Chapter 15.72

AFFORDABLE HOUSING IMPACT FEES

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15.72.010 – Purpose.

The purpose of this chapter is to establish affordable housing impact fees in the City of Oakland to assure that market-rate residential development projects pay their fair share to compensate for the increased demand for affordable housing generated by such development projects within the City of Oakland.

15.72.020 – Findings.

A. The City of Oakland conducted a nexus study that examined the link between new market-rate residential development, the growth of employment associated with the consumer expenditures of new residents, and the demand for affordable housing to accommodate the new worker households in Oakland. According to the nexus study, new development of market-rate single-family housing, townhome housing, and multi-family housing supports growth of consumer expenditures by new homebuyer and renter households.

B. Growth of household consumer expenditures supports job growth and new employment opportunities in Oakland.

C. New employment opportunities will attract new workers to Oakland.

D. Many of those new workers will seek housing and choose to live in Oakland.

E. Many of those new worker households will qualify as moderate, low, and very low income households and will increase the demand for affordable housing in Oakland, particularly since the increase in jobs is generally in the lower-wage-paying sectors such as retail trade and services.

F. Expansion of the supply of affordable housing will require funding to bridge the “gap” between the costs of developing new affordable housing and what new moderate- and lower-income households can afford to pay.

G. The nexus study established maximum legal affordable housing impact fees per unit based on the level of impacts on the need for affordable housing from various types of market-rate housing development project based on the average affordability gap per new market-rate unit built. The impact fees imposed under this chapter are lower than the maximum legal fees documented in the nexus study.

H. Through the payment of the fee, developers of market-rate housing will address at least a portion of the impact of their developments on the need for affordable housing. Revenue from the fees will be used to preserve and expand the supply of affordable housing in Oakland.
I. The affordable housing impact fee imposed under this chapter serve the public interest and is necessary to protect the health, safety and welfare of the residents of Oakland.

15.72.030 – Definitions.

As used in this chapter, the following terms have the following meanings, and to the extent a Planning Code and/or Municipal Code Chapter and/or Section is referenced herein, such reference shall also include future amendments, if any:

“Additional Housing Units” means the net increase in the number of housing units on a parcel of real property. Additional Housing Units equal the number of new housing units proposed to be developed on the parcel of real property by issuance of a building permit, less the number of housing units (a) legally removed from the same parcel of real property by authorized remodeling, demolition or relocation to another parcel of real property, or by accidental destruction or natural disaster, during the year preceding the owner’s filing for the building permit or (b) authorized to be removed prior to or during the construction for which the building permit is requested.

“Affordable Housing” means housing that is restricted to occupancy at an affordable rent or an affordable housing cost to Moderate-Income Households, Low-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.

"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 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 Administrator” means the City Administrator of the City of Oakland or his or her designee(s).

“Complete Building Permit Application” means an application for a building permit for vertical construction that is submitted after all necessary planning and zoning permits and approvals under Title 17 of the Oakland Planning Code are issued for the project and that contains all the application submittal materials required on the City’s submittal checklist.

"Development Project" means any activity resulting in Additional Housing Units in
a new or existing building requiring the issuance of a building permit by the City.

“Fee Per Housing Unit” means the Impact Fee per housing unit applicable to the
Development Project imposed under this chapter as contained in the City’s Master Fee
Schedule.

“Impact Fee” means the Affordable Housing Impact Fee imposed under this chapter
as set forth in the City’s Master Fee Schedule, as the Affordable Housing Impact Fee may
be adjusted for inflation pursuant to Section 15.72.050.

"Low-Income Household" shall be as defined in California Health and Safety Code
Section 50079.5 and its implementing regulations.

“Moderate-Income Household” means persons and families of low or moderate income
as defined in California Health and Safety Code Section 50093 and its implementing
regulations.

“Multi-Family Housing” means those uses that fall under any of the following use
facility types as defined in Chapters 17.10, 17.65, 17.101C, 17.101E and 17.102 of the
Oakland Planning Code:

Multifamily Dwelling Residential Facilities, except facilities that meet the
definition of Townhome Housing;
Live/Work Residential Facilities (as defined in Chapters 17.65 and 17.101E);
Work/Live Nonresidential Facilities (as defined in Chapters 17.65 and 17.101E in a D-CE-3 or D-CE-4 Zone);
Micro Living Quarters Facilities (as defined in Chapter 17.101C);
Joint Living and Work Quarters (as defined in Section 17.102.190);
Residentially-Oriented Joint Living and Working Quarters (in Section 17.102.195); or
Rooming House Residential Facilities that are not part of an institutional
dormitory and are not associated with any the following Activities:
   Residential Care Residential Activities;
   Supportive Housing Residential Activities;
   Transitional Housing Residential Activities;
   Emergency Shelter Residential Activities; or
   Semi-Transient Residential Activities.

