

REVISED 7/23/2002

APPROVED AS TO FORM AND LEGALITY:

DEPUTY CITY ATTORNEY

OAKLAND CITY COUNCIL

ORDINANCE NO. 12442 C.M.S.

AN ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE TO ESTABLISH A JOBS/HOUSING IMPACT FEE AND AN AFFORDABLE HOUSING TRUST FUND IN THE CITY OF OAKLAND

WHEREAS, the City of Oakland adopted a Consolidated Plan for Housing and Community Development dated June 27, 2000 (the "Consolidated Plan"), which found that there is a severe shortage of affordable housing in Oakland; and

WHEREAS, the Consolidated Plan found that persons who live and/or work in the City have serious difficulty locating housing at prices they can afford; and

WHEREAS, the Consolidated Plan found that existing local, state and federal resources are insufficient to meet the affordable housing need; and

WHEREAS, the Association of Bay Area Governments, through its Regional Housing Needs Allocation, estimates that based on anticipated economic growth, the City will experience demand for 3,207 new housing units affordable to low and very low income households between 1999 and 2006; and

WHEREAS, certain commercial development projects create an influx of new employees and their families to the City, and thus generate additional need for affordable housing; and

WHEREAS, the Commercial Development Linkage Fee Analysis for the City of Oakland prepared by David Paul Rosen & Associates published September 13, 2001 (the "nexus study"), presented to Council on June 18, 2002, examined the nexus between new non-residential development and the need for affordable housing in the City of Oakland; and

WHEREAS, the nexus study concluded that new non-residential development increases the demand for housing, including housing for low and very low income households, and exacerbates the housing crisis, and therefore established a clear rational nexus between such development and the need for affordable housing; and

WHEREAS, the nexus study concluded that imposing an impact fee on new office and warehouse/distribution development to be used for housing affordable to low and very low income households was justified, and that fees ranging from \$11.90 to \$31.32 per square foot would be supportable given the analyzed nexus; and

WHEREAS, the increased demand for affordable housing generated by commercial development projects, unless mitigated, is detrimental to the City's public health, safety and general welfare; and

WHEREAS, the public policy of the City of Oakland, as reflected by City Council goal #5 for FY 2001-03, is to support the development of affordable housing opportunities in all areas of the City; and

WHEREAS, the final report of the Affordable Housing Task Force recommended that the City adopt a jobs/housing impact fee and establish an affordable housing trust fund; and

WHEREAS, the Council has received and considered two staff reports on a possible jobs/housing impact fee and affordable housing trust fund dated October 16, 2001 and June 18, 2002, as well as the staff report accompanying this Ordinance; now therefore

The Council of the City of Oakland does ordain as follows:

SECTION 1. This Ordinance shall be known as the "Jobs/Housing Impact Fee and Affordable Housing Trust Fund Ordinance."

SECTION 2. Chapter 15.68 is hereby added to the Oakland Municipal Code to read as follows:

Chapter 15.68

JOBS/HOUSING IMPACT FEE AND AFFORDABLE HOUSING TRUST FUND

15.68.010 Purpose.

The purpose of this chapter is to establish a Jobs/Housing Impact Fee and an Affordable Housing Trust Fund in the City of Oakland to assure that certain commercial development projects compensate and mitigate for the increased demand for affordable housing generated by such development projects within the City of Oakland.

15.68.020 Findings.

The City Council finds and determines the following:

A. New development of office and warehouse/distribution space creates new employment opportunities in Oakland.

B. New employment opportunities will attract new workers into the City of Oakland.

C. Many of those new workers will choose to move their residence to Oakland.

D. Many of those new Oakland residents will qualify as low and very low income households.

E. Low and very low income households have difficulty finding affordable housing in Oakland.

F. New development of office and warehouse/distribution space therefore increases the demand for housing for low and very low income households and exacerbates the housing crisis, and thus there is a clear rational nexus between such development and the need for affordable housing.

G. Through the payment of an impact fee into an affordable housing trust fund dedicated to affordable housing production, developers of employment-generating office and warehouse/distribution projects will mitigate at least a portion of the impact of their developments on the housing market.

H. The jobs/housing impact fee and Affordable Housing Trust Fund created by this Ordinance serve the public interest and are necessary to protect the health, morals, safety, property, general welfare, well being and prosperity of the

residents of Oakland, and is within the home rule powers and police powers of the City.

15.68.030 Definitions.

As used in this chapter, the following terms have the following meanings:

"Affordable housing" means housing that is provided at an affordable rent or an affordable housing cost to lower income households or very low income households. The terms "affordable rent" and "affordable housing cost" shall be as defined in California Health and Safety Code Sections 50053 and 50052.5 and their implementing regulations. Such housing shall have terms of affordability equivalent to those prescribed in California Health and Safety Code Sections 33334.3(f)(1)(A) for rental housing and 33334.3(f)(1)(B) for owner occupied housing.

"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.

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

"City" means the City of Oakland.

"City Manager" means the City Manager of the City of Oakland or his or her designees.

"Change and intensification of use" means a project that 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 which 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 this chapter.

"Impact fee" means that jobs/housing impact fee imposed under this chapter on applicants for certain development projects.

