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August 9, 2016

Planning and Sustainability Commission
1900 SW Fourth Ave., Suite 7100
Portland OR, 97201

Attn: CC2035 testimony

RE: Analysis of FAR Transfers and Affordable Housing Opportunities

Dear Commissioners:

Service Employees International Union Local 49 has proposed amendments to the Central City Plan code to require a public or community benefit when transfers of floor area ratios (FAR) increase the development allowed for a project. Specifically, in my letter and testimony on July 26, SEIU proposed that workers who provide ongoing service to such a development, including janitors, maintenance and security workers, be paid the equivalent of 50% of the median family income for the area, to mitigate the impact of the development on the city's limited stock of affordable housing. Such compensation, about $36,000-38,000/year, is at the upper end of compensation packages for full-time janitorial workers in Portland; at the lower end their full-time compensation is about $22,000 or 30% of area median income (AMI or MFI). Our research shows that there is a substantial inventory of housing affordable to a worker making 50% of AMI, but that almost no non-subsidized housing is affordable to a worker making only 30% of AMI.

A memorandum dated August 8, 2016, from consulting firm Economic and Planning Systems (EPS) is being submitted with this letter. EPS has extensive national experience with linkage fees and other tools to address housing affordability, including preparation (with OTAK) of a study for the city last year that underlies the proposals in the Central City Plan for bonus FAR based on affordable housing. The attached EPS memorandum provides data on the supply and affordability of housing at incomes of 50% and 30% of AMI, and analyzes the feasibility of our proposed compensation requirement in terms of residual value of the transferred FAR after discounting the increased development and operating costs such transfers would entail. There are minor discrepancies between the terms and numbers proposed in our July 26 letter and in the attached memorandum; for example, use of the terms "AMI" and "MFI" and assumptions that housing is affordable at 1/3 rather than 30% of income. However, the attached memorandum supports our proposal as being consistent with linkage study analysis of the impact of low-wage workers on affordable housing, and concludes that our proposal is feasible in the real-world market based on the residual value of transferred FAR.

As I noted in response to a question at the last hearing, our proposal to require the specified compensation as a public benefit for transferred FAR is directed to FAR that is transferred within a sub district; the Proposed Draft allows unlimited transfers of such FAR without requiring additional public benefit for the transfer. To be clear, we are not requesting that the compensation requirement be imposed on transfers from historic properties. Instead, we are seeking to recapture some of the value created by FAR transfers within a sub district, and to apply that value to mitigate the impact of the development on affordable housing supplies.

We look forward to working with your staff to develop specific code language for Section 510 to implement our proposal. One detail to be addressed is a threshold for imposing such a requirement; reasonable thresholds may be either an additional 1:1 of FAR (i.e. at least one additional floor) or 35,000 square feet (i.e. the floor area that would typically require one additional worker for janitorial service). Another detail is specifying that the requirement would apply to the development itself, and thus to the owner, operator, tenant, or whoever else, by lease or contract, provides or contracts for the ongoing service of the building. A related detail is establishing a mechanism for enforcement, including use of recorded restrictive covenants that may be enforced by parties to the land use proceeding that imposes the requirement.

We ask that you direct your staff to provide further analysis and work with us to supply specific code language for consideration during your upcoming work sessions and for inclusion in the Central City Plan code that you recommend to the City Council

Thank you for your consideration and please ask you staff to seek any further information from us that would assist you.

Very truly yours,

David C. Noren

MEMORANDUM

To: David C. Noren, Attorney at Law;
Maggie Long, Executive Director, SEIU Local 49

From: Economic & Planning Systems

Subject: Economic Considerations of SEIU Local 49 Policy Proposal

Date: August 8, 2016

This memorandum was prepared to provide supporting information regarding a policy proposal from the Service Employees International Union (SEIU) Local 49 to the Portland Planning and Sustainability Commission on July 26, 2016. It supplies analysis regarding proposed Central City Plan code amendments to require that FAR transfers provide a public benefit in the form of adequate wage and benefit packages for service workers of non-residential development.

Background

SEIU Local 49 is proposing a policy to the City of Portland that would address housing affordability and income inequity by requiring that workers who service certain non-residential developments are paid adequately. Taking its cues from the recently adopted 2035 Comprehensive Plan, such a proposal is aligned with the City's goal of "incorporating requirements into the Zoning Code to provide public and community benefits as a condition for non-residential development projects to receive increased development allowances."

Local 49 envisions this policy to be integrated into a regulatory mechanism such as the transfer of additional floor area (FAR) or the provision of additional "bonus" density beyond base entitlement, similar to the proposed affordable housing density bonus incentive. The economic value of additional density to the receiving site is leveraged to offset the "cost" associated with the development (the impact on affordable housing supply of low-wage workers who service the development) by requiring a community benefit (wages adequate for such workers to afford housing). SEIU Local 49's proposal is that such workers be paid the equivalent of 50 percent of area median income, which is near the upper end of compensation for such workers currently, because compensation at the lower end (about 30 percent of area median income) strains the City's stock of affordable housing.