“Single-Family Housing” means those uses that fall under any of the following use
facility types as defined in Chapter 17.10 of the Oakland Planning Code:

One-Family Dwelling Residential Facilities consisting of individual detached
housing units;
One-Family Dwelling with Secondary Unit Residential Facilities; or
Mobile Home Residential Facilities.

“Townhome Housing” means those uses that fall under any of the following use
facility types as defined in Chapter 17.10 of the Oakland Planning Code:

One-Family Dwelling Residential Facilities consisting of multiple attached housing units;
Two-Family Dwelling Residential Facilities; or
Multifamily Dwelling Residential Facilities consisting of housing units arranged in a single horizontal row with abutting sidewalls.

“Use Fee Category” means Multi-Family Housing, Single-Family Housing or Townhome Housing.

"Very Low-Income Household" shall be as defined in California Health and Safety Code Section 50105 and its implementing regulations.

15.72.040 – Applicability.

The regulations, requirements and provisions of this chapter shall apply to any Development Project, unless exempt from this chapter. The Applicant for any Development Project, unless exempt from this chapter, as a condition of the building permit, must pay to the City the required Impact Fees, or the Applicant may elect to comply with those requirements through the provision of on-site or off-site Affordable Housing units as permitted under Sections 15.72.100 and 15.72.110 of this chapter.

A. Effective date. Any Applicant for a Development Project for which a Complete Building Permit Application is submitted on or after September 1, 2016, must pay the Impact Fee in effect at the time of building permit submittal. If the Development Project fails to meet all of the criteria listed in subsection B below, the Applicant must pay the Impact Fee in effect at the time that the Development Project does meet all the criteria.

Notwithstanding the above, this chapter shall also apply to Development Projects whose applications are determined and/or deemed complete on or after November 27, 2015, per the California Subdivision Map Act, Government Code Section 66474.2(b), provided a vested right, as defined by California law, has not been obtained as of 60 days after the adoption of this chapter.

B. Exemptions based on submittal date. Any Development Project for which a Complete Building Permit Application is submitted prior to September 1, 2016, shall be exempt from this chapter if all of the following criteria are met:

1. The building permit is issued within one year of submittal of the Complete Building Permit Application;
2. The Development Project is diligently pursued toward completion, as reasonably determined by the Building Official or designee;
3. The building permit does not expire, although it may be extended for up to one year; and
4. A certificate of occupancy or temporary certificate of occupancy is issued within three years of the building permit being issued.

In addition, Development Projects that obtain a vested right, as defined by California law, no later than 60 days after the adoption of this chapter are not subject to the Impact Fee.

C. Exemptions based on project type. The following types of Development Projects shall be exempt from this chapter if any of the following are met:
   1. Secondary Units, as defined in Section 17.04.090 of the Oakland Planning Code; or
   2. Affordable Housing projects.

D. Other requirements. 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 Fee and requirements authorized by this chapter are in addition to any other fees or mitigation measures otherwise authorized by law.

Article II –Fee Requirements and Procedures.

15.72.050 – Amount of Impact Fees.

The Impact Fees shall be calculated for each Development Project as follows, pursuant to the Impact Fee amounts as stated in the Master Fee Schedule in effect at the time of a Complete Building Permit Application:

Impact Fee = Fee Per Housing Unit × Additional Housing Units

The Impact Fee amount shall automatically be adjusted upward annually for inflation on July 1st beginning on July 1, 2021, by the City Administrator in accordance with the percentage increase from January to January 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 Administrator, with appropriate adjustments for regional and local construction costs as necessary. The adjustment shall be automatically effective whether or not the Master Fee Schedule has been amended to reflect the adjustment.

15.72.060 – Impact Fees Zones.

The Impact Fee amount shall be based upon the Impact Fee Zone in which the Development Project is located as contained within the Master Fee Schedule and as set forth in the maps included in Section 15.72.140 of this chapter.
15.72.070 – Payment of Impact Fees.

Payment of the Impact Fees shall be due in two installments. The first installment shall be due prior to the issuance of a building permit for all or any portion of the Development Project associated with the building permit, and shall be in the amount of fifty percent (50%) of the Impact Fees. The second installment shall be due prior to the issuance of a temporary certificate of occupancy or certificate of occupancy, whichever occurs first, for all or any portion of the Development Project associated with the building permit, and shall be in the amount of the remaining fifty percent (50%) 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 temporary certificate of occupancy or certificate of occupancy, whichever occurs first, may be issued for any Development Project subject to this chapter unless the final 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 established under Chapter 15.62 of this Code.

