

CITY OF OAKLAND
AGENDA REPORT

TO: Office of the City Manager
ATTN: Robert C. Bobb
FROM: Community and Economic Development Agency
DATE: June 18, 2002

RE: **A REPORT AND RECOMMENDATION ON THE ESTABLISHMENT OF A
JOBS/HOUSING IMPACT FEE**

SUMMARY

This report summarizes the issues discussed by a working group convened by staff to discuss the issues raised in October 2001 when staff first presented a proposal for the establishment of a jobs/housing impact fee. The proposal for such a policy was first raised by the Affordable Housing Task Force in July 2000, and the City Council subsequently authorized a professional services contract to prepare the required nexus study and an analysis of potential economic impacts of such a fee.

A number of questions and objections were raised when the policy was proposed in October 2001, and the City Council directed staff to work with interested parties to develop alternatives and to take into account additional considerations not originally addressed.

Staff convened a working group consisting of members of the original Task Force and representatives of the developer and business community. Although the group was unable to reach consensus, it succeeded in bringing both sides to a better understanding of each others concerns and interests. The working group was able to identify a range of policy options that are discussed below.

Because the working group was unable to develop a consensus proposal, staff is recommending that the City Council approve a proposed jobs/housing impact fee policy that would:

- Establish a linkage fee of \$6.00 per square foot
- Cover office, hotel and warehouse/distribution land uses (retail uses would be excluded)
- Be effective beginning January 1, 2006
- Allow fee payments to be paid in installments between issuance of a building permit and 18 months following completion of the project
- Provide an exemption for the first 25,000 square feet of any project
- Exempt projects that receive approval prior to January 1, 2004 for a final Planned Use Development permit

Item: _____

Community and Economic Development Committee
June 18, 2002

- Provide options for developers to comply in lieu of paying a fee, by taking other actions that cause affordable housing to be developed

Staff also recommends that the City Council direct staff and the City Attorney's Office to prepare the necessary legislation to implement this policy.

FISCAL IMPACT

There is no immediate fiscal impact as a result of this informational report. If the City Council approves the recommendations and directs staff to prepare an ordinance to implement a jobs/housing impact fee, the City could realize additional revenue of several million dollars once the ordinance goes into effect. The exact amount is difficult to estimate as it will depend on the number and size of new non-residential developments that start construction.

Impact fee revenues would be deposited into an affordable housing trust fund and are required by law to be used only for development of such housing. Costs of administration are expected to be minimal, although additional staff resources may be needed if the revenues result in a substantial increase in the number of housing development projects financed by the City.

BACKGROUND

A jobs/housing impact fee was first proposed by the Affordable Housing Task Force in July 2000, when its final report was accepted by the City Council. The Task Force recommended that the City engage a consultant to prepare a nexus study to determine the linkage between non-residential development and additional demand for affordable housing. Nexus studies are required by law to provide the foundation for any impact fee. Nexus studies demonstrate the relationship between the activity against which fees are assessed and the problem that is being mitigated, and also determine the maximum fee that can be supported legally..

Staff issued a request for proposals in October 2000, and in December 2000 the City Council authorized a contract with David Paul Rosen and Associates. Funding for the contract was approved in Jan 2001, and work on the nexus study and economic impact analysis began shortly thereafter.

The consultant's work was completed in Fall 2001. and after public meetings with developers and advocates, staff presented the report to the City Council in Oct 2001. Staff recommended that the City Council establish a job/housing impact fee of \$6.00 per square foot on all new office, retail, hotel and warehouse/distribution developments, to be effective on January 1, 2003.

Despite the findings of the nexus study that the proposed fee would have a minimal impact on development costs, project rents and developer rates of return, a number of developers and other members of the business community argued that the proposed fee would have serious consequences for economic development in Oakland and would discourage future development.

The City Council directed staff to work with developers and advocates to develop a workable proposal, and to consider not only the effect of the jobs/housing impact fee, but the cumulative effect when combined with other impact fees that may be under consideration.