The Economics of Land Use

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What is the problem?

The City of Portland has recently taken great strides to research and propose policy and funding tools to address its growing housing affordability problems. The problem is two-fold – **lagging household incomes** on the demand side and **escalating housing costs** on the supply side. The problem is frequently characterized as a widening gap between housing (rental and ownership) costs and incomes (i.e. what households can afford).

What is the supply of multifamily rentals?

There are 73,231 apartments tracked in the City by Costar/Apartments.com, which monitors rental rates, occupancies, and vacancies for multifamily rentals in buildings larger than 30,000 square feet, as illustrated in **Figure 1**.

The average rent throughout the City is $1,162 per month, which requires a household income of $46,472, assuming no more than 30 percent of pre-tax household income is spent on housing. In the Central City alone, there are 17,537 units with an average rent of $1,396 per month, which would require a household income of $55,839, also assuming 30 percent of income is spent on housing costs.

What is "affordable"?

Affordability is a relative term. In the Portland Central City context, affordable housing policy has generally focused on incomes less than 60 percent of the area median income (AMI). As shown in **Table 1**, compensation for full-time janitors and cleaners in the Portland Metro Area ranges from about $22,000 for workers in approximately the 25th percentile of earners on the low end to slightly more than $38,000 on the upper end (slightly below the 90th percentile). Therefore, our analysis of affordable housing needs focuses on lower income households earning less than 30 percent and less than 50 percent of the area median income (AMI). Using 2015 Department of Housing and Urban Development (HUD) income limits, which defines the area median income for a 4-person household at $73,900, a household earning 30 percent AMI would have an income of $22,160, and a household at 50 percent AMI would have an income of $36,950.

Table 1
2016 Wage Levels for Janitors and Cleaners (BLS 37-2011)

	2016 Annual Wages for Janitors (BLS 37-2011)					
	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile	Average
Portland-Metro	$20,030	$21,299	$26,021	$31,158	$38,792	$27,685

Source: State of Oregon Employment Department; Economic & Planning Systems
H:\163057-Portland Service Workers Union Policy Study\Data\[163057-Employment Dept Data.xlsx]Table 1 - Summary

Table 2 illustrates that less than 2 percent of Portland's overall inventory is affordable to a household at 30 percent AMI or lower where rents are affordable to 30 percent AMI at $554 per month or lower. This estimate includes rent-subsidized units, such as low income housing tax credit (LIHTC) projects and other federally, state, or locally subsidized rental units. At 50 percent AMI, where the affordable rent is $924 per month, approximately 35 percent (i.e. 1.8 percent + 33.7 percent) of total citywide inventory is affordable.

