City of Oakland

Impact Fee Administrative Regulations and Manual

Affordable Housing, Transportation & Capital Improvements Impact Fees

Adopted by City Administrator:

August 9, 2017

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Note: Acronyms and terms (shown with initial capitalization) are defined in the Glossary in Appendix A.

I. PURPOSE

O.M.C. 15.72.010 and 15.74.010

The purpose of these administrative regulations and manual (the "Regulations") is to assist City staff with implementation of the following Impact Fees:

a. Affordable Housing Impact Fee (AHIF) assures that market-rate Residential Projects pay their fair share to compensate for the increased demand for Affordable Housing generated by Residential Projects within the City of Oakland.

b. Transportation Impact Fee (TIF) assures that Development Projects pay their fair share to compensate for increased demand on Citywide Transportation Infrastructure[1] generated by Development Projects within the City of Oakland.

c. Capital Improvements Impact Fee (CIIF) assures that Development Projects pay their fair share to compensate for increased demand on Capital Facilities generated by Development Projects within the City of Oakland.

These administrative regulations and manual have been adopted by the City Administrator[2] pursuant to the authority delegated to the City Administrator to adopt rules and regulations and related forms or other material as needed to implement the Impact Fees under Sections 15.72.112 and 15.74.130 of the Oakland Municipal Code (OMC).

NOTE: There also is a Jobs/Housing Impact fee that applies to Warehouse and Office Activities; please see OMC Chapter 15.68 as well as the Administrative Regulations located at the Impact Fee webpage at www.oaklandnet.com/impactfee for those requirements.

II. ADMINISTRATIVE ORGANIZATION & RESPONSIBILITY

A. Planning and Building Department

The Planning and Building Department has the following responsibilities:

a. Assume the role of Impact Fee Administrator with overall responsibility for implementation of the Impact Fees.

b. Review proposed Capital Facilities projects and Citywide Transportation Infrastructure projects for funding with the CIIF and TIF as part of the Capital

[1] See Appendix D: Citywide Transportation Infrastructure

[2] As used throughout this document, the term City Administrator includes duly authorized designees of the City Administrator.

Improvement Program on a biennial basis, in concert with adoption of the biennial budget.

c. Provide public information about the Impact Fee program.

d. Calculate and collect Impact Fees from project Applicants.

e. Prepare annual inflationary adjustment for TIF and CIIF (see Section IX.B).

f. Prepare annual Impact Fee report with input from the Housing and Community Development Department, Planning and Building Department Fiscal, Department of Transportation, and Public Works Department (see Section IX.C).

g. Prepare five-year program review with input from the Housing and Community Development Department, Planning and Building Department Fiscal, Department of Transportation, and Public Works Department (see Section IX.D).

B. City Administrator

The City Administrator has the following responsibilities:

a. Approve Affordable Housing Agreements (see Section VI).

b. Review and act on applications for fee reductions, waivers, and appeals (see Section VIII).

c. Administer the accounts established for the Impact Fees and proscribe regulations for the use of funds (see Section IX.A).

d. Take enforcement actions (see Section IX.E).

e. Supervise and coordinate the work of City departments under the City Administrator's control, and address any interdepartmental issues that may arise with respect to the Impact Fee program.

C. Office of the City Attorney

The Office of the City Attorney is responsible for providing legal advice and other legal support to City departments as needed to implement the Impact Fee program.

D. Public Works Department

The Public Works Department has the following responsibilities:

a. Recommend Capital Facilities projects for funding with the CIIF as part of the Capital Improvement Program on a biennial basis, in concert with adoption of the biennial budget and in consultation with the Planning and Building Department.

b. Determine Developer Constructed Facilities that may be credited against a CIIF obligation.

c. Prepare, negotiate, administer, monitor and execute any Credit and Reimbursement Agreements for Developer Constructed Facilities to offset a CIIF obligation, subject to the review and approval of the Office of the City Attorney.

d. Maintain records of total CIIF collected.

e. Maintain records of how the fees have been spent or will be spent to support the annual and five-year reporting requirements (see Sections IX.C and IX.D).

f. Provide input to the Planning and Building Department for the annual Impact Fee report and the five-year program review.

E. Department of Transportation

The Department of Transportation has the following responsibilities:

a. Recommend Citywide Transportation Infrastructure for funding with the TIF as part of the Capital Improvement Program on a biennial basis, in concert with adoption of the biennial budget and in consultation with the Planning and Building *Department*.

b. Determine Developer Constructed Facilities that may be credited against a TIF obligation.

c. Prepare, negotiate, administer, monitor and execute any Credit and Reimbursement Agreements for Developer Constructed Facilities to offset a TIF obligation, subject to the review and approval of the Office of the City Attorney.

d. Maintain records of total TIF collected.

e. Maintain records of how the fees have been spent or will be spent to support the annual and five-year reporting requirements (see Sections IX.C and IX.D).

f. Provide input to the Planning and Building Department for the annual Impact Fee report and the five-year program review.

F. Housing and Community Development Department

The Housing and Community Development Department has the following responsibilities:

a. Recommend or approve Affordable Housing for funding from the AHIF deposited into the Affordable Housing Trust Fund consistent with the rules for the use of Affordable Housing Trust Funds set forth in OMC Chapter 15.62.

b. Prepare, negotiate, administer, and monitor regulatory agreements and other agreements, subject to the review and approval of the Office of the City Attorney, for production of on-site and off-site Affordable Housing units.

c. Maintain records of total AHIF collected.

d. Prepare annual inflationary adjustment for AHIF (see Section IX.B).

e. Maintain records of how the AHIF funds have been spent or will be spent to support the annual and five-year reporting requirements (see Sections IX.C and IX.D)

f. Provide input to the Planning and Building Department for the annual Impact Fee report and the five-year program review.

G. Planning and Building Department Fiscal

The Planning and Building Department Fiscal has the following responsibilities:

a. Hold revenues from each Impact Fee in a separate account.

b. Credit interest earnings on fund balances to each Impact Fee account (contact Treasury).

c. Hold 2% of the Impact Fees in a separate account for administrative costs to pay staff time to manage the Impact Fee program and to update the Impact Fees every five years.

d. Provide input to the Planning and Building Department for the annual Impact Fee report and the five-year program review.

III. APPLICABILITY OF IMPACT FEES

A. Development Projects

O.M.C. 15.72.040 and 15.74.040

The Impact Fees shall apply to any Development Project unless exempt (see Section III.B for exemptions). The Applicant for any Development Project must pay to the City the required Impact Fees during the building permit process. The amount of the Impact Fee may be reduced or eliminated based on compliance with the requirements for on-site or off-site Affordable Housing units (see Section VI), and/or Credits and Reimbursements for Developer Constructed Facilities (see Section VII).

A Development Project requires the issuance of a building permit by the City and includes any of the following:

a. New construction, whether a new building or an addition to an existing building for a Nonresidential Project.

b. Change and Intensification of Use of an existing building as part of a Nonresidential Project

c. Additional Housing units in a new or existing building.

The AHIF applies only to Additional Housing Units. The TIF and CIIF apply to both Additional Housing Units and Nonresidential Projects.

B. Effective Date

O.M.C. 15.72.040(A) and 15.74.040(A)

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 submittal of a Complete Building Permit Application. However, if at any time a Development Project, whether applied for before September 1, 2016 or after September 1, 2016, fails to meet all of the criteria listed in OMC 15.72.040(B) and 15.74.040(B) below, the Applicant must pay the Impact Fee in effect at the time that the Development Project does meet **all** of the criteria.

Impact Fees do not apply to projects with a vested right, which include the following:

a. Projects that acquired a vested right by July 2, 2016 through either (1) a Development Agreement; (2) a vesting tentative map approval; and/or (3) by obtaining a validly issued building permit and beginning substantial construction;

b. Projects with a vesting tentative map application either deemed or determined complete by November 27, 2015, which the City eventually approves; and

c. Revisions to a Development Project with an approved vesting tentative map are not subject to the Impact Fees if the vesting tentative map is still valid; however, any additional housing units and/or additional nonresidential square footage not part of the original Development Project and vesting tentative map approvals are subject to the Impact Fees.

C. Exemptions

1. Exemption Based on Building Permit Application Submittal Date and Performance Standards

O.M.C. 15.72.040(B) and 15.74.040(B)

Any Development Project for which a Complete Building Permit Application was submitted prior to September 1, 2016 is exempt from the AHIF, TIF, and CIIF. However, if at any time a Development Project, whether applied for before September 1, 2016 or after September 1, 2016, fails to meet all of the following criteria listed below, the Applicant must pay the Impact Fee in effect at the time that the Development Project does meet **all** of the following criteria:

a. The building permit is issued within one year of submittal of the Complete Building Permit Application;

b. The Development Project is diligently pursued toward completion, as reasonably determined by the Building Official or designee;

c. The building permit does not expire (except if the Development Project only needs final inspection to be completed), although it may be extended for up to one year; and

d. A certificate of occupancy or temporary certificate of occupancy is issued within three years of the building permit being issued.

Changes to building permit:

a. Development Projects that have applied for a building permit and make small changes that do not trigger a new building permit are only subject to new Impact Fees for any additional housing units or additional nonresidential square footage added after the initial building permit application.

b. Development Projects that have applied for a building permit and make substantial changes to the building that trigger a new building permit will be required to pay the Impact Fees that apply at that time for the entire Development Project.