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 provision of on-site or off-site Affordable Housing units as permitted under Sections 15.72.100 and 15.72.110 of this chapter.

15.72.080 – Reductions, Waivers, and Appeals.

A. Reductions, Waivers, and Appeals to the Impact Fees. Reduction, waiver, and/or appeals of the Impact Fees may be granted by the City Administrator to a Development Project under any one of the following scenarios:

1. The Development Project is rendered infeasible by imposition of all or a portion of the Impact Fee because 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 this chapter than the relief requested. For purposes of this paragraph, "infeasible" means incapable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors;
2. The Development Project will not generate any need for affordable housing, or the increase in such need will be limited so as to justify a reduced Impact Fee;
3. The Development Project is subject to a higher Impact Fee than what would otherwise apply under normal circumstances solely and exclusively due to unusual delays, beyond the reasonable control of the Applicant, related to an appeal, litigation and/or other similar circumstances;
4. The requirements of this chapter have been incorrectly applied to a Development Project; and/or
5. That application of the requirements of this chapter to a Development Project is unlawful under and/or conflict with federal, state, or local law and/or regulation, including constituting an unlawful taking of property without just compensation.

B. Applications for reductions, waivers, and/or appeals. Application for reduction, waivers and/or appeals of the Impact Fee must be made no later than the date of application for the building permit for the Development Project on a form provided by the City, and shall include payment of fees as established in the Master Fee Schedule. The burden of establishing by satisfactory factual proof the applicability and elements of this Section shall be on the Applicant. The Applicant must submit full information in support of their submittal as requested by the City Administrator. Failure to raise each and every issue that is contested in the application and provide appropriate supporting evidence will be grounds to deny the application and will also preclude the Applicant from raising such issues in court. Failure to submit such an application shall preclude such person from challenging the Impact Fees in court. The City Administrator may require, at the expense of the Applicant, review of the submitted materials by a third party.

C. The City Administrator shall mail the Applicant a final, written determination on the application for a reduction, waiver, and/or appeal. The City Administrator’s decision is final and not administratively appealable.

15.72.090 – Enforcement.

A. Failure to comply with any of the provisions of this chapter is declared to be prima facie evidence of an existing major violation and shall be abated by the City Administrator in accordance with the provisions of this chapter. Any person in violation will be subject to civil penalties, civil action and/or other legal remedies.

B. If the Applicant fails to comply with any provisions of this chapter including failure to timely pay the Impact Fee, the City may take any of the following actions:

1. Withhold issuance of the building-related permits;
2. Record a Special Assessment or other lien or liens against the real property which is the subject of the Development Project for the amount of the Impact Fee;
3. Revoke or suspend the temporary certificate of occupancy and/or certificate of occupancy for the Development Project;
4. Take any other action necessary and appropriate to secure payment, with interest accruing from the date of nonpayment; and/or
5. Assess civil penalties against an Applicant and/or associated parcel owner who fails to comply with this chapter, including failure to pay the impact fees, pursuant to Chapter 1.08 of this Code.
Violations of this chapter are considered to be “Major” pursuant to Section 1.08.040D of this Code. The daily civil penalties described in subsection (5) above shall continue until the violations are cured, including payment of the Impact Fee with accrued interest. Civil penalties established in this chapter are in addition to any other administrative or legal remedy which may be pursued by the City to address violations identified in this chapter.

In the event all Affordable Housing units required under the certification described in Sections 15.72.100 and 15.72.110 are not timely produced as required by this chapter, 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.

Article III – On-Site and Off-Site Affordable Housing Options.

15.72.100 – On-Site Affordable Housing Option.

A. On-site affordable housing mitigation measure. An Applicant for a Development Project that is otherwise subject to the Impact Fee will not be subject to the Impact Fee if the Applicant will be providing Affordable Housing units within the Development Project as set forth below.

1. In all such cases the Applicant shall execute a written agreement with the City setting forth the number, type, location, approximate size and construction schedule of all such Affordable Housing units, restricting the occupancy and rent or sale price of such units, and setting forth other terms and conditions as required for ensuring compliance with this Section. Rental units shall remain affordable for 55 years or for the life of the Development Project, whichever is greater. Said agreement shall be recorded against the Affordable Housing units as covenants running with land, senior in priority to any private liens or encumbrances except as provided below, and shall be enforceable by the City against the Applicant or the Applicant’s successors-in-interest to the property for the full affordability term. Additional restrictions, deeds of trust, rights of first refusal, or other instruments may be required by the City Administrator as reasonably needed to enforce these restrictions. The City Administrator shall have the authority to subordinate such restrictions to other liens and encumbrances if he or she determines that the financing of the Affordable Housing units would be infeasible without said subordination.
2. Proposals for the provision of on-site Affordable Housing units as homeownership housing must comply with the City of Oakland Affordable Homeownership Development Program Guidelines. The Applicant shall agree to, and the City shall ensure that, the initial occupant of all for-sale units are Very Low-, Low-, or Moderate-Income Households, as required, and that the units are offered at an Affordable Housing Cost.

