

**CITY OF SOMERVILLE**  
**ORDINANCE NO. 2023-**  
**IN CITY COUNCIL: \_\_\_\_\_, 2023**

**AN ORDINANCE AMENDING ARTICLE 12 OF THE SOMERVILLE ZONING ORDINANCE TO MODIFY THE AFFORDABLE HOUSING LINKAGE FEE AND THE TIMING OF THE PAYMENTS OF THE LINKAGE FEE.**

WHEREAS, an established body of law supports a municipality's right to require monetary or other contributions in connection with commercial and/or residential development, including conditioning a development permit upon such payments or contributions when a "reasonable relationship" can be demonstrated between the required fee and the government's legitimate purpose;

AND WHEREAS, developing and preserving affordable housing for low- and moderate-income households, constitutes a legitimate government purpose, as indicated by authorizing state legislation;

AND WHEREAS, Somerville established and codified a housing linkage policy in 1990, and amended it in 2013 and in 2017 each amendment based on the results of a Nexus Study Commissioned by the City;

AND WHEREAS, a Nexus Study commissioned by the City and completed in 2022 by a qualified consultant recommended that the City simplify and update the City's linkage policies by revising the affordable housing linkage fee project size threshold exemption and linkage fee payment schedule to match those of the jobs linkage,

AND WHEREAS, the consultant further recommended that the City maintain its jobs fee rate at \$2.75 and that doubling the current affordable housing linkage fee of \$11.23 to \$22.46 was warranted based upon the financial analysis conducted in the reports and that a fee increase of \$11.23 is unlikely to impact Somerville's competitiveness in either attracting development investment or tenants.

AND WHEREAS, establishing a graduated linkage fee for in which projects with at least 15,000 square feet (SF) pay 50% of the full housing linkage fee for SF between 15,000 and 30,000 and pay the full housing fee on the amount of SF above 30,000 was also warranted by the financial analysis.

NOW THEREFORE, be it ordained the City Council, in session assembled, that Article 12 of the Somerville Zoning Ordinance is amended as follows

(Additions are underlined, subtractions are ~~crossed-out~~):

**12.2 LINKAGE**

**1. Applicability**

- a. Unless otherwise specified, this Section is applicable to building types as specified in Article 3: Residential Districts, Article 4: Mid-Rise Districts, Article 5: High-Rise Districts, Article 7: Special Districts, and Article 8: Overlay Districts.
- b. DEVELOPMENT may not be segmented or phased in any manner and APPLICANTS may not establish surrogate or subsidiary entities to avoid compliance with this Section.

## 2. Affordable Housing Linkage

### a. Purpose

- i. To mitigate the impact of the increased demand for housing generated by employees of new commercial DEVELOPMENT wanting to live within Somerville.
- ii. To support the DEVELOPMENT of affordable housing that is available to qualifying households over the long-term.
- iii. To recapture a public benefit from the increased value of land resulting from the adoption of this Ordinance.

### b. Applicability

- i. This section is applicable to all non-residential DEVELOPMENT, except the following:
  - a). Real property owned by the City of Somerville
  - b). Religious & Educational uses protected by M.G.L. 40A. Sec. 3
  - c). CREATIVE STUDIOS
  - d). ~~Accessory~~ Vehicular Parking