Figure 1
Multifamily Apartment Inventory, 2016

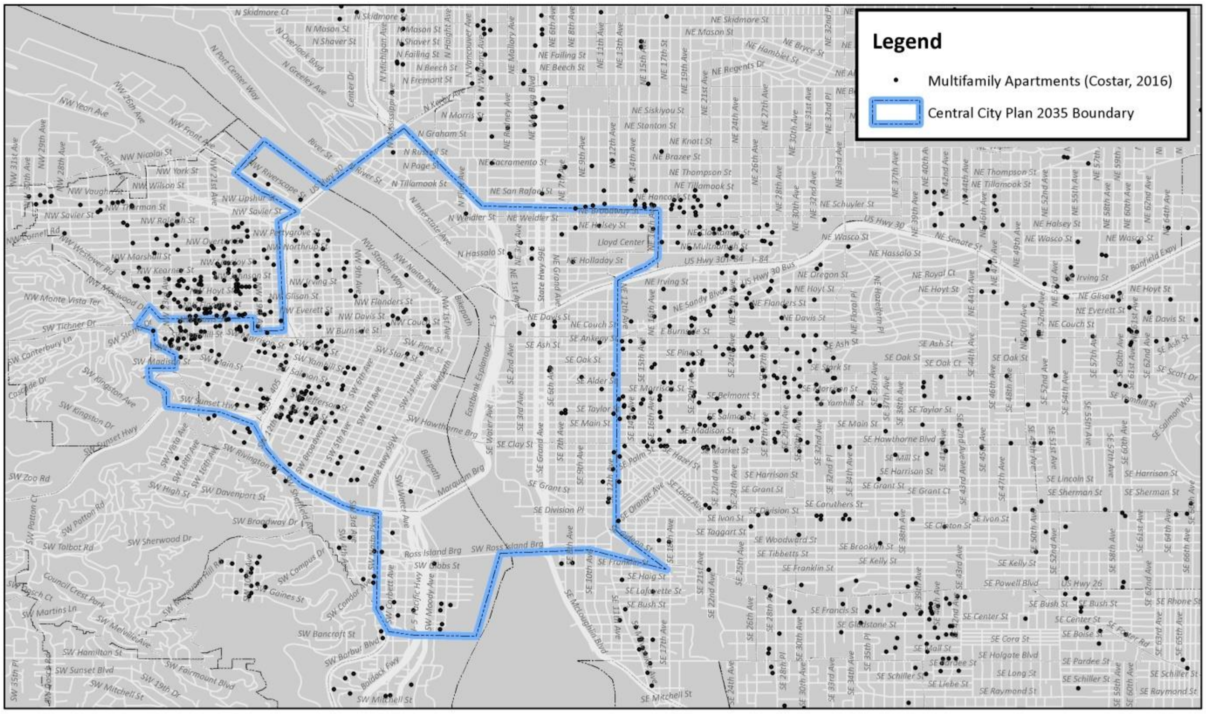

Table 2
City of Portland Multifamily Inventory, 2016

	Income				Units [1]		Units as %	
Rental Rate Category	**Low**	**(AMI)**	**High**	**(AMI)**	**Citywide**	**Central City**	**Citywide**	**Central City**
Less than $554		< 30%	$22,160	30%	1,352	645	1.8%	3.7%
Between $554 and $924	$22,160	30%	$36,960	50%	24,667	4,684	33.7%	26.7%
Greater than $924	$36,960	50%		> 50%	47,212	12,208	64.5%	69.6%
Total					**73,231**	**17,537**	**100.0%**	**100.0%**

[**Note 1**]: Inventory of multifamily units is limited to buildings with more than 30,000 square feet and excludes single-family rentals.
Source: CoStar/Apartments.com; Economic & Planning Systems
H:\163057-Portland Service Workers Union Policy Study\Data\[163057-Apartments.xlsx]Table 1

What is the demand for affordable housing?

Is housing in Portland affordable for janitors earning 30 percent AMI?

Workers who provide cleaning, maintenance and security to commercial developments are apt to be paid at a level that makes housing unaffordable. According to State of Oregon Employment Department data presented previously, for janitors earning 25th percentile wages (approximately $22,000 per year), which equates to 30 percent AMI, only 645 multifamily units in the Central City are affordable to them, as illustrated in **Figure 2**.

Figure 2
Multifamily Apartments Affordable to 30 Percent AMI or Lower, 2016

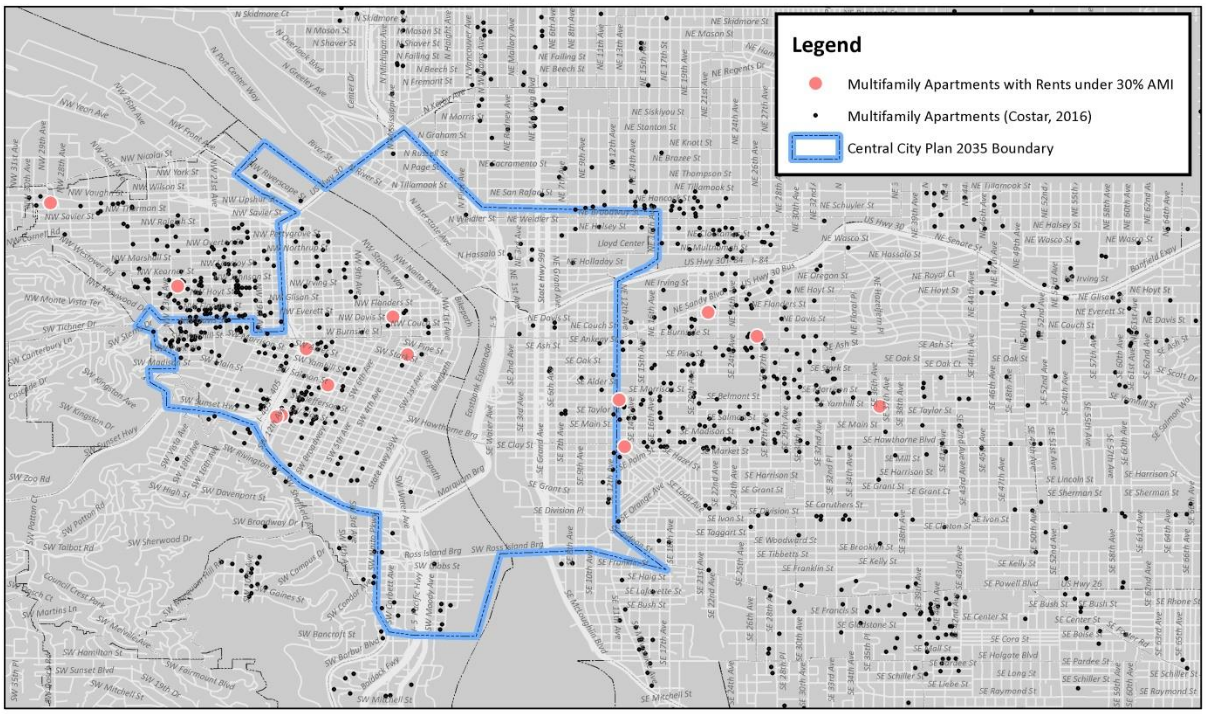

Table 3 further illustrates that rent-subsidized apartments account for approximately 23 percent of the City's inventory, of which less than two percent (1,235 units) is affordable to households earning less than 30 percent AMI, and as illustrated previously, less than one percent of the inventory is located in the Central City. It should also be noted that a service worker at the low end of the wage scale would not be able to find a non rent-subsidized apartment in the Central City. That is, all of the units available below 30 percent AMI in the Central City are rent-subsidized.

