

CITY OF OAKLAND
COUNCIL AGENDA REPORT

TO: Office of the City Manager
ATTN: Robert C. Bobb
FROM: Community and Economic Development Agency
DATE: July 23, 2002
RE: **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**

SUMMARY

On June 25, 2002, the City Council directed staff to prepare an ordinance to establish a jobs/housing impact fee and an affordable housing trust fund. Consistent with guidelines provided by the City Council, staff has drafted and the City Attorney has reviewed and approved a proposed ordinance that establishes an impact fee with the following parameters:

- Set the fee at \$4.00 per square foot, with an annual escalator tied to increases in residential construction costs.
- The fee will apply to office and warehouse/distribution development.
- The first 25,000 square feet of a development will be exempt from the fee.
- Payments will be due in 3 installments – 25 percent upon issuance of a building permit, 50 percent upon completion of construction, and 25 percent 18 months after completion.
- Developers will have an option to provide an equivalent number of affordable housing units in lieu of payment of the fee.
- The fee requirement will become effective on July 1, 2005, and will exempt any project for which the City has approved a building permit prior to that date.

The ordinance also establishes an Affordable Housing Trust Fund to increase, improve, and preserve the supply of housing affordable to very low and low income households. All revenues generated by the jobs/housing impact fee will be deposited into the trust fund.

FISCAL IMPACTS

Because the ordinance will not be effective until July 1, 2005, there are no fiscal impacts for at least three years. If the City Council approves the ordinance the City will realize additional revenue once the ordinance goes into effect. The exact amount is difficult to estimate as it will depend on the number and size of any office and warehouse/distribution developments that start construction after the measure goes into effect. Revenues and expenditures for the fund will be included when the proposed budget for FY 2005-07 is prepared.

Impact fee revenues would be deposited into an affordable housing trust fund to be used only for development of affordable 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. The ordinance permits the use of the trust fund to cover administrative costs.

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.

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 October 2001. Staff recommended that the City Council establish a jobs/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.

At its October 30, 2001 meeting, 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.

After working with developer and advocates, on June 25, 2002, staff presented a revised recommendation to the City Council to establish a fee of \$6.00 per square foot on office, hotel and warehouse/distribution uses. The City Council adopted a modified program that would establish a fee of \$4.00 per square foot, to be assessed only on office and warehouse/distribution uses. The City Council directed staff to prepare an ordinance and return for final approval on July 23, 2002.

KEY ISSUES AND IMPACTS

The City of Oakland continues to experience a severe lack of adequate affordable housing to meet the needs of its low income residents. In Oakland, over 40 percent of all renters pay more than 30 percent of their income for housing. 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, and increased efforts to secure more State and Federal resources. Notwithstanding these efforts, 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 nexus study showed that there was a significant relationship between development of non-residential projects and demand for affordable housing, and that such housing required substantial public subsidies.

The nexus study found the housing impact (for very low and low income housing) per square foot of office space is \$31.32 and warehouse/distribution is \$11.90. When the first staff recommendation was presented to the City Council in October 2001, developers and representatives of the business community argued that an impact fee would discourage future non-residential development, and would severely disadvantage projects that were already in the pipeline. Subsequent discussions by the working group that met in the first half of 2002 focused on the need to defer implementation for several years in order to allow time for the market to adjust to the added cost of a new fee. The policy adopted by the City Council and implemented in the proposed ordinance addresses these concerns by reducing the fee to \$4.00 per square foot and deferring implementation until July 1, 2005.

Implementation Issues Arising Since Council Approval of the Impact Fee Policy

When the City Council approved this policy, it directed staff to index the fee to the Consumer Price Index in order to adjust the fee for inflation. Staff believes that it is more appropriate to index the fee to a more direct measure of the cost of providing housing, and therefore is recommending that the inflation adjuster be tied to an industry-standard measure of residential construction costs, similar to the manner in which valuations are indexed for building permit fees.

