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TITLE 6.8. San Francisco Bay Area Regional Housing Finance [64500 - 64652] (Title 6.8 added by Stats. 2019, Ch. 598, Sec. 1.)

PART 2. Financing Activities of the Bay Area Housing Finance Authority [64600 - 64652] (Part 2 added by Stats. 2019, Ch. 598, Sec. 1.)

CHAPTER 2. Revenue [64610 - 64636] (Chapter 2 added by Stats. 2019, Ch. 598, Sec. 1.)

ARTICLE 2. Commercial Linkage Fee [64620 - 64628] (Article 2 added by Stats. 2019, Ch. 598, Sec. 1.)

[64620.](#) As used in this article:

(a) "Commercial development project" means any project involving the issuance of a permit by an underlying land use jurisdiction for construction, not including remodeling of an existing property, that is undertaken within the San Francisco Bay area for the development of land for commercial use, but does not include any project involving solely a permit to operate.

(b) "Commercial linkage fee" means a monetary exaction, other than a tax or special assessment, established for a broad class of projects by legislation of general applicability that is charged to an applicant in connection with the approval of a commercial development project by an underlying land use jurisdiction for the purpose of addressing the need for additional housing development necessitated by that commercial development project, as determined pursuant to the nexus study undertaken pursuant to subdivision (b) of Section 64621.

(c) "Underlying land use jurisdiction" means any of the following entities, as applicable, that has jurisdiction over the approval of a commercial development project:

(1) The following counties:

(A) The County of Alameda.

(B) The County of Contra Costa.

(C) The County of Marin.

(D) The County of Napa.

(E) The County of San Mateo.

(F) The County of Santa Clara.

(G) The County of Solano.

(H) The County of Sonoma.

(2) A city that is located within the territorial boundaries of any of the counties specified in paragraph (1).

(3) The City and County of San Francisco.

(Added by Stats. 2019, Ch. 598, Sec. 1. (AB 1487) Effective January 1, 2020.)

[64621.](#) (a) (1) Subject to paragraph (4), the executive board may establish, increase, or impose a commercial linkage fee, in an amount not to exceed ten dollars (\$10) per square foot, within the San Francisco Bay area by enactment of a resolution, in

accordance with the requirements of this article, that is in addition to any fee, as defined in Section 66000, that is levied by an underlying land use jurisdiction.

(2) The fee shall be adjusted on July 1 of each year, in accordance with the California Construction Cost Index. The annual adjustment may increase the fee to be greater than the ten-dollar (\$10) maximum imposed by paragraph (1).

(3) The authority board shall ratify, by resolution, any commercial linkage fee or modification to a commercial linkage fee adopted by the executive board.

(4) The executive board shall not establish a commercial linkage fee pursuant to paragraph (1) until after the voters approve a parcel tax pursuant to Section 64610 or a general obligation bond pursuant to Section 64631.

(5) (A) The executive board may establish, increase, or impose a commercial linkage fee pursuant to this article by a resolution that provides for a fee assessed on commercial development projects within the San Francisco Bay area.

(B) A resolution establishing or revising the fee shall provide that the amount of the fee required to be paid shall be reduced by the amount that the applicant is required to pay, if any, for a commercial linkage fee for affordable housing imposed by the relevant underlying land use jurisdiction.

(b) Before establishing, increasing, or imposing a commercial linkage fee, the executive board shall prepare a regional jobs and housing nexus study in order to support the necessity and amount of the fee. The study, or separate study conducted before the establishment of a commercial linkage fee, shall examine the factors listed in paragraph (5) of subdivision (d), may consider other potential consequences, and shall take into consideration the potential impact of the fee on the creation of high-paying jobs for people without four-year degrees.

(c) Expenditures of proceeds from a commercial linkage fee shall be limited to affordable housing production, preservation, tenant protection, as described in subparagraphs (A) and (B) of paragraph (2) of subdivision (b) of Section 64650, and the authority's related administrative costs.

(d) In any action to establish, increase, or impose a commercial linkage fee, the executive board shall do all of the following:

(1) Identify the purpose of the commercial linkage fee.

(2) Determine how there is a reasonable relationship between the fee's use and the type of commercial development project on which the fee is imposed, based on the regional nexus study prepared pursuant to subdivision (b).

(3) Determine how there is a reasonable relationship between the need for housing and the type of commercial development project on which the fee is imposed, based on the regional nexus study prepared pursuant to subdivision (b).

(4) Determine how there is a reasonable relationship between the amount of the fee and the cost of the housing necessitated by the commercial development project that is attributable to the development on which the fee is imposed, based on the regional nexus study prepared pursuant to subdivision (b).

(5) (A) Adopt findings that, based upon the executive board's analysis and the regional nexus study, the commercial linkage fee:

(i) Would concentrate jobs near transit.

(ii) Would not reduce commercial development and space for jobs, particularly in economically disadvantaged areas.

(iii) Would not exacerbate intraregional job-to-housing imbalances.

(iv) Would not disincentivize mixed-use development.