Table 3
City of Portland Rent Subsidized Multifamily Inventory, 2016

	Total Units [1]		**Rent Subsidized**		**Rent Subsidized as % of Total**	
Rental Rate Category	**Citywide**	**Central City**	**Citywide**	**Central City**	**Citywide**	**Central City**
Less than $554	1,352	645	1,235	645	1.7%	0.9%
Between $554 and $924	24,667	4,684	10,740	3,081	14.7%	4.2%
Greater than $924	47,212	12,208	4,730	1,557	6.5%	2.1%
Total	**73,231**	**17,537**	**16,705**	**5,283**	**22.8%**	**7.2%**

[**Note 1**]: Inventory of multifamily units is limited to buildings with more than 30,000 square feet and excludes single-family rentals.
Source: CoStar/Apartments.com; Economic & Planning Systems
H:\163057-Portland Service Workers Union Policy Study\Data\[163057-Apartments.xlsx]Table 2

What are the solutions?

The advancement of mandatory inclusionary zoning and the recent passage of the construction excise tax (CET) on June 29, 2016, and which went into effect on August 1, 2016, are geared toward remedying the problem through a supply-side approach, i.e. to utilize development as a mechanism for requiring either the construction of, or payment of a fee in-lieu of providing, affordable housing units at target income levels through subsidized rents. While these policies are consistent with U.S. housing industry practice, they fall short of addressing the magnitude of need that exists and they do not seek to remedy the problem from the demand side (i.e. the household income side).

How much is the Construction Excise Tax?

According to publicly available documentation from the Portland Housing Bureau's (PHB) website, the CET is equal to one percent of building permit valuation and is applied to both residential and non-residential construction. According to PHB documentation, the proposed fee for an office development of 42,610 square feet would be $60,000 or $1.41 per square foot. As is common for fee-based affordable housing policies, the CET is justified through the analysis of maximum justifiable commercial and residential linkage fees, i.e. through a nexus study.

Nexus studies are commonly used in part to provide support if constitutional challenges to such fees require demonstration that the fee is roughly proportional to the impact of development for which the fee is exacted. The premise is that the occupants of new development will have employees with a wide range of incomes, and some employees will be paid at levels that will burden the community's supply of affordable housing. Linking the fees charged to the impact of that burden on affordable housing provides evidence that the exaction of the fee is roughly proportional to the impact of the development. Typically such studies establish a maximum justifiable fee based on the cost to mitigate the impact of the development on affordable housing, then propose a lower fee based on other economic and policy considerations.

Whether such nexus and rough proportionality may be required for increased development rights above the base zone is beyond this scope of this analysis.

How much of the affordable housing demand does this cover?

While a draft report of the Portland nexus study is not yet publicly available, limited presentation materials and recently-completed nexus studies from PHB's consultant have been used to document underlying assumptions. Accordingly, nexus studies for Seattle (2015) and Denver (2016) from PHB's consultant have been reviewed.[1] They indicate that the maximum justifiable fee for office development is $80 per square foot in Seattle and $57 per square-foot in Denver. But the adopted fees in Seattle range from $8 to $17.50 per square-foot depending on location, just 10 percent to 22 percent of the total mitigation justified. In Denver, the City Council has proposed to adopt fees in the range of $1.50 per square-foot (modeling only up to $7 per square-foot), which translates to just 3 percent to 12 percent of the total justified mitigation.

What is an Alternative to Fees That Increase Supply of Affordable Housing?

SEIU Local 49's proposal would require projects that increase development above the base zone through the use of FAR transfers to provide a community benefit, in the form of compensation to the workers who service the development at the equivalent of 50 percent AMI. As described above, such compensation would make about 35 percent of the apartment supply affordable to these workers. If such workers are paid only at the low end (30 percent AMI) there is very little housing that is affordable, placing greater strain on supplies at the lowest end of the housing market.

The remainder of this memorandum is primarily addressed to the potential costs and related effects of implementing such a proposal.

How many service worker jobs support office development?

One janitorial worker is required for every 25,000 to 35,000 square feet of office space. Approximately 15 million square feet of office space utilize SEIU Local 49 service workers, according to SEIU documentation of commercial real estate over 75,000 square feet in Portland's CBD. Servicing these office buildings are 425 full-time service workers, reflecting an average level of service (LOS) of slightly more than 35,000 square feet per worker per shift. According to a 2014 report by the Building Owners and Managers Association (BOMA), the U.S. average LOS is actually lower at 24,441 square feet per job per shift, implying a higher LOS for office space than the CBD's tenants utilize.

