. Planning Code Section 413.6 tasks the Mayor's Office of Housing (MOH) with annually adjusting the fee rate according to an indexing methodology based on housing construction costs and the price of housing in the City. This method is published in MOH's Procedures Manual for the Residential Inclusionary Affordable Housing Program. Only the JHLF and the Inclusionary Affordable Housing Fee rates are adjusted by MOH. Other development impact fees are adjusted by the Controller. In typical years the JHLF rate, like other development impact fee rates, increases above the previous year's rate.

The JHLF rate may also be adjusted apart from annual indexing. For these increases the City relies on both legal and economic analyses to inform any changes. The first analysis, a legal requirement pursuant to the California State Mitigation Fee Act,¹ is a Jobs Housing Nexus Analysis. The previous Jobs Housing Nexus Analysis the City commissioned was published in 1997. The Jobs Housing Nexus Analysis, like all nexus analyses, must be found consistent with the six requirements of the California State Mitigation Fee Act. In meeting those six requirements, the May 2019 Jobs Housing Nexus Analysis established the relationship between construction of new non-residential buildings, the commensurate added employment and the increased demand for affordable housing. It also established the basis for

¹ Government Code Section 66000, (Mitigation Fee Act)

calculating the JHLF rate that could be imposed on non-residential projects in a manner satisfying State law.² This Nexus did not, however, provide recommendations on precise JHLF rates.

The May 2019 Nexus includes notable methodological changes and updates to underlining data for the calculations, resulting in a nexus that legally justifies a significantly higher rate than that of the 1997 study. The most notable methodological change was to assume that all workers in new commercial buildings would live in San Francisco. This contrasts with the 1997 study which assumed that 45% of workers would live elsewhere and commute into the City. This change is consistent with other recently completed studies statewide. Other updates include reflecting the modestly higher density of office workers in contemporary buildings based on new analysis (240 gsf per worker (2019) vs 276 gsf per worker (1997)) and updates to the income distribution of workers in the various industry sectors. The compounding effect of these changes with the substantially higher cost of building affordable housing today compared to 1997 results in a maximum *legally justified* nexus amount that is substantially higher than that from the 1997 study.

The second analysis the City relies on to adjust JHLF rates, or any development impact fee, is a feasibility assessment. The purpose of a feasibility assessment is to understand how different fee rates affect the financial feasibility of prototypical development projects that could be expected in different conditions in San Francisco, including buildings of different scales and locations. Underlying this assessment is the policy rationale that new development fee rates should be set to typically provide for reasonable financial feasibility. A consultant feasibility assessment was commissioned by the City this year to analyze how JHLF rate increases for six office development prototypes, including project typologies currently in the pipeline, affect their feasibility.³ This assessment found that under certain market conditions, including an assumption of reduced land values and construction costs as well as future increased commercial rents, some modeled office prototypes remain feasible with up to a \$10/gsf increase in the JHLF. This would result in a \$38.57/gsf total JHLF rate for office projects. Planning Department Staff is unaware of any feasibility assessments analyzing Laboratory uses.

Imposing development impact fee rates above those found feasible would postpone or halt the construction of a Development Project. Any public benefit revenue or public improvements that were expected from such projects would not materialize and would necessarily be postponed or abandoned until such time as market conditions or policy changes make the rates feasible. This is particularly notable for area plans, like the recently approved Central SOMA Plan, that depend on development impact fees and other revenue mechanisms related to new development for financing public benefits and infrastructure. In that case, hundreds of millions of dollars' worth of public recreation and open space projects, pedestrian and bicycle safety improvements, cultural preservation, *and* affordable housing

² Jobs Housing Nexus Analysis, May 2019:

<https://sfgov.legistar.com/View.ashx?M=F&ID=7297881&GUID=36D31872-977F-4EC2-A2FE-CDD21E62D99F>

³ Jobs Housing Linkage Fee Update Development Feasibility Assessment, June 2019:

<https://sfgov.legistar.com/View.ashx?M=F&ID=7297879&GUID=57038818-AA04-4FBD-9854-8F07B79963E8>

would not materialize with an infeasible rate. Similarly, increasing development impact fees for uses without understanding the maximum feasible rate is not a fully informed action.