Staff convened a working group consisting of members of the original Affordable Housing Task Force and developer and business interests. A list of those who attended one or more meetings is provided in Attachment 1. After two general meetings, certain key issues were identified, and a smaller subcommittee was formed to try to craft an acceptable policy proposal. While the subcommittee succeeded in focusing the discussion on a specific set of issues, it was not able to reach consensus. A final meeting of the entire working group resulted in further discussion of options, but no consensus was reached.

KEY ISSUES AND IMPACTS

Affordable Housing Needs

The City of Oakland continues to experience a severe lack of adequate affordable housing to meet the needs of its low and moderate income residents (individuals and families earning less than \$50,000 per year for a family of four). According to Census 2000 figures, 59.5 percent of all Oakland households have incomes less than \$50,000 per year, and 32.1 percent have incomes less than \$25,000 per year. Over 40 percent of all renters pay more than 30 percent of their income for housing; the figure is undoubtedly much higher for lower income renters.

In recent years, the City and Redevelopment Agency have expanded their efforts to address these needs through such measures as the issuance of a \$40 million affordable housing bond, increasing the Redevelopment Agency's affordable housing set-aside to 25 percent of tax increment revenues, streamlining permit processes, and increased efforts to secure more State and Federal resources. Nonetheless, demand for affordable housing for existing residents continues to outstrip the available resources.

Over the next several years, continued economic development is expected to attract new residents to the City, which will increase demand for housing, including affordable housing for low and moderate income workers and their families. The Association of Bay Area Governments, through its Regional Housing Needs Allocation for the housing element update process, estimates that the City will experience demand for 7,700 new housing units between 1999 and 2006, of which 3,300 must be affordable to low and moderate income households.

Results of the Nexus Study

The jobs/housing nexus

The nexus study showed that there was a significant relationship between development of non-residential projects (office, retail, hotel, and warehouse/distribution) and demand for affordable housing, and that such housing required substantial public subsidies. The study estimates the economic impact of nonresidential development on affordable housing through the following steps (which are calculated separately for each of the four development types listed above). This methodology is well established and is typically used in nexus studies throughout the State.

1. Estimate new jobs created per 100,000 square feet of new nonresidential development.
2. Estimate number of jobs that will be filled (directly or indirectly) by persons currently living outside of Oakland.
3. Estimate number of non-residents who will move to Oakland as a result of taking the new jobs (new "resident employees").
4. Determine the occupational profile of these jobs, and develop estimates of the incomes for these occupations.
5. Determine the number of new households that will be formed by new resident employees.
6. Make adjustments for multiple earner households in order to estimate the household income of new resident employees.
7. Determine the cost of developing new housing, and the subsidy required to make such housing affordable to various income levels (the housing "gap analysis").
8. Apply the results of the gap analysis to the results of steps 1 through 6 to determine the subsidy required to provide new housing for new low and moderate income resident employment generated by new development.
9. Divide by 100,000 to determine the cost per square foot of new development.

The results of this analysis showed a substantial relationship between new development and the additional cost burden that would result to provide affordable housing for new low and moderate income workers attracted to Oakland. The following chart shows these figures for each of the four land-use types:

Housing Subsidy Demand Generated by New Commercial Development

Land Use (Type of Development)	Housing Impact per Square Foot
Office	\$35.11
Retail	\$32.39
Hotel	\$12.91
Warehouse/Distribution	\$12.85

Item: _____

Analysis of economic impacts

The nexus study produced estimates that show that new development generates impacts that have a substantial cost to mitigate. If new developments were assessed a fee equal to the full mitigation cost, it would make such development financially infeasible, and new development would not take place. Thus, as is typical in every City in which such impact fees have been established, the study considered a range of possible fees that are well below the level required to fully mitigate the impacts.