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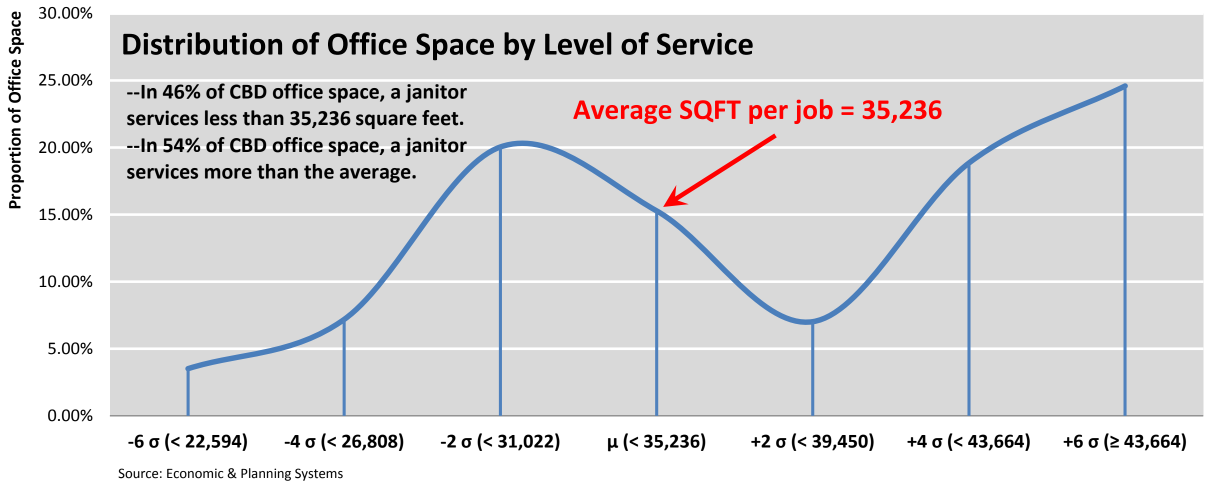
[1] Denver study available at:
https://www.denvergov.org/sirepub/cache/2/c51qkyywa0mcxt3rhd1y1bix/94197408082016042243294.PDF
Seattle study available within link at:
https://www.theurbanist.org/2015/11/10/toward-affordable-housing-seattle-adopts-a-commercial-linkage-fee/

Figure 3
Distribution of Office Inventory by Janitorial Level of Service, 2016



What cost factor would be associated with increasing wages from 30 to 50 percent AMI?

SEIU Local 49's proposal is to secure "good jobs", meaning that the low-end janitorial worker's compensation is increased from $22,000 (approximately 30 percent AMI) to the upper-end compensation of $38,000 (approximately 50 percent AMI). This is an annual ongoing cost, not just a one-time development cost, and would affect overall operations and maintenance (O&M) expenses for a development.

In a building with 193,800 square feet of rental office area, (as portrayed in Scenario A of **Table** 4 below), approximately 5.5 janitorial workers would be needed to meet the LOS of 35,000 square-feet per worker. The associated increase in annual O&M by increasing pay from the lower end to the upper end would be approximately $88,600 per year or $0.46 per square foot of rentable office space.

Leveraging the Transfer of FAR

Historic data from the City was reviewed to understand the frequency of FAR transfers in residential and non-residential development.[2] The major challenge in this context, however, is that FAR transfers are not systematically tracked as a matter of the development review process. As a result, no firm data or information are readily available to reliably estimate the frequency with which this mechanism might be used under such a structure. However, the Proposed Draft of the Central City Plan code allows unlimited transfers of FAR within subdistricts because such transfers (under the rubric of master plans) have been a useful tool under the existing code.