(6) Specify the estimated administrative costs of the authority in connection with the imposition of the fee to be included in the amount of the fee.

(B) The executive board shall provide analysis to support the findings and consider other potential consequences of the fee.

(e) The executive board and the authority shall suspend the imposition of a commercial linkage fee after two consecutive quarters of negative gross domestic product growth within the San Francisco Bay area. The fee may be reinstated after two consecutive quarters of positive gross domestic product growth within the San Francisco Bay area. The executive board and the authority board may reinstate the fee by resolution that states the condition in the previous sentence is met but shall not be subject to subdivisions (b), (c), or (d) of this section.

(Amended by Stats. 2023, Ch. 758, Sec. 6. (AB 1319) Effective January 1, 2024.)

64622. (a) A commercial linkage fee established, increased, or imposed pursuant to this article shall not exceed the reasonable cost of providing the housing necessitated by the commercial development project for which the commercial linkage fee is imposed, as

determined in the regional nexus study pursuant to subdivision (b) of Section 64621, and the authority's related administrative costs.

(b) It is the intent of the Legislature in adding this section to codify existing constitutional and decisional law with respect to the imposition of development fees and monetary exactions on developments by local agencies. This section is declaratory of existing law and shall not be construed or interpreted as creating new law or as modifying or changing existing law.

(Amended by Stats. 2023, Ch. 758, Sec. 7. (AB 1319) Effective January 1, 2024.)

64623. (a) Before adopting a resolution establishing or imposing a new commercial linkage fee or approving an increase in an existing commercial linkage fee pursuant to this article, the executive board shall hold a public hearing, at which oral or written presentations can be made, as part of a regularly scheduled meeting. The executive board shall publish a notice of the time and place of the meeting, including a general explanation of the matter to be considered in accordance with Section 6062a.

(b) Any costs incurred by the executive board in conducting the hearing required pursuant to subdivision (a) may be recovered as part of the commercial linkage fee that is the subject of the hearing.

(Amended by Stats. 2020, Ch. 370, Sec. 162. (SB 1371) Effective January 1, 2021.)

64624. (a) Except as otherwise provided in subdivision (c), if the executive board adopts a resolution or other legislative enactment establishing or imposing a new commercial linkage fee or approving an increase in an existing commercial linkage fee and the authority board adopts a resolution concurring with the establishment, imposition, or increase of the fee consistent with subdivision (a) of Section 64621, each underlying land use jurisdiction shall, as a condition of approving a commercial development project for which it receives an application for a conditional use permit or other discretionary or ministerial approval, require an applicant to pay the amount of commercial linkage fee established, imposed, or increased by the executive board and the authority board pursuant to this article. The underlying land use jurisdiction shall provide notice to the applicant that does all of the following:

(1) Notifies the applicant that the executive board and the authority board have established, increased, or imposed a commercial linkage fee pursuant to this article.

(2) States the amount of commercial linkage fee established, increased, or imposed by the executive board and the authority board.

(3) States that the applicant may protest the commercial linkage fee, as provided in Section 64625, and notifies the applicant that the 90-day period for that protest and the 180-day period for filing an action specified in subdivision (c) of Section 64625 has begun.

(b) Each underlying land use jurisdiction shall collect and, after deduction of any actual and necessary administrative costs incurred by the underlying land use jurisdiction, remit the amount of commercial linkage fee established, increased, or imposed pursuant to this article to the authority. An underlying land use jurisdiction shall remit the amounts required by this subdivision on or before the last day of the month next succeeding each calendar quarterly period.

(c) If any amount of commercial linkage fee established, increased, or imposed pursuant to this article is found to be invalid pursuant to Section 64625, each underlying land use jurisdiction shall immediately cease collection of the commercial linkage fee.

(Added by Stats. 2019, Ch. 598, Sec. 1. (AB 1487) Effective January 1, 2020.)

64625. (a) Any party may protest the imposition of a commercial linkage fee imposed on a commercial development project by the executive board and the authority pursuant to this article as follows:

(1) The party shall pay the total amount of commercial linkage fee required by the resolution enacted pursuant to Section 64621, or provide satisfactory evidence of arrangements to pay the commercial linkage fee when due, in accordance with Section 64624.

(2) Serving a written notice on the authority board and the legislative body of the relevant underlying land use jurisdiction that contains all of the following information:

(A) A statement that the required payment is tendered or will be tendered when due under protest.

(B) A statement informing the authority board and legislative body of the underlying land use jurisdiction of the factual elements of the dispute and the legal theory forming the basis for the protest.

(b) Compliance by any party with subdivision (a) shall not be the basis for an underlying land use jurisdiction to withhold approval of any map, plan, permit, zone change, license, or other form of permission, or concurrence, whether discretionary, ministerial, or otherwise, incident to, or necessary for, the commercial development project. This section does not limit the ability of an underlying

land use jurisdiction to ensure compliance with all applicable provisions of law in determining whether to approve or disapprove a commercial development project.

(c) (1) A protest filed pursuant to subdivision (a) shall be filed at the time of approval or conditional approval of the commercial development project or within 90 days after the date of the imposition of the commercial linkage fee to be imposed on a commercial development project.