The consultant's report examined the impact of nexus fees on residential development, using a range of \$2.00 to \$10.00 per square foot. The analysis considered three separate factors: the percentage increase in total development costs, the percentage increase in rents that would be required to hold developer rates of return constant, and the percentage decrease in rates of return that would result if rents were not increased. At \$6.00 per square foot (the fee recommended by staff), the effects were relatively small and did not appear likely to significantly change the overall economics of a project.

Validity of the nexus study

Although the consultant and staff interviewed a number of developers to ensure that the assumptions used in preparing the economic impact were valid, some developers have asserted that the study is flawed and underestimates the true cost of the proposed fee. Despite these claims and several requests from staff, no developer has provided actual numbers from recent or proposed developments that could be used to refute the validity of the original study. As detailed below, the working group discussions focused on the extent to which the economic impacts might be better absorbed depending on the timing of the implementation of a fee.

POLICY DESCRIPTION

Results of the Meetings of the Working Group

Since January of this year, staff has convened several meetings of a working group comprised of members of the original Affordable Housing Task Force and a number of developers and representatives of the business community. The working group included a wide spectrum of viewpoints and interests.

In the course of the discussions, it became clear that most of the major issues concerned various timing considerations:

- When a fee might become effective
- When the fee would be due
- Whether the amount of the fee would be phased in over time through stepped increases

Other issues that were discussed included:

- Various options for developers to comply in lieu of paying a fee
- Minimum sizes of developments to be subject to a fee (or the possibility of exempting a certain portion of all projects from the fee)
- The land uses to be covered by a fee.

Each of these issues is discussed below

Effective date

Several developers expressed concern that development projects already in the pipeline would be impacted negatively by new fee. Costs and investments are based on conditions that existed when the projects started. Imposing a new fee mid-stream would change those conditions. In particular, developers noted that the price they pay for land is determined by subtracting all other development costs (labor, materials, financing costs, fees, professional services, etc.) from the value of the finished project (including a rate of return for the developer and project investors). This residual value sets an upper limit to the amount they are willing to bid for land for development. If a fee is enacted, developers who already have purchased sites will in effect have paid too much for land and therefore will not be able to realize the same rate of return as developers who purchase land after a fee is enacted.

While there are always risks inherent in development (changes in construction costs, interest rates, market conditions, etc.), to the extent the City is interested in attracting new development, it may want to avoid creating additional risk factors for developers. Deferring the effective date of an impact fee would allow more time for the market to adjust to this new factor.

When fee is due

In the course of the working group's discussions, representatives of the developers and the Chamber of Commerce presented information from Boston, which has had a jobs/housing impact fee in place for many years. The Boston ordinance allows the fee to be paid in installments over a period of 7 to 12 years (shorter in downtown, longer in neighborhoods). Boston's ordinance also covers a much wider range of projects, including institutional land uses, so the reduced income from installment payments is offset by the larger number of projects subject to the fee.

The working group's subcommittee decided not to pursue the option of a multi-year fee schedule. However, developers noted that there is a significant difference between paying the entire fee when a building permit is issued, and paying the fee after the project is completed. Fees paid prior to construction must either be included in the construction loan, which entails additional interest costs, or would have to be paid directly by the developers. Once a project is completed and the construction loan is refinanced, developers can include the fee in the new loan. It was also felt that there were additional advantages to deferring a portion of the fee until after the project is fully occupied and has stabilized operations.

Amount and timing of fee

Because the principal issue seems to be how the market will react to and absorb a fee, there was considerable discussion about the idea of phasing in the fee over time. Under this scenario, the fee initially would be set at a relatively modest level, and then would increase over time, which would give the market time to adjust.

Proposals to phase in the amount of the fee should be considered in combination with proposals to defer the effective date, since these are both approaches to allowing the market time to adjust.

