August 29, 2016

UPDATE: New Fee for Affordable Housing Goes to Denver City Council Sept. 19

A bill proposing a new development impact fee for a permanent affordable housing fund moved on to the Denver City Council Wednesday.Bill No. 625, proposed by Mayor Michael Hancock and Councilmembers Robin Kniech and Albus Brooks and advanced by the Denver City Council Safety, Housing, Education & Homelessness Committee, could address the need for affordable housing by creating a permanent fund in 2017.

An impact fee on all new development, based on square footage, and a property tax increase of .5 mill would pay for the fund.

Councilman Chris Herndon may propose an alternative, Bill No. 626, on the City Council floor. The alternative bill would create a permanent affordable housing fund, but doesn't identify specific funding sources. Councilman Herndon expects such sources would be identified during the annual budget process and a larger City Council discussion on all available revenue sources.

If approved, these fees would apply to new construction beginning Jan. 1, 2017. Developers should factor them into their underwriting because these fees would be due when building permits are issued.

A voter-approved increase in mills in 2012, which the City has not used, means that a new vote on the property tax increase is not needed. The tax would not be payable until 2018 because Colorado property taxes are paid in arrears.

The proposed development fees are:

• Residential Single-Family/Duplex $0.60/sf

• Residential Multi-Family $1.50/sf

• Commercial Hotel/Office/Retail/Other $1.70/sf

• Commercial Industrial/Agricultural $0.40/sf

For example, the development fee for a new 2,500-square-foot home is $1,500 and the development fee for a new 25,000-square-foot commercial building, such as a bank or convenience store, is $42,500. A 0.5 mill increase would value at approximately $12 per year for a $300,000 residential home and $145 per year for every $1 million in commercial property value.

Certain types of development, such as replacement of a structure due to catastrophe, accessory dwelling units, additions less than 400 square feet on a single-family or duplex unit and renovations that do not increase square footage are exempt from the fee.

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As an alternative to the fee, developers could build additional units, calculated per 1,000 square feet or 2 percent of new development. On a 12-story residential building with 304,063 square feet and 232 units, this would mean a development fee of $456,094.50 or making five of the units affordable.

Following comments from the public, the bill was changed to include $5 million from 2017 general funding to the new fund; to freeze the development impact fees for five years (other than an annual CPI adjustment); a review of the program by the council after five years; and a new feasibility study for future development impact fee increases following review.

Grandfathering of Projects in the Queue

Fees will not apply for building permits submitted and officially logged in with applicable fees paid by close of business Dec. 30, 2016, and a site development concept plan or a building permit application with associated permit drawings. We advise developers working to meet the deadline to submit their concept plan no later than Dec. 9, 2016, to ensure the project is assigned a city log number before Dec. 30, 2016.

The fee would replace Denver's current inclusionary housing ordinance.

The City Council Committee reviewed other pending tax and fee increases in Denver for context.

To learn about the history leading up to the proposal, read BHFS Client Alert #1.

Permanent Affordable Housing Fund

If approved, Denver estimates the development impact fee would generate $156.4 million in the first 10 years to create a permanent affordable housing fund and a long-term goal of 6,000 units over the decade.

The fund would address both for-rent and for-sale housing, emergency assistance for those at risk of losing homes and includes supportive services and transitional housing projects for the homeless.

Denver anticipates appointing a group of experts and community stakeholders to manage the fund and hold monthly, public meetings.

Affordable housing developers could apply to access these funds through a to-be-determined process.

Studies to Determine Development Impact Fee

Required by Colorado statute, Denver performed a Nexus Study to determine whether a fee could be charged per square foot for new construction and in what amount.

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Denver believes that the fee could compensate for the impact of workers filling on-site commercial and residential development jobs living in the area.

The linkage study's findings establish the legal justification for fees from $9.60 per square foot for a new single-family home to $119.26 per square foot for a new retail development.

Denver also conducted a feasibility study to determine the appropriate fee level on development to reasonably meet affordable housing demand while minimizing local real estate market impact.

Next Steps

Sept. 12 – City Council first reading

Sept. 19 – City Council one-hour courtesy public hearing and vote

Nov. 17 – Deadline for City Council to approve 2017 budget

Dec. 22 – Deadline for City Council to adopt 2017 mill levies

Dec. 30 – Deadline for projects to be logged in city system to avoid impact fee

Jan. 1 – City's first dedicated affordable housing fund, development fee and property tax increase of .5 mill take effect

We will continue to monitor these efforts and provide updates as appropriate. Please contact Carolynne White (cwhite@bhfs.com, 303.223.1197) or Caitlin Quander (cquander@bhfs.com, 303.223.1233) to get an expanded analysis of this proposed development fee in relation to a specific project or matter or if you'd like assistance preparing comments on the fee for the mayor or Denver City Council.

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