Applying new JHLF rates to projects with site permits

Under current code standards, JHLF rates imposed on a Development Project are the rates in place when the Development Project secures its site permit. This is standard for most development impact fees and provides a measure of certainty for Development Project feasibility. Diverging from this practice should be done with care, especially if the goal is to apply increased rates to Development Projects on the verge of securing site permits. This would include many projects in the Central SOMA Area Plan. For example, when selecting dates tied to Planning Commission approvals or Ordinance effective dates to establish new rate application, it makes sense to select dates that are far into the future given the propensity for delays. This can close loopholes and avoid unintended consequences and confusion when collecting the JHLF.

Racial and Social Equity Analysis

Assuming the rates are financially feasible, updating and increasing the JHLF for Office and Laboratory uses augments available resources that fund affordable housing projects throughout the City. Many of these projects will be in neighborhoods with a large presence of communities of color, such as the SOMA, Mission and Bayview/Hunters Point. This aligns with the Area Plan goals that call for providing additional resources for affordable housing and for developing affordable housing in these neighborhoods.⁴ By providing new resources to expand the stock of affordable housing in communities of color the proposed Ordinance works to further racial and social equity.

General Plan Compliance

The proposed Ordinance is in alignment with the relevant General Plan Objectives and Policies. For example, by updating and increasing the JHLF the Ordinance will help expand the financial resources available for permanently affordable housing, which is a policy found in the Housing Element.

Implementation

The Department has determined that this Ordinance will not impact our current implementation procedures.

RECOMMENDATION

The Department recommends that the Commission *approve with modifications* the proposed Ordinance and adopt the attached Draft Resolution to that effect. The Department's proposed modification is as follows:

1. Amend JHLF rates according to feasibility assessments.

⁴ Mission Area Plan; Objective 2.1, Policy 2.1.2 and Objective 2.3, Policy 2.3.5; Bayview Hunters Point Area Plan, Objective 6, Policy 6.1; Western SOMA Area Plan Objective 3.5, Policy 3.5.5.

BASIS FOR RECOMMENDATION

The Department supports the overarching aims of the Ordinance. The City needs to periodically analyze its development impact fees to assure that they reflect the latest relationship between non-residential uses and the demands they create. Updating the JHLF rate is important given that the fee rate has not been holistically analyzed in approximately two decades. Further refining how Development Projects may fulfill their JHLF requirements and how the fee program is implemented, including who and how the fee rate is set, are also important amendments. The Department does have concerns about particular proposed changes and is making the following recommendation:

Recommendation 1: Amend JHLF rates according to feasibility assessments. Development impact fee rates should be set in accordance with feasibility assessments. This assures that the City captures as much value from new Development Projects without jeopardizing their viability. In this way the City gains both the new Development Project and associated impact fees to fund public infrastructure and benefits. The City has a feasibility assessment for Office uses that recommends a rate no higher than \$38.57/gsf. Unless a newer or separate study can demonstrate a higher feasible rate, the rates should be set reflective of this information. Staff is unaware of a similar assessment for Laboratory uses. Without a current feasibility assessment of Laboratory uses, Staff cannot recommend increasing rates for this use.

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may approve it, reject it, or approve it with modifications.

ENVIRONMENTAL REVIEW

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c)(2) and 15378 because they do not result in a physical change in the environment.

PUBLIC COMMENT

As of the date of this report, the Planning Department has not received any public comment regarding the proposed Ordinance.

Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Jobs Housing Nexus Analysis, May 2019
- Exhibit C: Jobs Housing Linkage Fee Update Development Feasibility Assessment, June 2019
- Exhibit D: Board of Supervisors File No. 1905448