In-lieu options

The working group did not devote much time to a discussion of specific options, but it was generally agreed that any ordinance should include provisions for alternative methods for developers to mitigate the affordable housing impacts of their developments. The working group noted that the San Francisco linkage fee ordinance contains language that allows developers, in lieu of paying the fee, to "cause housing to be developed" through direct construction on site or off, donations of land, or assistance to third parties (such as nonprofit developers) to build the housing. The number and affordability of units produced under such an alternative should be comparable to the number of units that would be assisted if the fee were paid directly to the City.

Threshold sizes and exemptions

The working group subcommittee spent some time discussing the minimum size of projects subject to a fee. The original staff proposal excluded small projects because of a desire to avoid any impact on smaller neighborhood-serving retail projects.

The developers and the Chamber of Commerce provided information about the City of Boston's linkage fee, which excludes 50,000 square feet of every development from the fee calculation. In effect, projects with less than 50,000 square feet are exempt; larger projects pay the fee on only a portion of the development. For example, a 500,000 square foot office building pays a fee

on 450,000 square feet of space. It was noted that this approach would ensure that a 51,000 square foot building would not be at a competitive disadvantage to a 49,000 square foot building.

Land uses covered by a fee

There was general agreement that office, hotel and warehouse/distribution uses should be covered by an impact fee. There was also agreement that retail uses should be excluded. Given the City's continuing efforts to attract both neighborhood-serving and larger retail projects serving a regional market, excluding retail uses altogether would be consistent with the City's retail development strategy.

Other issues considered by staff

Staff has also examined some additional issues raised by the City Council, including total costs of doing business in Oakland compared to other cities, and the cumulative impact of all impact fees under consideration.

Cost of doing business

Costs of doing business break down into two categories: one-time costs of development, and ongoing costs of operations. The first category is primarily of concern to developers, although higher costs can translate into higher rents. This category includes permit fees, planning fees and development impact fees. The second category falls on tenants and landlords, and has some effect on rents. This includes utility taxes, business taxes, etc.

While costs of doing business vary from city to city, development costs (in particular land prices) and market rents also vary widely. It is impossible to assess the effect of costs of doing business just by comparing them between cities. Costs of doing business must be compared to market conditions in each city. San Francisco, for example, has the highest development fees and the highest business taxes of any city in the region, yet because of the strength of its market, over the long run these costs have not had a noticeable impact on development.

Other fees under consideration

Council asked staff to look at the proposed jobs/housing impact fee in the context of other fees that may be under consideration. However, work on those other fees is only at a preliminary stage and it is too early to assess what effect those fees would have. It appears unlikely that an open space fee would have much impact on commercial space. A study on downtown parking and transportation needs is underway and is expected to be completed by the end of this year. It is not possible to determine at this point if an impact fee for parking or transportation will be justified by this study, nor is it possible to estimate the amount of such a fee.

SUSTAINABLE OPPORTUNITIES

Economic

The establishment of a jobs/housing impact fee would have a variety of economic impacts. It is possible that there may be some reduction in the amount or pace of commercial development, although different approaches to the timing of implementation would likely reduce or eliminate these effects.

At the same time, the fee would make possible the development of new affordable housing, which itself generates construction jobs and continuing employment in property management and maintenance, as well as meeting the housing needs of the City's low and moderate income residents.

Jobs/housing impact fees have been recommended by a variety of organizations as a means of promoting smart growth by linking housing to new job creation.

Environmental

To the extent that a jobs/housing impact fee results in additional housing development in the same jurisdiction as new job creation, there are significant environmental gains. Promoting linkages between jobs and housing reduces tendencies to urban sprawl that result when workers must move further and further from job centers to find affordable housing. This would reduce traffic congestion, improve air quality, and relieve strain on scarce resources needed to provide infrastructure in previously undeveloped or under-developed areas.

Social Equity

As noted, the City continues to have severe housing problems, especially for low and moderate income households. A jobs/housing impact fee would help the City provide affordable housing for lower-paid workers and their families.