The City Council also directed that the ordinance exempt any project that had submitted a "substantially complete application" for a building permit prior to the effective date of the ordinance. On further research, staff has determined that there is no satisfactory basis for making such a determination for building permit applications. Accordingly, staff recommends that the exemption apply to projects that have building permits approved by the City prior to the effective date of the ordinance.

PROGRAM DESCRIPTION

Jobs/Housing Impact Fee

The Jobs/Housing Impact Fee will be assessed on all office and warehouse/distribution projects that construct new space, develop existing vacant space, or change from some other use to office or warehouse/distribution uses and intensify the use of the space by increasing the employment density of the project.

As directed by the City Council, the amount of the fee is \$4.00 per gross square foot devoted to office or warehouse/distribution uses. Parking and retail uses, for example, will be excluded. The first 25,000 square feet of a project are exempt from the calculation. To ensure that the fee keeps pace with the actual cost of providing housing, the fee will be adjusted yearly on July 1st and indexed to the percentage increase or decrease in residential building costs as published by Marshall and Swift.

The fee will be due in three installments. The first installment (25 percent of the total fee) will be due prior to the issuance of a building permit. The second installment (an additional 50 percent of the fee) will be due prior to the issuance of a Temporary Certificate of Occupancy upon completion of construction. The third installment (a final 25 percent of the fee) will be due 18 months from the date of the issuance of a Temporary Certificate of Occupancy.

As an alternative to payment of all or part of the impact fee, an applicant subject to the fee may elect to produce an equivalent number of housing units in lieu of the impact fee to mitigate the impacts of the development project. As noted in the nexus study and other City analyses, development subsidies of at least \$100,000 per unit are typically required to produce a unit of affordable housing. Accordingly, developers would need to produce 1 unit of housing for every 25,000 square feet of space subject to the fee, which is the same amount of space that would generate \$100,000 in fee revenue. Fractions of space less than 25,000 square feet would be subject to the fee.

Reductions and exceptions to the impact fee and in-lieu housing production requirements may be granted to a development project only if (1) the development project is rendered infeasible by imposition of the impact fee or mitigation measure, or (2) the development project will not increase employment density. The City Manager is authorized to establish an Impact Fee Appeals Board to review requests for exceptions under this chapter. Any final decision by the Impact Fee Appeals Board may be appealed to the City Council.

Affordable Housing Trust Fund

The Affordable Housing Trust Fund will provide assistance in developing affordable housing in the City of Oakland. The Trust Fund will receive all monies contributed from the jobs/housing impact fee and may also receive funds from other sources (for example, if State and Federal programs are established to provide matching funds for local trust funds). Funds deposited into the Affordable Housing Trust Fund will be used to increase, improve, and preserve the supply of housing affordable to households of low income and very-low income. Funds may also be used to cover reasonable administrative or related expenses of the City.

Funds in the Trust Fund may be used to subsidize or assist the City, other government entities, nonprofit organizations, private organizations, or individuals in the construction, preservation or substantial rehabilitation of housing for low income or very-low income households. The

ordinance also requires the production of an annual report showing fees imposed, revenues collected, funds committed, and actual expenditures.

Rules and Regulations

The proposed ordinance grants the City Manager and his or her designee the authority to adopt rules and regulations for administration of the impact fee and the Affordable Housing Trust Fund. All allocations of funds from the Trust Fund must be approved by the City Council.

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. Reduced housing costs also permit households to devote more income to discretionary spending in the local retail economy.

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

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

Staff recommends that the City Council adopt the Jobs Housing Impact Fee and Housing Trust Fund Ordinance to implement the program as directed by the City Council on June 25, 2002.

ACTION REQUESTED OF THE CITY COUNCIL

Adopt the Jobs Housing Impact Fee and Housing Trust Fund ordinance and direct the City Manager to develop regulations to implement the provisions of the ordinance.

Respectfully submitted,

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APPROVED AND FORWARDED TO THE
CITY COUNCIL

OFFICE OF THE CITY MANAGER