

Rules and Regulations

CITY OF OAKLAND JOBS/HOUSING IMPACT FEE (Effective July 1, 2005)

Authority cited: Ordinance No.12442 CMS, adopted on July 30, 2002 . Codified in Chapter 15.68 of the Oakland Municipal Code.

The purpose of this document is to provide rules and regulations for administering the Jobs/Housing Impact Fee in the City of Oakland.

I. Effective Date

These rules and regulations apply to development projects otherwise covered by these regulations for which a building permit is approved by the City on or after July 1, 2005. In the event that the building permit for any development project issued prior to July 1, 2005, expires prior to start of construction but after July 1, 2005, the development project shall be subject to the impact fee if and when a building permit is renewed or an application for a building permit is resubmitted.

II. Definitions

The following terms have the following meanings:

"Affordable housing" means housing that is provided at an affordable rent for rental housing or an affordable housing cost for owner occupied housing to lower income households or very low income households.

"Affordable rent" means rent, including a utility allowance set by the Oakland Housing Authority Section 8 program, not to exceed:

- For very low income households, the product of 30 percent of 50 percent of the area median income adjusted for family size appropriate for the unit.
- For lower income households whose gross incomes exceed the maximum income for very low income households, the product of 30 percent times 60 percent of the area median income adjusted for family size appropriate for the unit.

"Affordable housing cost" shall be as defined in California Health and Safety Code Section 50052.5 and its implementing regulations.

"Applicant" means any individual, person, firm, partnership, association, joint venture, corporation, limited liability company, entity, combination of entities or authorized representative thereof, who undertakes, proposes or applies to the City for any office or warehouse/distribution development project.

"Area Median Income" means area median income for the Oakland area as published and adjusted by HUD.

“Building Official” shall be as defined in Section 15.04.085 of the Oakland Municipal Code.

“City” means the City of Oakland.

“City Administrator” means the City Administrator of the City of Oakland or his or her designees.

"Change and intensification of use" means a project that (1) will change the use of one or more buildings from a non-office use to an office use or from a non-warehouse/distribution use to a warehouse/distribution use, and (2) will result in an increase in the average number of employees per square foot of gross space.

"Development project" means any activity for new construction, construction in an existing building that has been substantially vacant for a continuous period of at least one year, or any change and intensification of use of an existing building involving or requiring the issuance of a building permit by the City.

“Housing production mitigation measures” or “in-lieu housing production mitigation measures” mean those requirements or measures imposed on or elected by applicants for certain development projects in lieu of payment of impact fees, as such requirements and measures are set forth under Section 15.68.080 of the Oakland Municipal Code.

“Impact fee” means that jobs/housing impact fee imposed under Chapter 15.68 of the Oakland Municipal Code on applicants for certain development projects.

"Lower income household" means a household with an income not exceeding 80% of the area median income adjusted for household size as defined in California Health and Safety Code Section 50079.5 and its implementing regulations

"Office" means those uses that fall under any of the following use activity types as defined in the Oakland Planning Code:

Medical Service Commercial Activities (Section 17.10.330);

General Personal Service Commercial Activities (Section 17.10.350);

Consultative and Financial Service Commercial Activities (Section 17.10.360);

Administrative Commercial Activities (Section 17.10.390);

Business and Communication Service Commercial Activities (Section 17.10.400); or

Research Service Commercial Activities (Section 17.10.420).

"Substantial rehabilitation" means a project to repair or rehabilitate an existing building in which the cost of repairs or rehabilitation exceed 25 percent of the building's after-rehabilitation value.

"Very low income household" means a household with an income not exceeding 50% of the area median income adjusted for household size as defined in California Health and Safety Code Section 50105 and its implementing regulations.

"Warehouse/distribution" means those Transport and Warehousing Commercial Activities defined in the Oakland Planning Code Section 17.10.500.

III. Requirements

These regulations shall apply to any development project that is intended for office or warehouse/distribution use, if the development project is greater than 25,000 square feet. The applicant for any such development project, as a condition of its building permit, must pay to the City those impact fees, or must provide to the City those housing production mitigation measures in lieu of such impact fees, necessary to eliminate, mitigate, or reduce to an acceptable level those impacts on and increased demand for affordable housing.

The impact fees and in-lieu housing production mitigation measures authorized are in addition to any other fees or mitigation measures otherwise authorized by law. Nothing in this document shall be construed as waiving, reducing, or modifying any other requirements for issuance of any permit, variance, approval or other entitlement by the City under any other law.