2. Exemption Based on Type of Development Project

O.M.C. 15.72.040(C) and 15.74.040(C)

The following Development Projects are exempt from the Impact Fee:

a. **Prior Vested Rights:** Development Projects that obtained a vested right, as defined by California law, no later than **July 2, 2016**, (which is 60 days after the adoption of the Impact Fee ordinances by the City Council on May 3, 2016) (see section III.B, above).

b. **Small Institutional:** Nonresidential Projects under the Institutional Use Fee Category with less than 5,000 square feet of Additional Square Feet.

c. **Small Change of Use:** Nonresidential Projects associated solely with Change and Intensification of Use involving less than 5,000 square feet of Changed and Intensified Square Feet.

d. **Secondary Units:** Secondary units as defined in Section 17.09.040 (correction of typo in the OMC chapters) of the Oakland Planning Code.

e. **Affordable Housing:** Affordable Housing units (exempt from the AHIF and the CIIF **but not exempt from the TIF)**.

f. **Residential Additions:** Additions to existing housing units that do not result in Additional Housing Units.

g. **City, Port, and School District Nonresidential Projects:** See section VIII.A.6.

h. **Projects Without a Building Permit:** Projects that do not involve a building permit.

3. Voluntary Payment of Transportation Impact Fee to Satisfy CEQA Requirements

A Development Project that is not required to pay the Transportation Impact Fee because it has a prior vested right or applied for their building permit prior to September 1, 2016 may pay the Transportation Impact Fee to satisfy their cumulative traffic impacts and the cumulative mitigation measures that are required for their approved Development Projects

as per the California Environmental Quality Act (CEQA). This is as an alternative to constructing the cumulative mitigation measures.

IV. CALCULATION OF IMPACT FEES

A. Fee calculation

O.M.C 15.72.050 and 15.74.050

The formula for calculating the Impact Fee for a Development Project is shown below. Fees per housing unit and per square foot should be taken from the current City's Master Fee Schedule. Guidance regarding application of the Impact Fee Zone and Use Fee Category terms in these formulas are provided in the following sections. Also see the Glossary (**Appendix A**).

1. Residential Projects/Additional Housing Units (New Construction and Existing Buildings)

$$\text{Impact Fee} = \text{Fee Per Housing Unit (based on Impact Fee Zone and Use Fee Category)} \times \text{Additional Housing Units}$$

2. Nonresidential Projects (New Construction)

$$\text{Impact Fee} = \text{Fee Per Square Foot (based on Use Fee Category)} \times \text{Additional Square Feet}$$

3. Nonresidential Projects (Existing Buildings)

An Impact Fee for Nonresidential Projects in existing buildings only occurs if there is a Change and Intensification of Use.

$$\text{Impact Fee} = \left[\text{Fee Per Square Foot (new Use Fee Category)} - \text{Fee Per Square Foot (previous Use Fee Category)}\right] \times \text{Changed and Intensified Square Feet}$$

There is no impact from a Development Project and therefore no Impact Fee if the fee per square foot for the proposed Use Category is less than the fee for the prior use Fee Category. No credit is given if there is a negative impact fee amount. See Section IV.C.4. for more explanation.

4. On-Site and Off-Site Affordable Housing and Developer-Constructed Facilities

Development Projects may reduce or eliminate the Impact Fee by providing Affordable Housing and/or Developer Constructed Facilities. See Sections VI and VII.

B. Impact Fee Zones

O.M.C. 15.72.060 and 15.74.060

Residential Projects: Impact Fees for Residential Projects for Additional Housing Units vary based on location. Refer to the maps in **Appendix B** for the boundaries of impact fee zones for Residential Projects.

Residential Projects in Multiple Zones: If a Residential Project is split between multiple zones, then the Impact Fee is calculated separately for each zone based on the portion of the Project located in that zone. If a single housing unit is split across two or more zones, then the Impact Fee for that unit is based on the zone that contains the most amount of building area for that unit.

Development Projects in Multiple Cities: If a Development Project is split across municipal boundaries, then the Impact Fee will generally be based upon the percentage of the project site within Oakland, unless there is an agreement negotiated with the neighboring agency**.**

Nonresidential Projects: Fees on Nonresidential Projects do not vary by location.

C. Use Fee Category

O.M.C. 15.72.030 and 15.74.030

Impact Fees vary based on the Use Fee Category of the Development Project. See **Appendix C** for a detailed list of activities from the Planning Code and the applicable Use Fee Category. Use Fee Categories found in the impact fee schedule are shown below in Table 1. Following the list are guidelines on how to classify specific types of Development Projects where questions may arise.

Table 1: Use Fee Categories

Residential	Nonresidential
◆ Single-Family Housing	◆ Hotel/Motel
◆ Townhome Housing	◆ Industrial
◆ Multi-Family Housing	◆ Institutional
	◆ Office
	◆ Retail, Freestanding
	◆ Retail, Ground Floor
	◆ Warehouse/Distribution

1. Use Fee Categories for Certain Residential Activities

As further listed in in **Appendix C**, certain residential activities are Additional Housing Units in the Multi-Family Use Fee Category, while others are Nonresidential Projects in the Institutional Use Fee Category. These distinctions apply to calculation of Impact Fees only.

a. **Live/Work and Work/Live:** Most Development Projects that contain live/work or work/live in a building with multiple units are Additional Housing Units under the Multi-Family Use Fee Category (see exceptions in the following bullets).

b. **Work/Live:** Work/live Development Projects as defined in Section 17.73.040(B) and Chapter 17.101(E) in a D-CE-5 Zone, are Nonresidential Projects under the Industrial Use Fee Category.

c. **Rooming Houses:** Rooming house residential facilities such as dormitories, emergency shelters, residential care, semi-transient, supportive housing, and transitional housing that fall under the Institutional Use Fee Category are Nonresidential Projects under the Institutional Use Fee Category. However, a rooming house that does not fall under the Institutional Use Fee Category is categorized as the Multi-Family Use Fee Category.

2. Retail, Freestanding Versus Retail, Ground Floor

As shown in **Appendix C**, both the Retail, Freestanding and the Retail, Ground Floor Use Fee Categories share the same list of planning activities. The differences are:

a. **Retail, Freestanding** applies to all activities listed in the Retail, Freestanding Use Fee Category that are not part of a mixed use building.

b. **Retail, Ground Floor** applies to uses that are located on the ground floor, second floor or in the basement of a multi-story mixed use building that are not designated at the time of building permit application or that fall under any of the activities listed in the Retail Ground Floor Use Fee Category.

3. Unknown Uses

If the type of activity within a Development Project is not indicated in the Complete Building Permit Application sufficient to determine the Use Fee Category, then staff should determine the most likely activity and related Use Fee Category based on further analysis of the Project. The Impact Fee Administrator shall have final authority to determine the Use Fee Category for a Development Project. In the case of the ground floor in a mixed use building that is not designated at the time of the building permit application, staff should use the Retail, Ground Floor Use Fee Category as mentioned above in IV(C)(2). In other types of buildings, staff should look for indications of intended use on the plan, such as Industrial verses Warehouse (e.g., warehouses tend to have multiple loading dock doors).

4. Development Projects in Existing Buildings

Residential Projects: There is no Impact Fee for a Development Project in an existing building, such as addition and remodel projects, unless the Project would result in Additional Housing Units. Additional Housing Units include new live/work or work/live units unless they fall within the Industrial Use Fee Category. Additional Housing Units are net of any units developed on the same parcel that have been legally removed, demolished or relocated, or removed by accidental destruction or natural disaster during the year preceding the Applicant's filing for the building permit. Secondary Units (Section 17.09.040) are exempt from the Impact Fees.

Nonresidential Projects: There are two major instances when projects in existing Nonresidential Projects pay the TIF and CIIF:

a. Additional Square Feet is added to a building:

   1. This is the net increase in square feet of floor area.

   2. Basements, or areas for storage that become habitable floor area are included in Additional Square Feet.

b. Change and Intensification of Use of a building occurs:

   1. When the activity within an existing building associated with a Development Project would change from a Use Fee Category with a lower fee to a Use Fee Category with a higher fee. There is no fee if the change in use is from a higher to a lower Use Fee Category. No credit is given if there is a negative impact fee amount.

      i. In the case of vacant buildings, the last approved use is the basis of the existing use to new use calculation for impact fees. Last approved use may be determined from information sources such as: Zoning Clearance or Business License. If the prior use in a vacant building cannot be determined, then the Planning Director shall decide what Use Fee Category to assign.

c. The use is based on the primary use of the building, not uses that were accessory to the primary use. If there were a mix of uses in the building, then the square footage

of each use is calculated and compared to the new use or uses (see Mixed-Use Development Projects below).

5. Mixed-Use Development Projects

For a Development Project with multiple Use Fee Categories, the Impact Fee is calculated separately for each Use Fee Category, and then summed to calculate the total Impact Fee for the Development Project. Common areas are allocated to each Use Fee Category based on the share that each Use Fee Category comprises of the total Development Project. Common areas allocated to Residential uses are not charged a fee because the fee is calculated based on Additional Housing Units.

6. Affordable Housing

As noted in Section III.C.2.e, Affordable Housing units are subject to the TIF but are exempt from the AHIF and the CIIF.