### c. Fees

#### i. General

- a). All applicable DEVELOPMENT must pay an affordable housing linkage fee of ~~ten dollars (\$10)~~ twenty-two dollars forty-six cents (\$22.46) per gross square foot, except as follows:
  - i). DEVELOPMENT with less than ~~thirty thousand (30,000)~~ fifteen thousand (15,000) gross square feet is exempt.
  - ii). The first ~~thirty thousand (30,000)~~ fifteen thousand (15,000) gross square feet of DEVELOPMENT that has more than ~~thirty thousand (30,000)~~ fifteen thousand (15,000) gross square feet in total is exempt.
  - iii) DEVELOPMENT that has at least fifteen thousand (15,000) square feet must pay fifty percent (50%) of the full housing linkage fee per gross square foot in excess of fifteen thousand (15,000) gross square feet up to thirty thousand (30,000) gross square feet.
  - iv) DEVELOPMENT that has more than thirty thousand (30,000) gross square feet must pay the full housing linkage fee per gross square foot in excess of thirty thousand (30,000) gross square feet.
- b). MODIFICATIONs to an existing STRUCTURE that increases the total GROSS FLOOR AREA to more than ~~thirty thousand (30,000)~~ fifteen thousand (15,000) gross square feet must pay the affordable housing linkage fee for the additional square footage using the same graduated formula of fifty percent (50%) per gross square foot in excess of fifteen thousand (15,000) up to thirty thousand (30,000) gross square feet.
- c) MODIFICATIONs to an existing STRUCTURE increases the total GROSS FLOOR AREA to more than thirty thousand (30,000) gross square feet must pay the full affordable housing linkage fee for the additional square footage in excess of thirty thousand (30,000) gross square feet.

**ii. Inflation Adjustment**

- a). The affordable housing linkage fee is adjusted for inflation annually, beginning on March 1, ~~2019,2024~~ based on the change in the Boston Consumer Price Index. The Director of Housing shall publish and annually update the adjusted housing linkage fee on the City website.

**iii. Payment**

- a). Affordable housing linkage fees must be paid to the Somerville Affordable Housing Trust Fund, in ~~three (3)~~ two equal ~~annual~~ installments. The first payment is due prior to issuance of the BUILDING Permit and the second is due prior to issuance of the Certificate of Occupancy.
- b). ~~The BUILDING OFFICIAL will not issue a BUILDING Permit for DEVELOPMENT, beyond foundation construction, until the first installment of the affordable housing linkage fee is paid. The BUILDING OFFICIAL may not issue a Certificate of Occupancy for real property that has not paid the first second installment of the affordable housing linkage fee.~~
- c). ~~Affordable housing linkage fee payments must be paid annually on the anniversary of the first payment, or the next business day if that date falls on a weekend or federal, state, or local holiday.~~

**d. Compliance**

- i. The BUILDING OFFICIAL will not issue a BUILDING Permit for DEVELOPMENT, beyond foundation construction, until the first installment of the affordable housing linkage fee is paid.
- ii. The BUILDING OFFICIAL may not issue a Certificate of Occupancy for real property that has not paid the second installment of the affordable housing linkage fee.
- i. ~~The review boards shall require Applicants to execute and record a covenant or deed restriction agreeing to pay the housing linkage fee with the Middlesex South Registry of Deeds or filed with the Land Registration Office as a condition of any Discretionary of Administrative permit approval.~~
- ii. ~~The BUILDING OFFICIAL may not issue any Certificate of Occupancy for DEVELOPMENT subject to this Section until a covenant or deed restriction agreeing to pay the housing linkage fee is executed and recorded with the Middlesex South Registry of Deeds or filed with the Land Registration Office.~~

**e. Enforcement**

- i. In accordance with §1.1.7. Fines & Penalties, the BUILDING OFFICIAL shall consider each day as a separate offense for DEVELOPMENT that is not in compliance with the provisions of this Section.
- ii. Fines must be paid to the Somerville Affordable Housing Trust Fund.

**f. Formula Recalculation**

- i. The Director of Planning & Zoning shall prepare a Nexus Study every five (5) years to determine the suitability and performance of the provisions of this section and recommend any possible revisions or improvements necessary to address changing demand for affordable housing to the City Council.

**3. Employment Linkage**

**a. Purpose**

- i. To create and maintain employment opportunities within the city of Somerville for the residents of Somerville.
- ii. To mitigate the impact of large-scale DEVELOPMENTS on the cost of housing.
- iii. To provide training and services that will enable residents to ACCESS employment opportunities that will permit them to succeed and maintain adequate incomes to continue to afford living in Somerville.
- iv. To expand resident ACCESS to employment opportunities provided by new commercial DEVELOPMENT.
- v. To recapture a public benefit from the increased value of land resulting from the adoption of this Ordinance.