IV. Amount of impact fee

The impact fee shall be calculated for each development project subject to these regulations as follows:

(number of gross square feet in the development project devoted to office or warehouse/distribution uses minus 25,000 square feet) x \$4.00 = the amount of the fee.

The applicable dollar multiplier shall be adjusted yearly on July 1st beginning on July 1, 2006, by the City Administrator or his or her designee in accordance with the percentage increase or decrease in the Wood Frame Buildings Cost Index for the Western District from January to January published by Marshall and Swift, or if such index ceases to be published, by an equivalent index chosen by the City Administrator, with appropriate adjustments for regional and local construction costs as necessary.

For purposes of these regulations, the gross square footage devoted to office or warehouse/distribution uses shall include lobbies and common areas, but shall not include space devoted to parking.

V. Payment of impact fee

The impact fee will be assessed at the time a building permit is issued. Payment of the impact fee shall be due in three installments.

- The first installment shall be due prior to the issuance of a building permit for all or any portion of the development project, and shall be in the amount of twenty-five percent (25%) of the impact fee.
- The second installment shall be due prior to the issuance of a Temporary Certificate of Occupancy for all or any portion of the development project, and shall be in the amount of fifty percent (50%) of the impact fee.
- The third installment shall be due 18 months from the date of the issuance of a Temporary Certificate of Occupancy for all or any portion of the development project, and shall be in the amount of the remainder of the impact fee.

As an alternative to payment of the impact fee set forth in this chapter, an applicant for a development project subject to the impact fee may elect to produce affordable housing in lieu of paying the fee (see In-lieu housing production mitigation measures section below).

VI. Reductions and exceptions

Reductions and exceptions to the impact fee and in-lieu housing production mitigation measures may be granted to a development project by the Impact Fee Review Board only if:

- the development project is rendered infeasible by imposition of all or a portion of the impact fee or the housing production mitigation measures; and
- there are demonstrated special circumstances unique to the financing or economics of the development project and not generally applicable to other projects of similar type and size; and
- no feasible alternative means of compliance are available which would be more effective in attaining the purposes of the linkage fee ordinance than the relief requested,

or

- the development project will not generate any need for additional affordable housing, or the increase in such need will be limited so as to justify a reduced impact fee or reduced in-lieu housing production mitigation obligation.

The burden of establishing by satisfactory factual proof the applicability and elements of this section shall be on the applicant. For purposes of this section, "infeasible" means incapable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, and technological factors.

Application for reduction or exceptions to the impact fee must be made no later than the date of application for the building permit for the development project. The applicant must submit full information regarding all costs of development, all sources of funds for development and terms and conditions of all financing for the development. Decisions will be made within 30 days of application for a reduction or exception and will be made in writing.

VII. In-lieu housing production mitigation measures

As an alternative to payment of all or part of the required impact fee, an applicant may elect to produce affordable housing in lieu of the impact fee to mitigate the impacts of the development project. Any applicant electing this in-lieu option must demonstrate that it will construct or cause to be constructed new affordable housing units (of any tenure type) within the City of Oakland as determined by the following formula:

(number of gross square feet in development project devoted to office or warehouse/distribution uses minus 25,000 square feet) x .00004 (four hundredths of one percent) = number of affordable housing units.

In the event the application of this section to an applicable development project creates an obligation to construct a fractional housing unit, that fraction shall be converted into an addition to the impact fee, or in the alternative, at the discretion of the City Administrator, an additional affordable housing unit.

This unit production requirement shall be adjusted by the City Administrator, as appropriate, to account for any partial payment of impact fees to be made by the applicant.

In the event that an applicant chooses the in-lieu housing production option:

- A. The applicant must submit to the City Administrator an affordable housing production proposal with sufficient information to enable the City Administrator to determine that the applicant will construct or cause to be constructed the required number of affordable housing units. The application must demonstrate to the City Administrator's satisfaction that (1) it possesses the financial means, technical expertise and experience to commence and complete the construction of the affordable housing within the required time period, and (2) it will substantially participate in the proposed housing development such that additional units are developed that without said participation, would not have otherwise been built.
- B. No residential project for which a building permit has been issued prior to the issuance of the building permit for the development project shall qualify as in-lieu housing,
- C. The proposed housing may not use City or Redevelopment Agency affordable housing subsidy.