7. Parking

Parking uses are not Additional Housing Units or Additional Square Feet for purposes of calculating the Impact Fee, this includes Automotive Fee Parking Commercial Activities. The nexus study incorporates the impact of parking uses into the fee schedule such that these uses must be excluded from the fee calculation to avoid double-counting impacts.

D. Port of Oakland Jurisdiction Development Projects

Impact Fees still apply to Development Projects that fall within the jurisdiction of the Port of Oakland. When a Development Project that falls within the Port of Oakland jurisdiction applies for a building permit, the Applicant shall be sent to the Zoning Counter for a Zoning Worksheet permit to be entered where the Planner indicates the Planning Activity for the building, as well as the Impact Fee Category that should be applied. In addition, the Planner shall indicate what Impact Fees should be charged, i.e. Affordable Housing, Transportation, Capital Improvements, and/or Jobs/Housing Impact Fee per OMC Chapter 15.68, as well as, whether there are Public Art Requirements per OMC Chapter 15.70. Nonresidential Development Projects that are facilities for the primary use of the Port of Oakland are exempt from the Impact Fees, see Section VIII.A.6.

V. PAYMENT OF IMPACT FEES

A. Affordable Housing Impact Fee

O.M.C. 15.72.070

Payment of the AHIF applicable to Additional Housing Units is due in two installments:

- **First Installment** shall be due prior to the issuance of a building permit for the Additional Housing Units, and shall be in the amount of fifty percent (50%) of the AHIF.
- **Second Installment** shall be due prior to the issuance of a temporary certificate of occupancy or certificate of occupancy, or when the building permit is finalized, whichever occurs first, for the Additional Housing Units associated with the building permit, and shall be in the amount of the remaining fifty percent (50%) of the AHIF.

As an alternative to payment of some or all of the AHIF, an Applicant for a Development Project subject to this Impact Fee may elect to comply with those requirements through the provision of on-site or off-site Affordable Housing units as permitted under OMC Sections 15.72.100 and 15.72.110 (see Section VI).

No building permit may be issued for any Development Project subject to the AHIF unless and until the first installment of the AHIF is paid to the Building Official. No temporary certificate of occupancy, certificate of occupancy, or finalized building permit, may be issued for any Development Project subject to the AHIF unless the final installment of the AHIF is paid to the Building Official.

B. Transportation and Capital Improvements Impact Fees

O.M.C. 15.74.070

Payment of the TIF and CIIF applicable to a Development Project is due in one installment prior to the issuance of the building permit for that Development Project. No building permit may be issued for any Development Project unless the applicable TIF and CIIF is paid to the Building Official.

As an alternative to payment of some or all the TIF and/or the CIIF, an Applicant may comply with the requirements for Credits and Reimbursements for Developer Constructed Facilities for Citywide Transportation Infrastructure and Capital Facilities (see Section VII).

No building permit may be issued for a Development Project subject to the TIF or CIIF unless the applicable TIF or CIIF is paid to the Building Official, or a Credit and Reimbursement Agreement has been executed (see Section VII).

VI. ON-SITE AND OFF-SITE AFFORDABLE HOUSING OPTIONS

An Applicant may provide on-site or off-site Affordable Housing to offset some or all of the AHIF obligation.

A. On-Site Affordable Housing Option

O.M.C. 15.72.100

An Applicant for a Development Project that is otherwise subject to the AHIF will not be subject to the AHIF if the Applicant will be providing Affordable Housing units within the

Development Project, i.e., on the same parcel of land or within the same building as the Development Project, as set forth below.

1. Affordable Housing Agreement

The Applicant shall execute a written regulatory agreement or affordability agreement (the "Agreement") with the City describing the Affordable Housing units to be provided as part of the Development Project in terms of:

a. Number of Affordable Housing units as defined in Section VI.A.2; and

b. Income Category (very-low, low, or moderate income); and

c. Location of Affordable Housing units; and

d. Approximate size of Affordable Housing units; and

e. Construction schedule of Affordable Housing units;

   Construction of all Affordable Housing units in a Development Project and phases of a Development Project must be commenced either at the same time or prior to the commencement of the market-rate units, and must be completed either at the same time or prior to the completion of construction of the market-rate units, unless the City Administrator determines in his or her discretion that extenuating circumstances exist; and

f. Occupancy restrictions on units;

   All units must be occupied only by Very Low-Income Households, Low-Income Households, or Moderate-Income Households as determined by the Agreement; and

g. Rental and/or sales price restrictions on units; and

h. Other terms and conditions as required by these Regulations or as determined by the Housing and Community Development Department.

Rental Affordable Housing Units: Rental units shall remain affordable for 55 years or for the life of the Development Project, whichever is greater, in compliance with California Health and Safety Code Sections 50053 and 50052.5 and their implementing regulations. 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.

For-sale Affordable Housing Units: 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 and that comply with California Health and Safety Code Sections 50053 and 50052.5 and their implementing regulations.

Location and Design of Affordable Housing Units: 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.

Additional Restrictions: Additional restrictions, deeds of trust, rights of first refusal, or other instruments may be required by the City Administrator.

Recording of Agreement: The Agreement shall be recorded against the Affordable Housing units as covenants running with land, senior in priority to any private liens or encumbrances. 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.

Enforcement of Agreement: The Agreement shall be enforceable by the City against the Applicant or the Applicant's successors-in-interest to the property for the full affordability term.

Fee: The City may levy an annual fee to offset costs associated with implementation and monitoring of the Agreement. Such fee shall be included in the City's Master Fee Schedule.

2. Required Number and Type of Units

For applications for Development Projects that include on-site Affordable Housing units, the minimum 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 percent
Number of **Low Income** Units	=	Total Number of Housing Units	X	10 percent
Number of **Very Low Income** Units	=	Total Number of Housing Units	X	5 percent

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 Section 15.72.100 or any Section within Chapter 17.107 of the Oakland Planning Code or Government Code Sections 65915-65918.

Partial Fee Payment: An Applicant for a Development Project subject to the AHIF may provide less than the number of on-site Affordable Housing units indicated by the formulas above, and pay a proportionately reduced AHIF as determined by the City Administrator.

Fractional Units: If the formulas, above, create an obligation to construct a fractional Affordable Housing Unit, that fraction shall be either converted into a fractional AHIF, or shall require an additional Affordable Housing unit, to be determined at the discretion of the City Administrator.

Density Bonus: 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.

Moderate-Income Rental Units: Projects providing Moderate-Income rental units 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.

B. Off-Site Affordable Housing Option

O.M.C. 15.72.110

An Applicant for a Development Project that is otherwise subject to the AHIF will not be subject to the AHIF if the Applicant is providing Affordable Housing units at a site other than the location of the Development Project (i.e., on a different parcel of land and not in the same building); provided that such off-site option is subject to the conditions and restrictions set forth below.

1. Affordable Housing Agreement

Agreement: The Applicant must execute a written regulatory agreement or affordability agreement (the "Agreement") with the City as described in Section VI.A.1 and revised to comply with the off-site requirements in this section.

Approval by City Council: Any proposal by an Applicant to use the off-site development option must be approved by the City Council. The Council shall have sole discretion to approve or not approve an off-site proposal.

Location: The off-site Affordable Housing units must be located within one-half (½) mile of the Development Project, unless an exception is approved by the City Council.

Construction Schedule: For the off-site Affordable Housing construction schedule, the Applicant must meet all of the following requirements:

a. 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.

b. Obtain a building permit for the Affordable Housing units prior to the issuance of the temporary certificate of occupancy or the certificate of occupancy, whichever occurs first, for the Development Project.

c. 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.

2. Required Number and Type of Units

Number of Affordable Housing Units: The number of Affordable Housing units under the off-site option shall be the same as those calculated pursuant to the on-site affordable housing option in Section 15.72.100.B. (see Section VI.A.2).

VII. CREDITS AND REIMBURSEMENTS FOR DEVELOPER CONSTRUCTED FACILITIES FOR CITYWIDE TRANSPORTATION INFRASTRUCTURE AND CAPITAL FACILITIES

O.M.C. 15.74.120

The City and the Developer of a Development Project subject to the requirements of Chapter 15.74 may enter into a credit and reimbursement agreement (Agreement) to allow the Developer to construct Citywide Transportation Infrastructure or Capital Facilities that would otherwise be funded in whole or in part by the TIF or CIIF.

The City has sole and absolute discretion to enter into such an Agreement. Infrastructure improvements required by the City as a condition of approval to offset the impact of a Development Project are not eligible for a credit or reimbursement.

If a CEQA impact mitigation measure is a Development Project impact mitigation measure, the Applicant of the Development Project is responsible for the mitigation measure and must also pay the full Transportation Impact Fee. If the Development Project impact mitigation is also a cumulative impact mitigation measure, the Applicant of the Development Project is still responsible for the mitigation measure and must also pay the full Transportation Impact Fee unless additional Developer Constructed Facilities are provided.