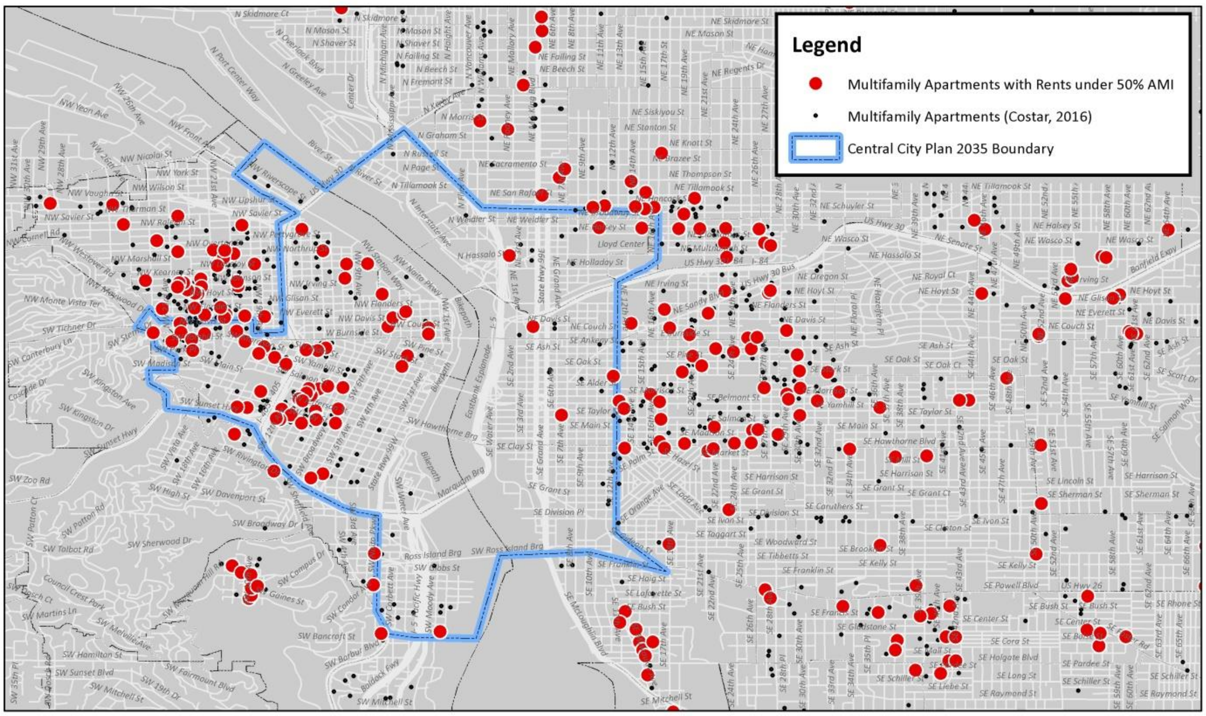
[2] This information was also used by EPS during the process of completing the "City of Portland Central City Bonus and Entitlement Transfer Mechanism Update" (June 22, 2015), in which Bureau of Planning and Sustainability (BPS) made best available information available. It is possible that BPS has since refined or updated some of the underlying information.

What are the potential impacts?

What is the impact on the availability of affordable inventory?

Increasing the incomes of service workers to 50 percent AMI would increase the inventory of available apartments from less than 2 percent (1,352 units) of citywide inventory to more than 35 percent (26,019 units), a nearly 20-fold increase, as illustrated in **Figure 4**. In the Central City alone, this would open up an inventory of 5,329 units to these workers, an eight-fold increase in available housing options.

Figure 4
Multifamily Apartments Affordable to 50 Percent AMI or Lower, 2016



What is the impact on development/operational feasibility?

Table 4 has been prepared to estimate the potential impact of the proposed service worker wage benefit policy concept. It utilizes the modeling mechanism built for the "City of Portland Central City Bonus and Entitlement Transfer Mechanism Update" (June 22, 2015) as well as updated land, construction cost and project revenue factors. Land costs and total development costs (including hard and soft costs[3]) have been escalated 15 percent from 2015, and project revenues, such as the full service lease rates (which include O&M expenses) for office have been based on most recent Costar trend data for Class A office space.

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[3] Soft costs include fees for: Architectural & Engineering; Development Fees & Admin.; Permits, Fees, & Entitlement; Construction Loan Interest (Cost of Carry); General Liability Insurance; Legal; Marketing; Cost of Sale; and a Contingency.

The scenarios evaluated are all based on a development program of a 20,000 square-foot site with 12:1 base FAR. The rental building area is 100 percent office. Common areas are factored in at 15 percent of the gross building area, and parking is calibrated to one space per 1,000 square-feet of rentable office space. Total development costs, excluding land, are estimated at a total of $243.80 per square-foot, and revenues are factored at the full-service office lease rate of $35.50, which includes $8.15 are O&M expenses.

In the following scenarios, the variable factors include the cost of additional FAR (which according to most developers ranges from $5 to $10 per square-foot, assumed here at $10) and the additional per square-foot O&M cost for the service worker wage benefit, estimated earlier in this memo at $0.46 per square-foot. It should be noted that the additional $0.46 per square-foot increases O&M expenses by 5.6 percent but increases the full-service lease rate by just 1.3 percent. It may also bear repeating that this increased cost assumes an increase from the low-end compensation package to the upper-end for full time janitorial workers; actual cost increases are necessarily speculative since the operator of the building may otherwise pay anywhere between the lower to the upper end for such services.

In this static analysis, the measurement of residual value or developer profit is stated simply as residual value over cost. These estimates are not intended to be accurate measures of project feasibility, rather provide an economic perspective to the *relative* impact that various policy assumptions could have on feasibility.

- Scenario A (Entitlement As-is): In this scenario, the estimated residual value is 8.0 percent.
- Scenario B (Additional Density with FAR Transfer): In this scenario, the estimated residual value is 15.4 percent. The development program here assumes that a developer is seeking to acquire and transfer an additional 2.25 FAR at a cost of $10 per square foot. It is assumed that the market can support this additional development and achieve Class A office rents.
- Scenario C (Additional Density with FAR Transfer and Service Worker Wage Benefit Applied to All Office Area): In this scenario, the estimated residual value is 13.4 percent. This development program also assumes that an additional 2.25 FAR is acquired at $10 per square foot, but that it requires an additional O&M cost of $0.46 per square-foot per year to increase service worker wages to 50 percent AMI for all janitors servicing the office floor area. It is still assumed that the market can support this additional development and achieve Class A office rents.
- Scenario D (Additional Density with FAR Transfer and Service Worker Wage Benefit Applied to Additional Office Only): In this scenario, the estimated residual value is 15.1 percent. This development program also assumes that an additional 2.25 FAR is acquired at $10 per square foot, but only requires the additional O&M cost of $0.46 per square-foot per year to for all janitors servicing the additional office floor area. It is still assumed that the market can support this additional development and achieve Class A office rents.