3. All Affordable Housing units must be reasonably dispersed throughout the Development Project, be of the same size, and contain, on average, the same number of bedrooms as the market-rate units in the Development Project. All Affordable Housing units must be comparable with the design or use of market-rate units in terms of appearance, amenities, materials and finish quality.

4. All Affordable Housing units may be occupied only by Very Low-, Low-, or Moderate-Income Households as applicable. For rental units, the owner of any units produced under this option must report to the City annually on the occupancy and rents charged for the Affordable Housing units.

5. All Affordable Housing units in a Development Project and phases of a Development Project must be constructed concurrently with or prior to the construction of the market-rate units, unless the City Administrator determines that extenuating circumstances exist.

B. Number of Affordable Housing units required for on-site mitigation. For applications for Development Projects that include Affordable Housing units, the total number of required Affordable Housing units for such Development Project that will be needed to exempt the Development Project from the Impact Fee shall be one of the following:

   Number of Moderate Income Units = Total Number of Housing Units x 10%; or  
   Number of Low Income Units = Total Number of Housing Units x 10%; or  
   Number of Very Low Income Units = Total Number of Housing Units x 5%.

“Total Number of Housing Units” means the total number of units proposed for the Development Project, including the Affordable Housing units, but not including units added by a density bonus awarded pursuant to this Section or any Section within Chapter 17.107 of the Oakland Planning Code or Government Code Sections 65915-65918.

1. An Applicant for a Development Project subject to this Section may provide less than the percentage of market rate units indicated above as Affordable Housing units and pay a proportionately reduced Impact Fee.

2. In the event the application of this section to an applicable Development Project creates an obligation to construct a fractional Affordable Housing unit, that fraction shall be either converted into a fractional Impact Fee, or shall require an additional Affordable Housing unit, to be determined at the discretion of the City Administrator.
3. Along with production of the Affordable Housing units, the Applicant may take advantage of the Chapter 17.107 Density Bonus and Incentive Procedure in the Oakland Planning Code as well as the State density program in Government Code Sections 65915-65918.

4. For those projects providing Moderate-Income rental units the Applicant may take advantage of the following provisions in Chapter 17.107 of the Oakland Planning Code that otherwise apply to Moderate-Income for sale units: Section 17.107.040, Table 17.107.03, Section 17.107.080, Section 17.107.090 and Table 17.107.05; all other requirements in Chapter 17.107 still apply.

15.72.110 – Off-Site Affordable Housing Option.

An Applicant for a Development Project that is otherwise subject to the Impact Fee will not be subject the Impact Fee if the Applicant is providing Affordable Housing units in the numbers set forth in Section 15.72.100.B at a site other than the location of the Development Project; provided that such off-site option is subject to the conditions and restrictions set forth below.

1. City Council approval. Any proposal by an Applicant to provide off-site development of Affordable Housing units requires approval of the City Council. The off-site Affordable Housing must be located within one-half (½) mile of the Development Project, unless an exception is approved by the City Council.

2. Timing of Affordable Housing. In the event that an Applicant chooses the off-site option, the Applicant must submit satisfactory evidence to the City Administrator of site control and issuance of all necessary planning and zoning permits and approvals under Title 17 of the Oakland Planning Code for the project intended to produce the Affordable Housing units, prior to issuance 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 temporary certificate of occupancy or the certificate of occupancy, whichever occurs first, 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 temporary certificate of occupancy or the certificate of occupancy, whichever occurs first, for the Development Project.

Article IV – Miscellaneous.

15.72.112 – Administrative Regulations.

The City Administrator is hereby authorized to adopt rules and regulations consistent with this chapter as needed to implement this chapter, subject to the review and approval of the Office of the City Attorney, and to develop all related forms and/or other materials and take other steps as needed to implement this chapter, and make such interpretations of this chapter as he or she may consider necessary to achieve the purposes of this chapter.
15.72.130 – Conflicting Provisions.

Where a conflict exists between the requirements in this chapter and applicable requirements contained in other chapters of this Code, the applicable requirements of this chapter shall prevail.

15.72.140 – Impact Fees Zone Maps.