A. Credit and Reimbursement Agreement

To enable Developer Constructed Facilities to offset a TIF and/or CIIF obligation, the Applicant must execute a Credit and Reimbursement Agreement (Agreement) with the City. Whether to enter into such an Agreement is within the sole and absolute discretion of the City. In deciding whether the proposed Agreement is acceptable to the City, the City shall

consider whether the proposed Developer Constructed Facility is consistent with City goals, plans, and policies, and whether the Facility has been previously identified as a CEQA cumulative impact mitigation measure.[3]

1. Types of Developer Constructed Facilities

To be eligible for credit and/or reimbursement, Developer Constructed Facilities must be:

a. Citywide Transportation Infrastructure to receive a TIF credit and/or reimbursement and is not already a condition of approval or a project-level CEQA mitigation measure for the project and must also meet the requirements of Section X.A.2 below.

b. Capital Improvement to receive a CIIF credit and/or reimbursement and is not already a condition of approval or a project-level CEQA mitigation measure for the project.

2. Credits Versus Reimbursements

Credits: Credits occur if the Applicant seeks to offset some or all of the Applicant's TIF or CIIF obligations.

Reimbursements: Reimbursements occur if the actual cost of Developer Constructed Facilities exceeds the applicable TIF or CIIF obligation.

a. The TIF Fund shall be the sole source of reimbursements for Developer Constructed Facilities that are Citywide Transportation Infrastructure, or

b. The CIIF Fund shall be the sole source of reimbursements for Developer Constructed Facilities that are Capital Facilities.

The sum of credits and reimbursements for Developer Constructed Facilities associated with a Credit and Reimbursement Agreement (see Section VII.A.4) shall equal the total cost of Developer Constructed Facilities associated with that Agreement.

3. Credit and Reimbursement Amount Based on Actual Costs

The amount of credits and reimbursements shall equal the actual cost of the Developer Constructed Facilities. Costs may include, for example, land, design and engineering, environmental review, permits, surveys and inspection, performance bond premiums, construction, furnishings and equipment, and project management. Credits and

[3] Subsequent to the adoption of the Transportation Impact Fee in May 2016, the City of Oakland revised its CEQA impact analysis procedures to replace Level-of-Service (LOS) with Vehicle-Miles-Traveled (VMT) as a measurement of significant impact under CEQA. Certain previously identified CEQA cumulative transportation impact mitigation measures based on LOS may no longer be consistent with current CEQA impact analysis procedures and no longer necessary and/or desirable by the City. City staff will evaluate proposed Developer Constructed Facilities on a case-by-case basis given these circumstances to determine if the proposal is acceptable.

reimbursements may be estimated based on the estimated cost of Developer Constructed Facilities as long as the total amount of credits and reimbursements is adjusted to actual costs upon acceptance of the Facilities by the City. Maintenance costs are not eligible for credit and/or reimbursement.

4. Credit and Reimbursement Agreement Provisions Template

Guidelines for provisions to be included in the Agreement are provided below.

a. **Facility Description:** The description of the Developer Constructed Facilities should include location, size, and any other characteristics needed to properly identify the Facilities.

b. **Facility Cost:** The cost of the Developer Constructed Facilities should be the actual cost of the Facilities as supported by documentation provided by the Applicant including, for example, land acquisition contracts, construction contracts, invoices, and payment records. If land was purchased well in advance of construction, land costs should be based on a current appraisal conducted by an appraiser with a current California license that is applicable to the type of land being appraised. The City has sole discretion whether to accept submitted documentation.

   If the Agreement is executed prior to construction of the Developer Constructed Facilities, then the Agreement should include the estimated cost as supported by documentation provided by the Applicant including, for example, construction unit costs and quantities, and lump sum estimates for design, engineering, and other soft costs (a percentage of not to exceed amount should be included for the soft-costs and will generally be limited between 10% and 20% of the construction cost for project design and construction consultants, above which there will be no credit/reimbursement). The City has sole discretion whether to accept submitted documentation.

c. **Acceptance of Facility:** Include the time when the Developer Constructed Facilities were accepted by the City, or an estimated schedule for acceptance and any conditions associated with acceptance, such as prior to issuance of a Certificate of Occupancy.

d. **Credits:** The total credit amount should equal the actual cost of Developer Constructed Facilities or the actual applicable TIF or CIIF obligation, whichever is less. If the actual cost of Development Constructed Facilities, and/or the actual TIF or CIIF fee obligation, is not known at the time the Agreement is executed, then amounts may be estimated.

e. **Reimbursements:** The total reimbursement amount should equal the actual cost of the Developer Constructed Facilities minus applicable TIF or CIIF credits. Indicate how payments are calculated, funded, and scheduled. Options include:

   1. Calculation of Payments:

i. **Fixed Percentage Payment:** Reimbursement payments are based on a fixed percentage of annual TIF or CIIF revenues. This approach can protect the City from over-commitment to reimbursement payments during years of low fee revenue.

ii. **Fixed Amount Payment:** Reimbursement payments are based on an annual fixed amount. This approach may be appropriate if the payments are small relative to anticipated fee revenues net of outstanding reimbursements due on other Agreements.

iii. **Interest on Unpaid Balances:** Indicate whether or not any reimbursement balance is adjusted annually, and if so the index to be used for that adjustment. An index is typically the interest rate associated with a specified type of U.S. Treasury debt or commercial bank lending.

2. **Funding:** The City should make reimbursement payments only from the TIF Fund or the CIIF Fund, whichever is applicable based on the type of Developer Constructed Facilities. The Agreement should state that:

   i. The City's general fund is not liable for payment of any obligations arising from the Agreement.

   ii. The credit or taxing power of the City is not pledged for any obligations arising from the Agreement.

   iii. The Applicant cannot compel the exercise of the City taxing power or the forfeiture of any of its property to satisfy obligations arising from the Agreement.

   iv. Obligations arising from the Agreement are not a debt of the City, nor a legal or equitable pledge, charge, lien, or encumbrance, upon any of its property, or upon any of its income, receipts, or revenues.

f. Timing of Construction, Credits, and Reimbursements:

1. **Credits:** Outstanding credit balances should be reduced based on the TIF or CIIF obligation calculated at time of submittal of a Complete Building Permit Application.

2. **Reimbursements:** Payments on outstanding reimbursement balances should be made no less often than once annually.

3. **Delay in Granting Credits and Reimbursements:** If the City has not accepted the Developer Constructed Facilities, and the total amount of credits and reimbursements to date is 90 percent or more of the estimated Facilities cost, then the City may delay the remaining credits or reimbursements until the City accepts the Facility. In the case of outstanding credits, this delay would require payment of the TIF or CIIF, as applicable, and an increase in the reimbursement amount due pursuant to the Agreement.

4. **Construction Timing:** Required completion date of the Developer Constructed Facilities, such as prior to issuance of a Certificate of Occupancy.

g. **Security:** If the Applicant seeks credits and/or reimbursements prior to City acceptance of the Developer Constructed Facilities, then the Applicant shall post a performance bond to ensure satisfactory completion of the Facilities.

h. Termination: The Agreement shall be terminated when the City accepts the Developer Constructed Facilities, or all credit and reimbursement obligations have been satisfied, whichever occurs later.

If all credit and reimbursement obligations have been satisfied based on an estimated cost of Developer Constructed Facilities and prior to City acceptance of Facilities, then upon acceptance by the City:

1. If the actual cost is greater than the total amount of credits and reimbursements made to date, then the City shall make additional credits and/or reimbursements up to the actual cost.
2. If the actual cost is less than the total amount of credits and reimbursements, then the Applicant shall reimburse the City for the difference. As described above under "Timing of Credits and Reimbursements", once 90 percent of the estimated cost has been funded through credits and/or reimbursements, the City can delay remaining credits or reimbursement payments until acceptance of the Facilities. This capability enables the City to avoid this circumstance in which the Applicant would need to reimburse the City for over-funding credits and reimbursements.

VIII. REDUCTIONS, WAIVERS, AND APPEALS

A. Types of Reductions, Waivers, and Appeals

O.M.C. 15.72.080(A) and 15.74.080(A)

A reduction, waiver, and/or appeal of the Impact Fees may be granted by the City Administrator to a Development Project under any one of the following scenarios described in this section.

1. Infeasibility

A reduction or waiver of the Impact Fees may be justified if 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. No or Limited Need for Affordable Housing, Citywide Transportation Infrastructure, or Capital Facilities

No Need: If the Development Project will not generate any need for Affordable Housing, Citywide Transportation Infrastructure, and/or Capital Facilities, then a waiver of the applicable Impact Fee may be justified.

Limited Need: If the increase in such need will be limited for Affordable Housing, Citywide Transportation Infrastructure, and/or Capital Facilities generated by the Development Project, then a reduction in the applicable Impact Fee may be justified. For purposes of this paragraph, "limited" means need that is substantially below the maximum level calculated in the nexus study used to justify the Impact Fee, adjusted for the level of the current Impact Fee should the current Impact Fee be less than the maximum justified by the nexus study.