"Lower income household" shall be 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 City of 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" shall be 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 City of Oakland Planning Code Section 17.10.500.

15.68.040 Requirements.

The regulations, requirements and provisions of this chapter shall apply to any office development project and any warehouse/distribution development project. 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 which are anticipated to be generated by or attributable to such development project, as such impact fees and in-lieu housing production mitigation measures are set forth in this chapter.

Nothing in this chapter 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.

The impact fees and in-lieu housing production mitigation measures authorized by this chapter are in addition to any other fees or mitigation measures otherwise authorized by law.

15.68.050 Amount of impact fee.

The impact fee shall be calculated for each development project 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 Manager in accordance with the percentage increase or decrease in the residential building cost index published by Marshall and Swift, or if such index ceases to be published, by an equivalent index chosen by the City Manager, with appropriate adjustments for regional and local construction costs as necessary.

15.68.060 Payment of impact fee.

The impact fee will be assessed at the time a building permit is issued for the amount specified in Section 15.68.050. 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.

Except as provided elsewhere in this chapter, no building permit may be issued for any development project subject to this chapter unless and until the first installment of the impact fee is paid to the Building Official. No Certificate of Occupancy may be issued for any development project subject to this chapter unless and until the second installment of the impact fee is paid to the Building Official. The Building Official shall deposit the impact fee in the Affordable Housing Trust Fund.

The City may also enforce the requirement to pay the impact fee by 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 by taking any other action necessary and appropriate to secure payment.

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 comply with those requirements through the production of housing as provided in Section 15.68.080 of this chapter.

15.68.070 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 City Manager or his or her designee(s) pursuant to Section 15.68.090 only if (1) the development project is rendered infeasible by imposition of all or a portion of the impact fee or the housing production mitigation measures, there are demonstrated special circumstances unique to the financing or economics of the project not generally applicable to other projects, and no feasible alternative means of compliance are available which would be more effective in attaining the purposes of this chapter than the relief requested, or (2) 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 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.

15.68.080 In-lieu housing production mitigation measures.

As an alternative to payment of all or part of the impact fee required under this chapter, an applicant subject to the requirements of this chapter 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) 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 = number of affordable housing units. This unit production requirement shall be adjusted by the City Manager 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, the applicant must submit satisfactory evidence to the City Manager of site control and issuance of a use permit for the project intended to produce the affordable housing units, prior to receipt of the building permit for the development project. The applicant must obtain a building permit for the affordable housing project prior to the issuance of the Certificate of Occupancy for the development project. The applicant must secure a Certificate of Occupancy for all affordable housing units no later than eighteen (18) months from the issuance of the Certificate of Occupancy for the development project.

An applicant who elects to comply with the requirements of this chapter through the production of housing must submit to the City Manager an affordable housing production proposal with sufficient information to enable the City Manager 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 Manager's satisfaction that it possesses the financial means, technical expertise and experience to commence and complete the construction of the affordable housing within the required time period.

Where the applicant intends to construct housing units through participation in a joint venture, partnership or similar arrangement, the applicant must certify to the City to the City Manager'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 to the joint venture or partnership equivalent to or greater than the amount of the impact fee that would otherwise be imposed under Section 15.68.060 of this chapter, less the portion of the housing requirements of this chapter actually met through the payment of impact fees, and that such joint venture or partnership is legally obligated to use such funds to develop the affordable housing required by this section. Any joint venturer or partner must meet the qualifications for an affordable housing developer as provided by regulations to be adopted by the City Manager. 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 Manager in the amount of the required monetary contribution. Additionally, the City may require a lien on the

development project property in the amount of any unpaid monetary contribution to assure compliance with this chapter.

The City Manager may issue guidelines for the administration of the in-lieu housing production mitigation measures provisions of this section. If the City Manager 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 this chapter is a binding obligation of the owner of the development project property, and the owner's assignees and successors in interest enforceable by the City.

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 Manager, an additional affordable housing unit.

In the event all affordable housing units required under the certification are not timely produced as required by this section, the City Manager 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 under Section 15.68.060 of this chapter, 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, or in the alternative the City may revoke or suspend the Certificate of Occupancy for the development project use.

15.68.090 Review.

The City Manager or his or her designee(s) shall review requests for reductions and exceptions under Section 15.68.070. Any final decision by the City Manager or his or her designee(s) on such a request may be appealed to the City Council by the applicant or by any other person.

15.68.100 Affordable Housing Trust Fund.

The City Manager shall establish an Affordable Housing Trust Fund to provide assistance in developing affordable housing in the City of Oakland. The Affordable Housing Trust Fund shall receive all monies contributed pursuant to Sections 15.68.050 and 15.68.060 of this chapter. The Affordable Housing Trust Fund may also receive funds from any other source.

Funds deposited into the Affordable Housing Trust Fund, and all interest and investment earnings thereon, shall be used to increase, improve, and preserve the supply of affordable housing in the City of Oakland, with priority given to housing for very low income households. For purposes of this paragraph, to "preserve" affordable housing means to acquire, refinance, or rehabilitate housing that is at imminent risk of loss to the affordable housing supply due to termination of use restrictions, non-renewal of subsidy contract, or physical conditions that are likely to result in vacation of the property.