DISABILITY AND SENIOR CITIZEN ACCESS

There is no direct impact on disability and senior citizen access as a result of this proposal. New affordable housing developments do include units accessible to persons with disabilities, and some new affordable housing is provided specifically for seniors.

RECOMMENDATION(S) AND RATIONALE

Despite several meetings, the working group was not able to reach a full consensus, but it did succeed in identifying key issues. Based on these discussions, staff has prepared a revised recommendation for a jobs/housing impact fee. **Attachment 2 provides a summary that compares the original staff proposal to staff's current proposal.**

Land uses subject to fee

Staff recommends that retail uses be excluded from the fee. Because it has been difficult to attract major retailers to Oakland, imposing additional costs would be inconsistent with the City's retail attraction strategy. Unless retail development increases significantly, the exclusion is not likely to have a major impact on potential revenues.

Effective date of ordinance

To allow time for the market to adjust to the fee, staff proposes that it apply only to projects that submit a complete application for a building permit after January 1, 2006. This will allow developers who have already made significant investments to complete their projects without added costs not originally anticipated, and will also defer implementation until economic conditions have improved. This delay will allow time either for land prices to adjust or for the fee to be absorbed as a result of future increases in office rents.

Amount of fee

The original staff proposal was for a fee of \$6.00 per square foot. The working group did not reach consensus on this issue. Staff continues to recommend that the fee be set at \$6.00 per square foot. The nexus study showed that the effect on development costs, rents and developer rates of return was minimal. Although developers asserted that these findings were incorrect, no pro formas or other analyses were provided to support this claim. It should be noted that allowing for the effects of inflation, the value of the fee in today's dollars will be less than \$6.00 per square foot when it is implemented, and the fee is likely to represent an even smaller proportion of developer costs than originally estimated. Staff further recommends that the fee be subject to annual increases based on an appropriate index such as the consumer price index, a building cost index, or a housing cost index.

Timing of payments

Allowing the fee to be paid in installments will allow developers to finance most of the cost out of permanent financing and operating revenue, without having to include the fee in the amount financed with a construction loan. While in the short run this will defer the initial revenue

Item: _____

Community and Economic Development Committee
June 18, 2002

stream, over the long run the effect will not be significant as the City should realize a more or less steady stream of fee payments.

Staff recommends that the fee be paid in three installments: 25 percent when a building permit is issued; 50 percent when construction is completed; and 25 percent paid 18 months after construction is completed.

Thresholds and exemptions

The working group was not able to reach consensus on this item. Providing an exemption rather than a threshold would avoid the problem of subjecting slightly different projects to significant differences in fees.

Staff proposes to exempt the first 25,000 feet of all covered projects from any fee. For example, a 20,000 square foot building would pay no fee. A 26,000 foot building would pay a fee on 1,000 feet, and a 200,000 foot building would pay a fee on 175,000 feet. This level of exemption would exclude smaller neighborhood-serving projects altogether, and reduce the impact of a fee on moderate size projects.

Other exemptions

In the course of the discussions, some developers raised concern about projects that have undergone extensive work, including the costly process of completing an environmental review. Developers felt that projects that had obtained or applied for a final Planned Use Development (P.U.D.) permit should be exempt for this reason. Staff recommends that such an exemption be provided for projects that have obtained a final P.U.D. before January 1, 2004. At present, staff is aware of only one project that currently has an approved P.U.D. One other major project could likely obtain final approval before 2004. Staff is not recommending exemptions for projects that merely apply for P.U.D. permits before that date as this would provide too much of an open-ended opportunity for exemptions.

In-lieu options

All parties have agreed that a jobs/housing impact fee program should provide for alternative means for developers to comply with the ordinance. Most cities with housing impact fees allow developers to build affordable units, or assist other parties to develop affordable units, in lieu of paying a fee. San Francisco's ordinance contains language that permits developers to build housing, contribute land or funds to developers of housing, or pay a fee to the city. Staff recommends that an in-lieu option be included in jobs/housing impact fee program, with the requirement that development of affordable housing units be at least equivalent to the number of units that would be developed as a result of the fee.