3. Delay

The following reductions or waivers caused by delay may apply as determined by the City in its sole and absolute discretion.

a. The City Administrator has already determined that a general waiver due to **City delay** applies if **all** the following criteria are met (if granted, the Applicant need not submit an application for waiver to the City Administrator as described in Section VIII.B below):

1. A building permit is not issued within one year of the Complete Building Permit Application because City staff took longer than the typical 12 weeks to give initial plan-check comments to the Applicant after a Complete Building Permit Application is submitted (this includes the payment date of the building permit), therefore causing a delay that is beyond the reasonable control of the Applicant;
2. The building permit is issued within an extended time period based on the amount of City delay. For example, if initial plan-check comments took 16 weeks instead of the typical 12 weeks, a 4 week extension period will be granted to the one year time limit of building permit issuance); and
3. The Applicant must submit to the Planning & Building Department evidence of the delay of the initial plan-check comments, including, but not limited to: the date of the Complete Building Permit Application (including when payment of the building permit was made) and an email or dated letter of the initial plan-check comments received by the Applicant. These dates will need to be verified from the City of Oakland's records.

b. The City Administrator has already determined that a general waiver due to any one of the following circumstances applies if sufficient evidence has been provided to demonstrate the circumstances apply and caused a delay of construction (if granted, the Applicant need not submit an application for waiver to the City Administrator as described in Section VIII.B below).

A building permit is not issued within one year of the Complete Building Permit Application and/or a certificate of occupancy or temporary certificate of occupancy within 3 years of the building permit issuance cannot be met because of unusual delays beyond the reasonable control of the Applicant, including but limited to:

1. Environmental factor delays, such as, but not limited to clean-up of a contaminated site, nesting birds, or historic building relocation;
2. Delay by a third party because of an existing contract that cannot be altered or business relocation;
3. Delay because of a major construction accident, fire, earthquake, or other natural or man-made disaster;
4. Delay related to an appeal, litigation and/or other similar circumstances involving the Development Project; or
5. Delay because due to the complexity of the construction type more than 3 years was required to obtain a certificate of occupancy or temporary certificate of occupancy.

c. If (a) or (b) above cannot be met, then a reduction or waiver in the applicable Impact Fee may still be justified if the Development Project is subject to an Impact Fee or higher Impact Fee than what would otherwise apply under normal circumstances solely and exclusively due to unusual delays, but the Applicant will need to submit an application for waiver to the City Administrator as described in Section VIII.B below.

d. The reduced fee relating to (a)-(c) above, would be the fee that would have applied under normal circumstances without the delay; or the fee could be waived entirely if no fee would have been charged but for the delay. The burden is on applicant to demonstrate "City delay" and/or "unusual delay" which may be granted or denied within the City's sole and absolute discretion.

   The Applicant must raise the issue of delay as soon as possible, diligently resolve the delay, diligently prosecute the Development Project to completion and demonstrate such to the reasonable satisfaction of the Building Official or designee.

4. Incorrect Fee Application

If the requirements of OMC Chapters 15.72 and 15.74 or these Regulations have been incorrectly applied to a Development Project, then a waiver or reduction in the applicable Impact Fee may be justified to reflect the correct application of the Impact Fees.

5. Unlawful Fee Application

A waiver or reduction in the applicable Impact Fee may be justified if the application of the requirements of OMC Chapters 15.72 and 15.74 or these Regulations to a Development Project is unlawful under and/or conflicts with federal, state, or local law and/or regulation, including constituting an unlawful taking of property without just compensation.

6. City, Port, or School District Non-Residential Projects Waived per Nexus Analysis

A general waiver applies to Nonresidential Projects undertaken by the City of Oakland, including the Port of Oakland, or the Oakland Unified School District, because such projects are exempt based on the nexus analysis conducted to justify the Impact Fees. That nexus analysis found, with respect to such projects, that local public service demand is reasonably related to private and other public development. Therefore, Affordable Housing, Capital Facilities, and Citywide Transportation Infrastructure impacts from local government employment growth are attributed to growth in private and other public development. With regards to the Port of Oakland, this blanket waiver only includes facilities for the primary use of Port of Oakland staff such as administrative facilities. This exemption excludes Development Projects within the Port Area that are designed to be leased for residential, commercial or industrial activities; therefore, these projects are required to pay the Impact Fees. The Planning and Building Department shall complete a Zoning Worksheet permit to determine the Impact Fee Category that should be applied, see Section IV.C.8.

B. Application for Reduction, Waiver or Appeal

O.M.C. 15.72.080(B) and 15.74.080(B)

Except for "Delay" waivers/reductions as detailed in Section VIII.A. 3 above, authorization of a reduction or waiver of the Impact Fee must meet the following requirements:

1. The Applicant must apply for a reduction, waiver, or appeal to the City Administrator no later than the date of application for the building permit for the Development Project, in writing on a form provided by the City. In the situation where an Impact Fee is due because of not meeting a performance standard, such as building permit issuance or certificate of occupancy deadline, the reduction, waiver, or appeal shall be applied for as soon as the Applicant realizes they will not be able to make the standard deadline.
2. The Applicant shall pay the Appeals Filing Fee for the reduction, waiver, and/or appeal application as established in the Master Fee Schedule.
3. 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.
4. Failure to raise 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.
5. Failure to submit such an application shall preclude such person from challenging the Impact Fee in court. The City Administrator may require, at the expense of the Applicant, review of the submitted materials by a third party.

C. Determination of Reduction or Waiver

O.M.C. 15.72.080(C) and 15.74.080(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.

IX. COLLECTION AND ACCOUNTING OF IMPACT FEES

The Mitigation Fee Act requires Sections A, C, and D, below.

A. Fee Accounts

O.M.C. 15.74.100(A), 15.74.110(A), 15.62.040, and 15.62.050

All Impact Fee payments shall be deposited in the accounts listed below. The City Administrator shall administer each account and have the authority to prescribe regulations for the use of each account.

- **AHIF:** Affordable Housing Trust Fund, in a subfund designated for Affordable Housing Impact Fee revenue.
- **TIF:** Transportation Impact Fee Fund.
- **CIIF:** Capital Improvements Impact Fee Fund.

No Comingling of Funds: Use of these accounts shall avoid any commingling of revenue from each Impact Fee with any other revenues and funds, including other impact fees.

Interest Earned on Fund Balances: Any interest income earned by moneys in each account shall be deposited in that account and shall be expended only for the purpose for which the Impact Fee was originally collected.

B. Annual Fee Adjustment

O.M.C. 15.72.050 and 15.74.050

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 of the prior year to January of the current year in the building cost index published by Marshall and Swift, using the Wood Frame Buildings in the Western District (Section 98, page 7 of the Marshall and Swift data). The Planning and Building Department maintains a subscription to Marshall and Swift on CDs. If such index ceases to be published by Marshall and Swift, an equivalent index will be chosen by the City Administrator, with appropriate adjustments for regional and local construction costs as necessary. The adjustment shall be automatically effective even if the Master Fee Schedule has not been amended to reflect the adjustment.

C. Annual Impact Fee Report

O.M.C. 15.74.100(B), 15.74.110(B), 15.62.040, and 15.62.050

Schedule: For each Impact Fee account the Department of Planning and Building shall, prior to December 27th of each year (within 180 days following the end of the fiscal year), make available to the public information regarding activity within each account for the prior fiscal year as per requirements under Government Code Section 6606(b).

Report Content: The annual impact fee report shall contain the following information for the prior fiscal year:

a. A brief description of the type of fee in the account.

b. The amount of the fee.

c. The beginning and ending balance of the account.

d. The amount of Impact Fee revenue collected and the interest earned on the fund balance.

e. An identification of the capital projects (Affordable Housing, Citywide Transportation Infrastructure, or Capital Facilities) on which Impact Fees were expended and the amount of the expenditures on each capital project, including the total percentage of the cost of the capital project that was funded with Impact Fees.

f. If a specific capital project is identified in the City's Capital Improvement Program for funding by Impact Fees, and if sufficient Impact Fees have been collected to complete funding of the capital project, then the approximate date by which the construction of that capital project will commence. If a date is not identified, then Impact Fees may have to be refunded pursuant to Government Code Sections 66001(e) and (f).

City Council Review: The City Council shall review this information at the next regularly scheduled public meeting not less than 15 days after this information is made available to the public.

Public Notice to Interested Parties: Notice of the time and place of the meeting, including the address where this information may be reviewed, shall be mailed, at least 15 days prior to the meeting, to any interested party who files a written request with the City for mailed notice of the meeting. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The City Council may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service.

All interested party written requests should be addressed to the Planning and Building Department, attn: Impact Fee Coordinator, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, CA 94612, or an interested party can sign up for notifications on the City's website at www.oaklandnet.com/impactfee and click on the "subscribe for updates" to add their name to the email subscription.

D. Five-year Impact Fee Program Review

O.M.C. 15.74.100(B), 15.74.110(B), 15.62.040, and 15.62.050

Schedule: Every five years the Department of Planning and Building will prepare a five-year impact fee program review. The first five-year program review shall be completed during FY 2021-22 for the fiscal year ending June 30, 2021, five years after the initial payment of Impact Fees in September 2016. The five-year program review shall be completed every five years thereafter. The five-year program review shall be released to the public and reviewed by the Council on the same schedule as the annual impact fee report (see Section IX.C).

Content: The primary purpose of the five-year program review is to justify or adjust continued collection of the Impact Fees pursuant to the Mitigation Fee Act in Sections 66000-66025 of Government Code (Act). Content shall include:

a. An update of the nexus analysis based on current information.

b. Support for the findings required in Section 66001(d) of the Act.

c. Identification of specific capital projects, or types of capital projects, for use of the prior year-ending fund balance consistent with the nexus analysis and findings made pursuant to the Act.