Funds may also be used to cover reasonable administrative or related expenses of the City not reimbursed through processing fees. No portion of the Affordable Housing Trust Fund may be diverted to other purposes by way of loan or otherwise.

Funds in the Affordable Housing Trust Fund shall be used in accordance with the adopted housing element to the City's General Plan, the Consolidated Plan, and subsequent housing plans adopted by the City Council, to subsidize or assist the City, other government entities, nonprofit organizations, private organizations or firms, or individuals in the construction, preservation or substantial rehabilitation of affordable housing. Monies in the Affordable Housing Trust Fund may be disbursed, hypothecated, collateralized or otherwise employed for these purposes from time to time as the City Manager so determines is appropriate to accomplish the purposes of the Affordable Housing Trust Fund. Eligible uses include, but are not limited to, assistance with staff costs or other administrative costs attributable to a specific affordable housing project, equity participation in affordable housing projects, loans and grants (including, predevelopment loans or grants) to affordable housing projects, or other public/private partnership arrangements. Monies from the Affordable Housing Trust Fund may be extended for the benefit of rental housing, owner occupied housing, limited equity cooperatives, mutual housing developments, or other types of affordable housing projects.

The Affordable Housing Trust Fund shall be administered by the City Manager, who shall have the authority to govern the Affordable Housing Trust Fund consistent with this section and to prescribe regulations for the administration and use of the Affordable Housing Trust Fund. Notwithstanding the foregoing, all allocations of funds from the Affordable Housing Trust Fund shall be approved by the City Council. An annual report showing impact fees imposed, revenues collected, funds committed, expenditures made, and any decisions made as to requests for reductions or exceptions shall be forwarded by the City Manager to the City Council.

15.68.110 Regulations.

The City Manager is hereby authorized to adopt rules and regulations consistent with this chapter as needed to implement this chapter, and to make such interpretations of this chapter as he or she may consider necessary to achieve the purposes of this chapter.

15.68.120 Applicability.

Any development project for which a building permit has been approved by the City prior to July 1, 2005, shall be exempt from this chapter. In the event that the building permit for such an exempt development project expires prior to start of construction but after July 1, 2005, the development project shall be subject to this chapter if and when a building permit is renewed or an application for a building permit is resubmitted.

SECTION 3. The record before this Council relating to this Ordinance and supporting the findings made herein includes, without limitation, the following:

1. Association of Bay Area Governments, Regional Housing Needs Determinations: 1999-2006 Housing Element Period, third official release dated June 1, 2000.
2. "Consolidated Plan for Housing and Community Development" dated June 27, 2000.
3. The report to City Council titled "Informational Report on the Final Recommendations of the Housing Development Task Force" and dated July 18, 2000.
4. "Commercial Development Linkage Fee Analysis for the City of Oakland" prepared by David Paul Rosen & Associates published September 13, 2001.
5. The report to City Council titled "Informational Report Regarding the Housing Nexus Study and Recommendations for the Establishment of a Housing Linkage Fee" and dated October 16, 2001.
6. The report to City Council titled "Supplemental Report to the Report Regarding the Housing Nexus Study for the Establishment of a Housing Linkage Fee" and dated October 30, 2001.
7. The report to City Council titled "A Report and Recommendation on the Establishment of a Jobs/Housing Impact Fee" and dated June 18, 2002.

SECTION 4. The recitals contained in this Ordinance are true and correct and are an integral part of the Council's decision, and are hereby adopted as findings.

SECTION 5. The custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively: (a) the Community and Economic Development Agency, Housing and Community Development Division, 250 Frank H. Ogawa Plaza, 5th floor, Oakland, California; and (b) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, California.

SECTION 6. The provisions of this Ordinance are severable, and if any clause, sentence, paragraph, provision, or part of this Ordinance, or the application of this Ordinance to any person, is held to be invalid or preempted by state or federal law, such holding shall not impair or invalidate the remainder of this Ordinance. If any provision of this Ordinance is held to be inapplicable to any specific development project or applicant, the provisions of this Ordinance shall nonetheless continue to apply with respect to all other covered development projects and applicants. It is hereby declared to be the legislative intent of the City Council that this Ordinance would have been adopted had such provisions not been included or such persons or circumstances been expressly excluded from its coverage.

IN COUNCIL, OAKLAND, CALIFORNIA, JULY 30, 2002

PASSED BY THE FOLLOWING VOTE:

AYES- BRUNNER, CHANG, MAYNE, NADEL, REID, SPEES, WAN, AND
PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California

**AN ORDINANCE AMENDING THE OAKLAND
MUNICIPAL CODE TO ESTABLISH A JOBS/HOUSING
IMPACT FEE AND AN AFFORDABLE HOUSING
TRUST FUND IN THE CITY OF OAKLAND**

NOTICE AND DIGEST

This Ordinance adds Chapter 15.68 to the Oakland Municipal Code to establish a Jobs/Housing Impact Fee and an Affordable Housing Trust Fund in the City of Oakland, and makes certain findings in support of its enactment.