

PHILADELPHIA'S PROPOSED ONE PERCENT CONSTRUCTION TAX/IMPACT FEE: GOOD COMPROMISE OR A FOOL'S BARGAIN?

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The Philadelphia City Council announced new legislation on April 11, 2018, that includes a new 1 percent tax on new construction that would raise revenue for the Housing Trust Fund, the city's dedicated source for developing new affordable housing, preserving existing housing and preventing homelessness.

WHAT IS THE TAX/IMPACT FEE?

Proposed Bill No. 180351 would impose a new Construction Impact Tax/Impact Fee on all projects that are eligible for the city's 10-year tax abatement. The funds raised from the tax are intended to help the Housing Trust Fund provide funding for more affordable and workforce housing development, which would be available to both nonprofit and for-profit developers.

HOW MUCH IS THE TAX?

The tax/impact fee is 1 percent of the stated cost of construction, including repairs, construction, additions and alterations of the building and is paid when the applying for a building permit. (Note that there is some discussion to change the time when payment would be due from the building permit application to the time a zoning permit is filed.)

While 1 percent may not sound like a lot, consider the tax on a \$1 billion new technology center, a \$300 million new multifamily high rise or a new \$800 million stadium. In each instance, the tax for these projects would be \$10 million, \$3 million and \$8 million, respectively.

ARE CERTAIN TYPES OF BUILDING EXEMPT?

As currently drafted, all buildings that are "for human occupancy" and that are eligible for the 10-year tax abatement would be subject to the tax/impact fee. These buildings would include not only residential structures, but commercial and industrial structures as well.

Rather than single out one particular kind of developer (i.e., multifamily developers), the proposed tax would apply to any project that qualifies for a 10-year tax abatement in Philadelphia.

COALITION BUILDING

There appears to have been more compromise than usual between the trades, the Building Industry Association, City Council members, members of the development community and other civic-minded individuals as the merits and concerns over the 10-year tax abatement were debated, as was the Mixed Income Housing Bill, both being offered as potential solutions for addressing Philadelphia's affordable and workforce housing needs.

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NOVEL APPROACH

Drexel University's Lindy Institute for Urban Innovation Senior Research Fellow Kevin Gillen told the Philadelphia Business Journal, "The impact fee being considered here is a truly unique hybrid. It is tied to the abatement rather than to inclusionary zoning. And it is the type of program that is traditionally used by low-cost, low-tax Sun Belt suburbs that have experienced decades of rapid population growth, but the bill's sponsors want to apply it to a relatively high-cost, high-tax Northeastern city that until recently has experienced decades of depopulation."

Impact on the Mixed-Income Housing Bill

If the new bill is passed, the Mixed-Income Housing Bill will become completely optional and will be amended to include numerous beneficial bonuses such as extra height (7 feet) and density (25 to 50 percent bonus) in RM-1, CMZ-1/2/2.5, amongst other potentially attractive zoning bonuses. These bonuses will continue to have a mixed-income housing requirement or payments in lieu of an additional 1 to 2 percent of construction costs depending on the amount of the bonus.

EFFECTIVE DATE

As proposed, the effective date would be July 1, 2018, although some are already pushing for a later effective date of January 1, 2019.

Duane Morris attorneys will continue to monitor and report on any development in this issue.

FOR MORE INFORMATION

If you have any questions about this Alert, please contact Brad A. Molotsky, any of the attorneys in the Real Estate Practice Group, attorneys in the Project Development/Infrastructure/P3 Practice Group or the attorney in the firm with whom you are regularly in contact.

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