E. Enforcement

O.M.C. 15.72.090 and 15.74.090

Failure of an Applicant to comply with any of the provisions of these Regulations and/or OMC Chapters 15.72 and 15.74 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 these Regulations and/or OMC Chapters 15.72 and 15.74. Any person in violation will be subject to civil penalties, civil action and/or other legal remedies.

If the Applicant fails to comply with any provisions of these Regulations and/or OMC Chapters 15.72 and 15.74, including failure to timely pay the Impact Fee, the City may take any or all 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 OMC Chapters 15.72 and/or 15.74, including failure to pay the impact fees, pursuant to OMC Chapter 1.08.

Violations of OMC Chapters 15.72 and 15.74 as well as these Regulations by an Applicant are "Major" pursuant to OMC Section 1.08.040(D). 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 OMC Chapters 15.72 and 15.74 are in addition to any other administrative or legal remedy which may be pursued by the City to address violations in these chapters.

On-Site and Off-Site Affordable Housing: In the event all Affordable Housing units required in Sections VI (Sections 15.72.100 and 15.72.110) are not timely produced as required by Chapter 15.72, the City Administrator may impose a charge on the Applicant equal to one hundred fifty percent (150%) of the Impact Fee which would have been otherwise due and owing, together with interest accrued from the date of the first building permit issuance for the Development Project, and shall so notify the Applicant. If this charge is not paid by the Applicant within sixty (60) calendar days of the expiration of the applicable time period, the City may record a special assessment lien against the Development Project property in the amount of any charge and interest owed, and the City may revoke or suspend the certificate of occupancy for the Development Project use.

X. USE OF IMPACT FEES FUNDS

A. Capital Expenditures

1. Affordable Housing

O.M.C. 15.62.040 and 15.62.050

AHIF funds deposited into the Affordable Trust Fund shall be used to increase, improve, and preserve the supply of affordable housing in the City, with priority given to housing for very low income households. To "preserve" affordable housing means to acquire, finance, refinance, or rehabilitate housing that is at imminent risk of loss to the affordable housing supply (including housing that is restricted to affordable housing or housing that is otherwise provided at an affordable rent or an affordable housing cost to lower income households or very low income households) due to termination of use restrictions, non-renewal of subsidy contract, mortgage or tax default or foreclosure, rent increases, conversion to market-rate housing or other uses, demolition, or physical conditions that are likely to result in vacation of the property.

Funds may 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 Administrator 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. Not more than 15% of the funds deposited into the Affordable Housing Trust Fund from AHIF may be used for housing affordable to moderate income households unless this limit is waived by the City Council with a specific finding that the waiver is in the best interests of the City.

The Affordable Housing Trust Fund shall be administered by the City Administrator, who shall have the authority to administer the Affordable Housing Trust Fund consistent with OMC Chapter 15.62 and these Regulations. Funds deposited to the Affordable Housing Trust Fund shall be appropriated on a continuous basis to projects to be established consistent with OMC Chapter 15.62 and these Regulations. All allocations of funds from the Affordable Housing Trust Fund shall be approved by the City Council.

2. Citywide Transportation Infrastructure

O.M.C. 15.74.100(A)

Except for directly associated administrative costs (see Section X.B), funds in the TIF Fund shall be used solely for Citywide Transportation Infrastructure as shown in **Appendix D**.

Funds deposited into the TIF Fund, and all interest and investment earnings thereon, shall be used to pay for improvements within the public right-of-way for pedestrians, bicyclists and/or motor vehicles. Fee revenues may be used to fund a capital project or portion of a capital project that meets **all** the following criteria:

1. The project is a capital project contained within the City's Capital Improvement Program or can be added to the Capital Improvement Program;
2. The project is part of the City's Citywide Transportation Infrastructure or provides connectivity between neighborhoods and activity centers within the City, or to neighboring communities or regional transportation facilities, and is not primarily for access to one specific neighborhood or development site;
3. The project is a CEQA cumulative mitigation measure that (a) is on the list of outstanding CEQA cumulative mitigation projects in Appendix B, Table B-5 of the Oakland Transportation and Capital Improvements Impact Fee Nexus Analysis that the City believes still should be implemented (see footnote #3 above); or (b) is a new CEQA cumulative mitigation measure from projects approved after the Nexus Analysis was completed. However, if the City determines there is a surplus of funds that will not be needed for future CEQA cumulative mitigation measures the funds

may be used for other transportation projects that meet the other requirements herein; and

4. The project improves or expands the City's Citywide Transportation Infrastructure to address and manage travel demand from new development.

Projects may include not only managing vehicle impacts, but also shifting demand to transit, biking, and walking. Funds may not be used for rehabilitation, maintenance or operating costs. When identifying a proposed capital project, the Department of Transportation shall consult with the Planning and Building Department concerning the project's consistency with previously identified CEQA cumulative impact mitigation measures and adopted plans and policies and such consultation and conclusions of such shall be documented in a writing and forwarded to the City Administrator. See Section VII. for more information about CEQA impact mitigations.

3. Capital Facilities

O.M.C. 15.74.110(A)

Except for directly associated administrative costs (see Section X.B), funds in the CIIF Fund shall be used solely for Capital Facilities.

Funds deposited into the CIIF Fund, and all interest and investment earnings thereon, shall be used to pay for projects that are required for fire, police, library, parks and recreation, or storm drain services. Fee revenues may be used to fund a public facility or portion of a public facility that meets all of the following criteria:

1. The project is a capital project contained within the City's Capital Improvement Program or can be added to the Capital Improvement Program;
2. If the project supports fire, police, library, or parks and recreation services, the project must improve or expand the City's public facilities to accommodate service demand from new development; funds may not be used for rehabilitation, maintenance or operating costs; and
3. If the project supports storm drain services the project must improve, expand, or rehabilitate the City's storm drain facilities to accommodate service demand from new development.

When identifying a proposed capital project, the Public Works Department shall consult with the Planning and Building Department concerning the project's consistency with adopted plans and policies and such consultation and conclusions of such shall be documented in a writing and forwarded to the City Administrator.

B. Administrative Costs

O.M.C. 15.74.100(A), 15.74.110(A), and 15.62.040

Each Impact Fee account may be used to fund administrative costs directly associated with the respective Impact Fee and not otherwise funded through processing fees or any other funding source. Administrative costs eligible for funding by Impact Fees include:

- Reasonable administrative or related expenses of the City including costs associated with the annual fee adjustment, annual impact fee report, and five-year impact fee program review described in Section IX.D.
- Costs reasonably related to preparation and revision of plans, policies, and studies associated with the capital expenditures described in Section X.A
- Nexus studies required to make any findings and determinations required by the Mitigation Fee Act.

XI. APPROVAL

O.M.C. 15.72.112 and 15.74.130

The City Administrator may develop related forms and/or other materials and take other steps as needed to implement these Regulations, and make such interpretations of these Regulations as he or she may consider necessary to achieve the purposes of these Regulations.

APPENDIX A: GLOSSARY

O.M.C. 15.72.030 and 15.74.030

Term	Definition
Additional Square Feet	The net increase in square feet of building floor area associated with a Development Project. "Net increase" is the floor area of the Development Project less the floor area (a) legally removed by authorized remodeling, demolition or relocation, or by accidental destruction or natural disaster, **during the year preceding** submittal of the Complete Building Permit Application or (b) authorized to be removed prior to or during construction of the Development Project. "Building floor area" is floor area within surrounding exterior walls (or exterior walls and fire walls) exclusive of vent shafts and outdoor courts. Floor area not provided with surrounding walls shall be included if such area is under the horizontal projection of a roof or floor above. Building floor area does not include parking uses.
Additional Housing Units	The net increase in the number of housing units on a parcel of real property, excluding Affordable Housing, associated with a Development Project. Additional Housing Units equal the number of new housing units to be developed on the parcel of real property less the number of housing units (a) legally removed from the same parcel of real property by authorized remodeling, demolition or relocation, or by accidental destruction or natural disaster, **during the year preceding** submittal of the Complete Building Permit Application or (b) authorized to be removed prior to or during the construction of the Development Project.
Affordable Housing	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.
Affordable Housing: On-Site	Applicant will be providing Affordable Housing units within the Development Project, i.e., on the same parcel of land or within the same building as the Development Project.
Affordable Housing: Off-Site	Applicant is providing Affordable Housing units at a site other than the location of the Development Project (i.e., on a different parcel of land and not in the same building).

Term	Definition
Applicant	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.
Capital Facilities	Capital projects (as defined in the City's Capital Improvement Program) that improve or expand **fire protection and emergency medical, police protection, library, parks and recreation, or storm drain facilities**. Capital projects may include land, including parkland and open space, as well as park improvements, buildings, vehicles, furnishings, equipment, library collections, and all related infrastructure and appurtenances. Capital projects may be located anywhere within the City. Capital Facilities exclude rehabilitation, maintenance, or operating costs **except in the case of storm drain facilities** that include replacement of existing facilities but exclude ongoing maintenance or operating costs.
Change and Intensification of Use	Any Nonresidential Project that will change the use of building floor area from a Use Fee Category with a lower fee to a Use Fee Category with a higher fee. If a building is vacant the current use is based on the last approved use.
Citywide Transportation Infrastructure	Capital projects (as defined in the City's Capital Improvement Program) that accommodate travel demand from Development Projects by improving or expanding arterials, collectors, pedestrian, and bicycle facilities that provide connectivity between neighborhoods and activity centers within the City, as well as to neighboring communities and regional transportation facilities. See Section VII.A.1.a, Section X.A.2, and Appendix D: Citywide Transportation Infrastructure for eligible locations of capital projects. Types of projects include: • Entire roadway curb-to-curb (vehicle travel lanes, bicycle lanes, and on street parking), as well as adjacent sidewalks, medians, and intersection signalization equipment, plus off-street bicycle and walking paths • Traffic calming facilities and other vehicle restrictions to address negative impacts of increased vehicle trips and/or to accommodate increased travel by transit, biking, or walking. Citywide Transportation Infrastructure excludes (1) local transportation infrastructure used primarily for access to one specific neighborhood or development site, and (2) rehabilitation, maintenance, or operation of existing transportation infrastructure.