Could different assumptions compensate for these additional costs?

The additional O&M costs mean that a developer will seek to offset them by some means. A few of the standard offsetting measures have been addressed in the static analysis, including: a reduction of land acquisition cost; an increase in the office lease rate; and an increase in the request for additional FAR.

It should be noted, independent of this analysis, that with any additional entitlements come additional total development costs and the need to raise additional equity for a project and acquire additional debt. With additional entitlements also come questions of whether the market demand is sufficient to support additional rentable or saleable floor area.

- Reduced Land Cost: Under Scenario C, the land cost would have to be negotiated down to less than $135 per square foot to offset the additional O&M costs which are capitalized into the project's value. This would represent a 40 percent reduction in land value. Under Scenario D, however, the land cost would have to be negotiated down to $213 per square foot to offset the additional O&M costs. This would represent only an 8 percent reduction in land value.

- Increased Office Lease Rate: Under Scenario C, the office lease rate would have to increase to $35.96, a 1.3 percent increase in the full-service lease rate. It is unclear without a complete market study to understand to what extent this minor increase in lease rate might affect office tenants' willingness to lease space. Under Scenario D, the office lease rate would have to increase to $35.58, a 0.2 percent increase in the full-service lease rate. It is similarly unclear how this increase might affect office tenants' willingness to lease space.

- Increased FAR Request: In both Scenario C and Scenario D, the objective is to understand what magnitude of additional FAR would need to be purchased to offset the cost of the service worker wage benefit. The general assumption is that the additional FAR comes with both additional total development costs (i.e. at $243.80 per square foot) plus additional O&M costs at $0.46 per square-foot, but that it also comes with the ability to achieve additional full-service lease rates at $35.50 per square-foot. The objective was to identify the magnitude of FAR necessary to bring the residual value to a point equal to or greater than the residual value of Scenario B where just additional FAR is acquired. **Table 4** shows that approximately 15,000 square feet of additional FAR would be needed to offset the requirement of Scenario B and 2,500 square feet of additional FAR would be needed to offset the requirement of Scenario C.

Table 4
Development Feasibility Impact of Service Worker Wage Benefit

	Factors	As-is Scenario A	Additional FAR with No Additional Cost Scenario B	Additional FAR with Service Worker Wage Benefit: Applied to All Rentable Office Area Scenario C	Additional FAR with Service Worker Wage Benefit: Applied to Additional Office Only Scenario D
Development Assumptions					
Site		20,000	20,000	20,000	20,000
Rental Building Area					
Office		204,000	204,000	204,000	204,000
Office (with Additional FAR)		0	45,000	45,000	45,000
Subtotal		**204,000**	**249,000**	**249,000**	**249,000**
Common Areas		36,000	36,000	36,000	36,000
Parking		71,400	71,400	71,400	71,400
Total Building Area		**311,400**	**356,400**	**356,400**	**356,400**
Development Costs					
Land	$230.00	$4,600,000	$4,600,000	$4,600,000	$4,600,000
Vertical Development Costs					
Hard Costs	$172.50	$53,716,500	$61,479,000	$61,479,000	$61,479,000
Soft Costs	$71.30	$22,202,820	$25,411,320	$25,411,320	$25,411,320
Subtotal Vertical Development Costs	**$243.80**	**$75,919,320**	**$86,890,320**	**$86,890,320**	**$86,890,320**
Cost for Additional FAR	$10.00	$0	$450,000	$450,000	$450,000
Total Development Costs (TDC)		**$80,519,320**	**$91,940,320**	**$91,940,320**	**$91,940,320**
Development Revenues					
Occupancy Level		95%	95%	95%	95%
Office Lease Rate (Full Service)	$35.50	$6,879,900	$8,397,525	$8,397,525	$8,397,525
Office Operating Expenses (per sqft)	-$8.15	-$1,662,600	-$2,029,350	-$2,029,350	-$2,029,350
Less: O&M Expense for Service Worker Wages	-$0.46	$0	$0	-$113,829	-$20,571
Net Operating Income		**$5,217,300**	**$6,368,175**	**$6,254,346**	**$6,347,604**
Capitalized Value	6.00%	**$86,955,000**	**$106,136,250**	**$104,239,107**	**$105,793,393**
Residual Value (Developer Profit)		**$6,435,680**	**$14,195,930**	**$12,298,787**	**$13,853,073**
as % of TDC		8.0%	15.4%	13.4%	15.1%
Difference Between Scenario B		---	---	-$1,897,143	-$342,857
Compensating Measures [1]					
A) Reduction in Negotiated Land Cost		---	---	$2,702,857	$4,257,143
…per sqft		---	---	$135.14	$212.86
B) Increased Office Lease Rate		---	---	$35.96	$35.58
…per sqft difference from Market Rate		---	---	$0.46	$0.08
C) Increased FAR		---	---	15,000	2,500
…yields Residual Value of…		---	---	$14,771,251	$14,265,150
…as % of TDC		---	---	15.4%	15.4%

[**Note 1**]: Adjustments to other variables to compensate for "lost" revenue from additional FAR and maintain level of developer profit in Scenario B.