- D. If the proposal is for homeownership housing, the proposed housing must meet the City of Oakland Affordable Homeownership Development Program Guidelines.
- E. If the proposal is for rental housing, the proposed housing must meet the City of Oakland Project Underwriting Guidelines.
- F. The period of affordability must be at least 55 years for rental housing and at least 45 years for homeownership housing, enforced by a regulatory agreement, resale controls, or similar restrictions which are enforceable by the City as covenants running with the land and recorded by the City against the housing property.
- G. If the City Administrator approves an affordable housing production proposal, he or she shall issue a certificate so indicating. This certificate shall be recorded on title of the development project property as a covenant running with the land, and indicate that compliance with Chapter 15.68 of the Oakland Municipal Code and these regulations is a binding obligation of the owner of the development project property, and the owner's assignees and successors in interest, and is enforceable by the City.
- H. Prior to receipt of the building permit for the development project, the applicant must submit satisfactory evidence to the City Administrator of site control and any required land use entitlements (other than building permits) for the affordable housing project.
- I. Prior to the issuance of the Certificate of Occupancy for the development project the applicant must obtain a building permit for the affordable housing project.
- J. No later than eighteen (18) months from the issuance of the Certificate of Occupancy for the development project, the applicant must secure a Certificate of Occupancy for all affordable housing units.

VIII. In-lieu housing production through participation in a joint venture

Where the applicant intends to construct housing units through participation in a joint venture, partnership or similar arrangement, the applicant must comply with all the provisions of Section VII. In addition, the applicant must certify to the City to the City Administrator's satisfaction that the applicant has made a binding commitment, enforceable by the applicant's joint venturers or partners, to contribute an amount of funds or real property to the joint venture or partnership equivalent to or greater than the amount of the impact fee that would otherwise be imposed, less the portion of the housing requirements of these regulations actually met through the payment of impact fees, and that such joint venture or partnership is legally obligated to use such funds or property to develop the affordable housing required by Section VII. The contribution must be for at least as long as the period of affordability required under Section VII, and must be from non-City or Redevelopment Agency funds. Acceptable forms of contributions include a grant of funds to the project, or a loan to the project in which all principal and interest payments are made to the City's Housing Trust Fund. Financing not permanently dedicated to affordable housing, equity investments, or investments made in exchange for Federal or State tax credits are not eligible forms of contributions.

The contribution may also be in the form of a contribution of real property to the housing project. The value of the contribution will be the appraised fair market value of the real property, if the property is donated by the applicant without consideration, or the difference between the appraised fair market value of the real property and the price at which it is sold to the developer of the housing project, if the property is sold at below market value.

Any joint venturer or partner must meet the City of Oakland Minimum Developer Qualifications applicable to the City's Affordable Housing New Construction and Rehabilitation Program. No building permit may be approved for a development project subject to this paragraph until the applicant has paid in full or has posted an irrevocable letter of credit or other form of financial security acceptable to the City Administrator in the amount of the required contribution. Additionally, the City may record a lien on the development project property in the amount of any unpaid monetary contribution to assure compliance with these regulations.

IX. Enforcement

If the applicant fails to pay the impact fee, the City may take any of the following actions:

- Recording a lien or liens against the real property which is the subject of the development project for the amount of the impact fee;
- Revoking or suspending the Certificate of Occupancy for the property; or
- Taking any other action necessary and appropriate to secure payment.

In the event all affordable housing units required under the certification described in the section above are not timely produced as required by these regulations, the City Administrator may impose a charge on the applicant equal to one hundred fifty percent (150%) of the impact fee which would have been otherwise due and owing, together with interest accrued from the date of the first building permit issuance for the development project, and shall so notify the applicant. If this charge is not paid by the applicant within sixty (60) calendar days of the expiration of the applicable time period, the City may record a special assessment lien against the development project property in the amount of any charge and interest owed, and the City may revoke or suspend the Certificate of Occupancy for the development project use.

X. Impact Fee Review Board

There is hereby established an Impact Fee Review Board. The Board consists of the Deputy Director of Housing, the Director of Development, and the Director of Economic Development, Redevelopment and Housing and Community Development. The Board shall meet as needed. The Board shall review requests for reductions or exceptions made by the applicant under Section VI of these regulations. In addition, any person, including the applicant, may request a review by the Impact Fee Review Board of any other administrative determination made under these regulations. Such a request

must be submitted to the City in writing no later than 10 calendar days after such determination is made.

Any person, including the applicant, may appeal a final decision of the Impact Fee Review Board to the City Council. Any request for an appeal must be submitted to the City in writing no later than 10 calendar days after the final decision of the Impact Review Board is released.

The City will not issue a building permit to the Development Project until the above periods for filing appeals have expired with no appeals filed or if an appeal has been filed, final decision on the appeal has been made.

APPROVED:

City Administrator

Revision History:

1/25/07 – Section IV modified to change dates for building cost index from April to January to ensure timely calculation for preparation of City’s Master Fee Schedule.