Item: _____

Although a jobs/housing impact fee will not in itself solve the City's housing problems, it will make an important contribution to those efforts. Ultimately, it will require a variety of efforts including both regulatory and financial measures. Staff recommends that the Council adopt a jobs/housing impact fee as one part of a larger strategy that includes such measures as promoting higher density growth in the downtown, waterfront and commercial corridors (as enacted in the General Plan), the recent increase in the low and moderate income housing set-aside, and continued efforts to secure new resources from the State and Federal government.

ALTERNATIVE RECOMMENDATION(S)

Staff has identified two alternatives that the City Council may wish to consider. These are:

1. Adopt the program originally proposed by staff in October 2001.
2. Adopt no program.

ACTION REQUESTED OF THE CITY COUNCIL

Adopt the staff proposal for the general parameters of a jobs/housing impact fee, and direct staff and the City Attorney's Office to work together to develop an ordinance to implement this policy and return to the City Council for final approval.

Respectfully submitted,

WILLIAM E. CLAGGETT

Prepared by:

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Housing and Community Development
and
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Housing and Community Development Division

APPROVED FOR FORWARDING TO THE
CITY COUNCIL AND REDEVELOPMENT AGENCY

Office of the City Manager/Agency Administrator

APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE:

OFFICE OF THE CITY MANAGER

Item: _____
Community and Economic Development Committee
June 18, 2002

Attachment 1

Jobs/Housing Impact Fee Working Group

Judy Belcher	Oakland Coalition of Congregations
Catherine Bishop	National Housing Law Project
Jane Brunner	Oakland City Council
Tim Chapman	Oakland Tenants Union
Jim Christian	Shorenstein Company
Sandra Coleman	League of Women Voters
Susan Dembowski	Oakland Coalition of Congregations
Robert Dhondrup	Alameda County Central Labor Council
Jim Falaschi	
Mike Ghielmetti	Signature Properties
Leslie Gould	CEDA
Jon Gresley	Oakland Housing Authority
Joe Haraburda	Oakland Metropolitan Chamber of Commerce
Sean Heron	EBHO
Justin Horner	City Council aide
Kathryn Kasch	
Karen Koh	Urban Ecology
Lynette Lee	EBALDC
Jeffrey Levin	CEDA
Barry Luboviski	Building Trades Council
Andrew Montgomery	United Seniors
Phil Neville	Oakland Housing Authority
Rachel Peterson	Urban Ecology
Alex Salazar	Pyatok and Associates
Bill Salmon	Simeon Properties
Roy Schweyer	CEDA
Rachel Smit	City of Oakland
Peter Smith	
Karen Stefonek	Madison Park REIT
Charles Sumner	Prentiss Properties
Paul Valva	Oakland Association of Realtors
Obray VanBuren	Pipe Trades
James Vann	Oakland Tenants Union
Todd Willis	Oakland Metropolitan Chamber of Commerce

Attachment 2

Jobs/Housing Impact Fee Summary of Proposals from Working Group and Staff

Item	Original Staff Proposal	Current Staff Proposal
Uses covered	Office, hotel, retail, warehouse/distribution	Office, hotel, warehouse/distribution
Effective date of ordinance	January 1, 2003	Jan 1, 2006 (3 years)
Amount of fee	\$6.00 per square foot	\$6 per square foot Annual increases based on CPI or building cost index
Timing of payments	100% at building permit issuance	25% at bldg permit issuance 50% at construction start 25% 18 mos. after occupancy
Building size thresholds and exemptions	Projects less than 50,000 square feet to be exempt	Exemption of first 25,000 square feet of any project
Other exemptions		Any building with a final P.U.D. approved prior to Jan 1, 2004.
In-lieu option for developer to build affordable housing	Not discussed	Provide range of options for developers to produce an equivalent number of comparable affordable units through direct development, land donations and other means.