(2) Any party who files a protest pursuant to subdivision (a) may file an action to attack, review, set aside, void, or annul the imposition of the commercial linkage fee imposed on a commercial development project within 60 days after the delivery of the notice required by subdivision (a) of Section 64624. Thereafter, notwithstanding any other law, all persons shall be barred from any action or proceeding or any defense of invalidity or unreasonableness of the imposition. Any proceeding brought pursuant to this subdivision shall take precedence over all matters of the calendar of the court except criminal, probate, eminent domain, forcible entry, and unlawful detainer proceedings.

(d) (1) If the court grants a judgment to a plaintiff invalidating, as enacted, all or a portion of a resolution establishing, increasing, or imposing a commercial linkage fee, the court shall direct the authority to refund the unlawful portion of the payment, plus interest at an annual rate equal to the average rate accrued by the Pooled Money Investment Account during the time elapsed since the payment occurred, or to return the unlawful portion of the exaction imposed.

(2) If an action is filed within 120 days of the date at which a resolution to establish or modify a commercial linkage fee to be imposed on a commercial development project takes effect, the portion of the payment or exaction invalidated shall also be returned to any other person who, under protest pursuant to this section and under that invalid portion of that same resolution as enacted, tendered the payment or provided for or satisfied the exaction during the period from 90 days before the date of the filing of the action which invalidates the payment or exaction to the date of the entry of the judgment referenced in paragraph (1).

(e) The imposition of a commercial linkage fee occurs, for the purposes of this section, when it is imposed or levied on a specific commercial development project.

(Amended by Stats. 2020, Ch. 370, Sec. 163. (SB 1371) Effective January 1, 2021.)

64626. (a) In any judicial action or proceeding to validate, attack, review, set aside, void, or annul any resolution providing for the establishment, increase, or imposition of a commercial linkage fee pursuant to this article in which there is an issue whether the fee is a special tax within the meaning of Section 50076, the executive board and the authority shall have the burden of producing evidence to establish that the commercial linkage fee does not exceed the reasonable cost of providing the housing necessitated by the commercial development project for which the commercial linkage fee is imposed, as determined in the regional nexus study pursuant to subdivision (b) of Section 64621.

(b) A party may only initiate an action or proceeding pursuant to subdivision (a) if both of the following requirements are met:

(1) The commercial linkage fee was directly imposed on the party as a condition of project approval, as provided in Section 64624.

(2) At least 30 days before initiating the action or proceeding, the party requests that the executive board and the authority provide a copy of the documents, including, but not limited to, the regional nexus study prepared pursuant to subdivision (b) of Section 64621, that establish that the commercial linkage fee does not exceed the reasonable cost of providing the housing necessitated by the commercial development project for which the commercial linkage fee is imposed. In accordance with subdivision (a) of Section 7922.530, the executive board and the authority may charge a fee for copying the documents requested pursuant to this paragraph.

(c) For purposes of this section, costs shall be determined in accordance with fundamental fairness and consistency of method as to the allocation of costs, expenses, revenues, and other items included in the calculation.

(Amended by Stats. 2021, Ch. 615, Sec. 214. (AB 474) Effective January 1, 2022. Operative January 1, 2023, pursuant to Sec. 463 of Stats. 2021, Ch. 615.)

64627. (a) Any person may request an audit in order to determine whether any fee or charge levied by the executive board and the authority board exceeds the amount necessary to cover the reasonable cost of providing the housing necessitated by the commercial development project for which the commercial linkage fee is imposed, as determined in the regional nexus study pursuant to subdivision (b) of Section 64621 and the authority's related administrative costs. If a person makes that request, the executive board and the authority may retain an independent auditor to conduct an audit to determine whether the commercial linkage fee is reasonable, but is not required to conduct the audit if an audit has been performed for the same fee within the previous 12 months.

(b) If an audit pursuant to this section determines that the amount of any commercial linkage fee or charge does not meet the requirements of this article, the executive board and the authority board shall adjust the fee accordingly.

(c) The authority shall retain an independent auditor to conduct an audit only if the person who requests the audit deposits with the authority the amount of the executive board's and the authority's reasonable estimate of the cost of the independent audit. At the conclusion of the audit, the authority shall reimburse unused sums, if any, or the requesting person shall pay the authority the excess of the actual cost of the audit over the sum which was deposited.

(d) Any audit conducted by an independent auditor pursuant to this section shall conform to generally accepted auditing standards.

(e) This section shall not be construed as granting any additional authority to any local agency to levy any fee or charge which is not otherwise authorized by another provision of law, nor shall its provisions be construed as granting authority to any local agency to levy a new fee or charge when other provisions of law specifically prohibit the levy of a fee or charge.

(Amended by Stats. 2023, Ch. 758, Sec. 8. (AB 1319) Effective January 1, 2024.)

64628. Any action by the executive board and the authority board or interested person under this article shall be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

(Added by Stats. 2019, Ch. 598, Sec. 1. (AB 1487) Effective January 1, 2020.)