Term	Definition
Complete Building Permit Application	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 a Development Project and that contains all the application submittal materials required on the City's submittal checklist.
Credit and Reimbursement Agreement	See Section VII.D.
Developer Constructed Facilities	Citywide Transportation Infrastructure or Capital Facilities constructed by an Applicant that offset some or all the TIF or CIIF obligation, subject to approval by the City (see Section VII.).
Development Project	Any activity requiring the issuance of a building permit by the City that would result in (1) new construction, (2) Change and Intensification of Use of an existing building, or (3) Additional Housing Units in an existing building.
Impact Fee	Any one or more of the following impact fees: • Affordable Housing Impact Fee (O.M.C. 15.72) • Transportation Impact Fee (O.M.C. 15.74) • Capital Improvement Impact Fee (O.M.C. 15.74)
Impact Fee Administrator	Department of Planning and Building.
Low-Income Household	See California Health and Safety Code Section 50079.5 and its implementing regulations.
Moderate-Income Household	Persons and families of low or moderate income as defined in California Health and Safety Code Section 50093 and its implementing regulations.
Nonresidential Project	A Development Project with the following Use Fee Categories: Hotel/Motel, Industrial, Institutional, Office, Retail Freestanding, Retail Ground Floor or Warehouse/Distribution.
Residential Project	A Development Project with the following Use Fee Categories: Multi-Family Housing, Single-Family Housing, or Townhome Housing
Use Fee Category	The land use categories used to calculate the fee on a development project, including Hotel/Motel, Industrial, Institutional, Multi-Family Housing, Office, Retail Freestanding, Retail Ground Floor, Single-Family Housing, Townhome Housing, or Warehouse/Distribution (see **Appendix C**).

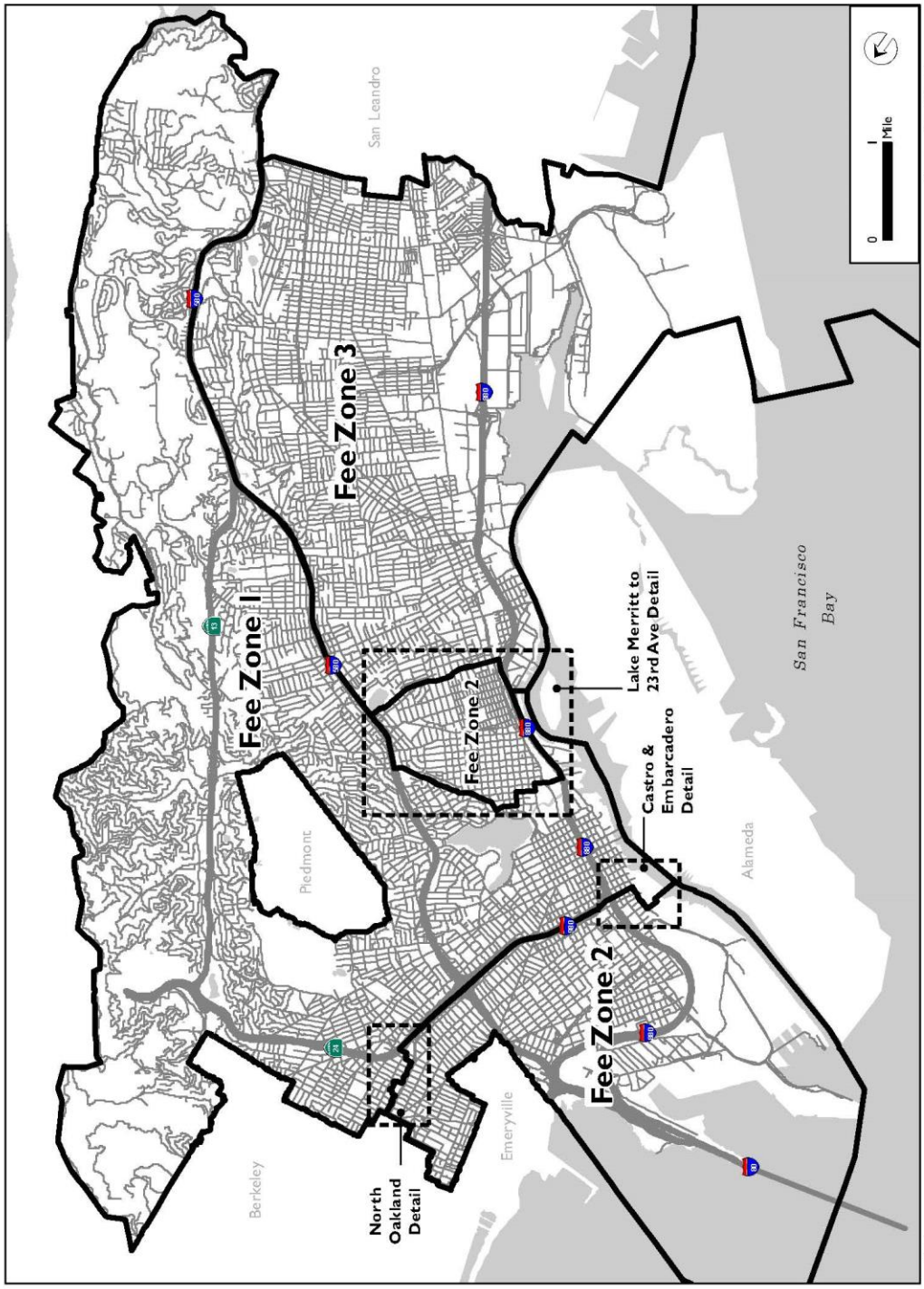
Term	Definition
Very Low-Income Household	See California Health and Safety Code Section 50105 and its implementing regulations.

Acronym	Definition
AHIF	Affordable Housing Impact Fee
CIIF	Capital Improvements Impact Fee
HCDD	City of Oakland Housing and Community Development Department
DOT	City of Oakland Department of Transportation
DPW	City of Oakland Department of Public Works
TIF	Transportation Impact fee