Source: Economic & Planning Systems

H:\163057-Portland Service Workers Union Policy Study\Data\[163057-Data Support-062116.xlsx]Table 1 - Development Impact

Contextual Considerations

As of the beginning of August 2016, the CET was approved and has gone into effect. The mandatory inclusionary zoning policy, on the other hand, according to publicly available information on the Bureau of Planning and Sustainability's website (presentation from July 19, 2016), might not take full effect until 2018, although plans could involve the adoption of an interim code sometime in 2017.

Are there conflicts with the CET?

One of the primary concerns is whether a conflict could exist between the CET and this proposed policy, as they relate to mitigating the affordable housing needs of lower-income households. When it becomes available, the nexus study supporting the city's CET will document the impacts on housing generated by various categories of expected employees for the tenants or other (owner) occupants of an office development (as well as other types of development). In standard nexus studies, maximum justifiable fees are based on Bureau of Labor Statistics (BLS) Occupational Employment Statistics data assumptions and income distributions within each occupational category for each development prototype.

Using the nexus studies prepared for Seattle and Denver (as referenced earlier), however, each reports' tables documenting the categories of new office employee households ("Estimated Occupational Distribution of New Employee Households in Non-Residential Development") exclude "Building and Grounds Cleaning and Maintenance" jobs (BLS 37-0000) in all AMI categories[4]. (This specific BLS occupational category, BLS 37-2011, accounts for "Janitors and Cleaners, Except Maids and Housekeeping Cleaners".) The absence of janitorial workers in both nexus studies for office development means that the maximum justifiable fees do not incorporate their affordable housing needs or affordability gaps. In this context, it is unlikely that Local 49's proposal would be double-dipping into the mitigation of affordable housing needs for janitorial workers.

Furthermore, because most cities' recommended and adopted linkage fees are a small percentage of the maximum justifiable fees, the fees collected can only mitigate against that portion of affordable housing demand created. For example, if the adopted fee is 10 percent of the maximum justifiable fee, only 10 percent of the affordable housing needs are mitigated.

Finally, and most important, SEIU Local 49's proposal addresses a more direct impact of the development on affordable housing: the impact on the incomes of workers who will service the development itself. The development will have an ongoing need for service workers, in the same way it will have an ongoing need for sewer and water service and for access to transportation facilities. Because it is the physical development itself that generates the need for service workers, mitigation of the impact should be more direct than the CET or similar program would allow.

[4] See DRA "Seattle Non-Residential Affordable Housing Impact and Mitigation Study: Final Report" (September 15, 2015), Tables 10-12 documenting 0 percent through 80 percent AMI, indicate 0 jobs and 0 households for Building and Grounds Cleaning and Maintenance jobs. In DRA "Denver Affordable Housing Nexus Study: Public Review Draft Report" (July 8, 2016), Tables 25-28 documenting 0 percent through 120 percent AMI, indicate 0 jobs and 0 households for Building and Grounds Cleaning and Maintenance jobs.

Does this policy concept conflict with the mandatory inclusionary zoning ordinance?

Inclusionary zoning ordinances are enacted under a different governing authority. Because linkage fees are often considered to be similar to exactions, they may be required to meet the Supreme Court case law tests of "rational nexus" and "rough proportionality". There is no such quantitative justification for the affordable housing requirement (i.e. a set-aside or affordability level) and thus there is little or no evidence or comparative framework to document whether this policy is duplicative.

It is understood that the mandatory inclusionary zoning policy might leverage the mechanism of bonus density as a compensating measure (i.e. an incentive) to offset the cost of the affordability requirement. It is, however, unclear to what degree of density will be granted as an incentive. According to publicly available documents, one possibility is that only a portion of the 3:1 density bonus could be utilized and that the remainder could still be available for other density bonus options.

Conclusion

SEIU Local 49's proposal is consistent with the intent of linkage studies that analyze the impact on affordable housing of lower-wage workers who will occupy new development. Requiring development that uses transferred FAR to pay service workers at the upper end of 50 percent AMI will open up a much larger pool of possible housing than would be available to workers paid the low-end compensation of 30 percent of AMI. The estimated residual value of additional FAR is sufficiently high that there will be an incentive to use transfers, even after discounting the development and operational costs of obtaining the transferred FAR and paying increased compensation based on the maximum increase from the low-end compensation to the upper end at 50 percent of AMI.