**b. Applicability**

- i. This section is applicable to all commercial DEVELOPMENT requiring site plan approval or a special permit, except the following:
  - a). Real property owned by the City of Somerville
  - b). Religious & Educational uses protected by M.G.L. 40A. Sec. 3
  - c). CREATIVE STUDIOS
  - d). ~~Accessory~~ Vehicular Parking

**c. Fees**

**i. General**

- a). All applicable DEVELOPMENT must pay a job creation and retention linkage fee (hereafter referred to as “jobs linkage fee”) of two dollars and ~~forty-six cents (\$2.46)~~ seventy-five cents (\$2.75) per gross square foot, except as follows:
  - i). DEVELOPMENT with less than fifteen thousand (15,000) gross square feet is exempt.
  - ii). The first fifteen thousand (15,000) gross square feet of DEVELOPMENT that has more than fifteen thousand (15,000) gross square feet in total is exempt.
- b). MODIFICATIONS to an existing STRUCTURE that increases the total GROSS FLOOR AREA to more than fifteen thousand (15,000) gross square feet must pay the jobs linkage fee for the additional square footage.

**ii. Inflation Adjustment**

- a) The jobs linkage fee is adjusted for inflation annually, beginning on March 1, ~~2019,2024~~ based on the change in the Boston Consumer Price Index. The Director of [Housing Economic Development](#) shall publish and annually update the adjusted jobs linkage fee on the City website.

**iii. Payment**

- a). Jobs linkage fees must be paid to the Somerville Municipal Job Creation and Retention Trust Fund, in two (2) equal installments. The first payment is due prior to issuance of the BUILDING Permit and the second is due prior to issuance of the Certificate of Occupancy.
- ~~b). The BUILDING OFFICIAL will not issue a BUILDING Permit for DEVELOPMENT, beyond foundation construction, until the first installment of the jobs linkage is paid.~~
- ~~c). The BUILDING OFFICIAL will not issue a Certificate of Occupancy for DEVELOPMENT until the second installment of the jobs linkage fee has been paid.~~

**d. Compliance**

i. The BUILDING OFFICIAL will not issue a BUILDING Permit for DEVELOPMENT, beyond foundation construction, until the first installment of the jobs linkage is paid.

ii. The BUILDING OFFICIAL will not issue a Certificate of Occupancy for DEVELOPMENT until the second installment of the jobs linkage fee has been paid.

~~The review boards shall require Applicants to execute and record a covenant or deed restriction agreeing to pay the jobs linkage fee with the Middlesex South Registry of Deeds or filed with the Land Registration Office as a condition of any Discretionary of Administrative permit approval.~~

ii. ~~The BUILDING OFFICIAL will not issue any Certificate of Occupancy for DEVELOPMENT subject to this Section until a covenant or deed restriction agreeing to pay the jobs linkage fee is executed and recorded with the Middlesex South Registry of Deeds or filed with the Land Registration Office.~~

**e. Enforcement**

i. In accordance with §1.1.7. Fines & Penalties, the BUILDING OFFICIAL shall consider each day as a separate offense for DEVELOPMENT that is not in compliance with the provisions of this Section.

ii. Fines must be paid to the Somerville Municipal Job Creation and Retention Trust Fund.

**f. Formula Recalculation**

i. The Director of Planning & Zoning shall prepare a Nexus Study every five (5) years to determine the suitability and performance of the provisions of this section and recommend any possible revisions or improvements necessary to address changing need for job training to the City Council.

**4. Green Line Linkage**

a. Reserved

**5. Civic Space Linkage**

a. Reserved

**6. Performance Review**

a. The Mayor shall undertake a Needs Assessment and Financial Feasibility Analysis every five (5) years after the adoption date of this Ordinance to determine the suitability and performance of the provisions of this Section and to recommend any possible revisions or improvements necessary to achieve the stated purpose of the established linkage requirements.

b. The Mayor shall submit recommended changes to the provisions of this section to the City Council for consideration.