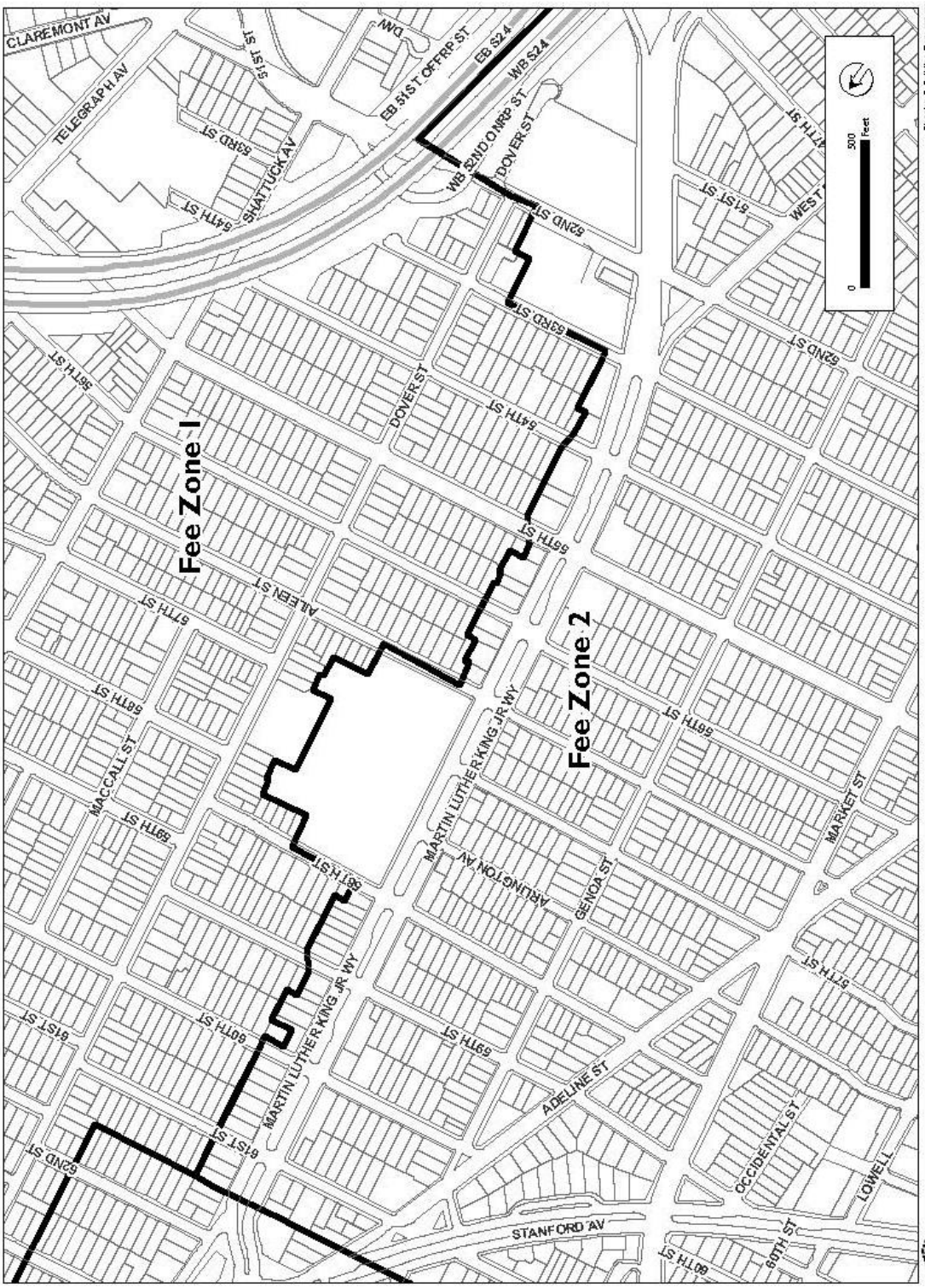
APPENDIX B: IMPACT FEE ZONES

O.M.C. 15.72.140 and 15.74.150

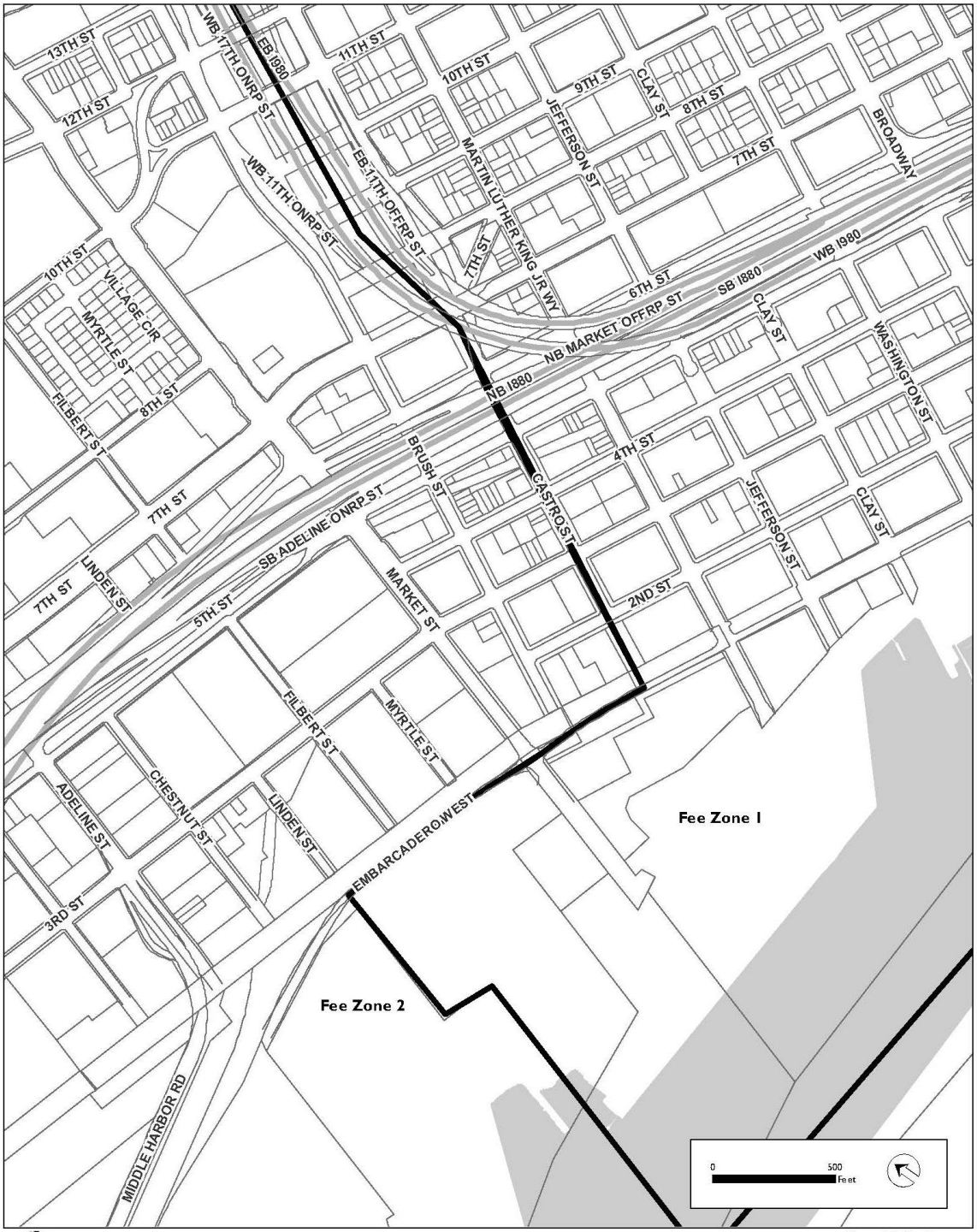
The Impact Fee for residential projects depends on the impact fee zone in which the Development Project is located. The boundaries of impact fee zones are shown on the maps on the following pages.



Impact Fee Zones for Residential Projects



Impact Fee Zones for Residential Projects - North Oakland Detail



Planning & Building Department
March 10, 2016

Impact Fee Zones for Residential Projects- Castro St & Embarcadero Detail

Planning & Building Department
March 10, 2016

Impact Fee Zones for Residential Projects - Lake Merritt to 23rd Ave Detail

APPENDIX C: USE FEE CATEGORIES

O.M.C. 15.72.030 and 15.74.030

The table on the following pages defines the types of Development Projects included in each Use Fee Category.

Use Fee Category	Planning Code Activity	Planning Code Facility	Additional Requirements (References are to O.M.C.)
Single-Family Housing	n/a	One-Family Dwelling Residential Facilities	Individual detached housing units on separate parcels
		One-Family Dwelling/Secondary Unit Residential Facilities	n/a
		Mobile Home Residential Facilities	n/a
Townhome Housing	n/a	One-Family Dwelling Residential Facilities	Multiple attached housing units or detached on the same parcel
		Two-Family Dwelling Residential Facilities	
		Multifamily Dwelling Residential Facilities	Housing units arranged in a single horizontal row with abutting sidewalls
Multi-Family Housing	n/a	Multifamily Dwelling Residential Facilities	Except facilities that meet the definition of Townhome Housing
		Rooming House Residential Facilities	Except facilities that meet the definition of the Institutional Use Fee Category
		Live/Work Residential Facilities	As defined in 17.65 and 17.101(E)
		Residential Facilities	Residentially-Oriented Joint Living & Working Quarters (17.102.195)
	n/a	Work/Live Nonresidential Facilities	As defined in 17.65 and 17.101(E) in a D-CE-3 or D-CE-4 Zone
	n/a	Micro Living Quarters Residential Facilities	As defined in 17.101(C)
	n/a	Nonresidential Facilities	Joint Living and Work Quarters (17.102.190)

Use Fee Category	Planning Code Activity	Planning Code Facility	Additional Requirements (References are to O.M.C.)
Hotel/Motel	Transient Habitation Commercial Activities	n/a	n/a
Industrial	Custom Manufacturing Industrial Activities	n/a	n/a
	Light Manufacturing Industrial Activities		
	General Manufacturing Industrial Activities		
	Heavy/High Impact Manufacturing Industrial Activities		
	Research and Development Industrial Activities		
	Construction Operations Industrial Activities		
	Regional Freight Transportation Industrial Activities		
	Trucking and Truck-Related Industrial Activities		
	Recycling and Waste-Relate Industrial Activities		
	Hazardous Materials Production, Storage, Waste Management Industrial		
	General Description of Agricultural and Extractive Activities		
	Plant Nursery Agricultural Activities		
	Limited Agricultural Activities		
	Extensive Agricultural Activities		
	Mining and Quarrying Extractive Activities		
	n/a	Nonresidential Facilities	Work/Live Unit as defined in 17.73.040(B)
	n/a	Work/Live Nonresidential Facilities	As defined in 17.101(E) in a D-CE-5 Zone

Use Fee Category	Planning Code Activity	Planning Code Facility	Additional Requirements (References are to O.M.C.)
Office	Medical Service Commercial Activities	n/a	n/a
	Consumer Service Commercial Activities		
	Consultative and Financial Service Commercial Activities		
	Administrative Commercial Activities		
	Business, Communication, and Media Service Commercial		
	Research Service Commercial Activities		
Warehouse/ Distribution	Warehousing, Storage, and Distribution Industrial Activities	n/a	n/a
Institutional	Essential Service Civic Activities	n/a	n/a
	Limited Child Care Civic Activities		
	Community Assembly Civic Activities		
	Recreational Assembly Civic Activities		
	Community Education Civic Activities		
	Nonassembly Cultural Civic Activities		
	Administrative Civic Activities		
	Health Care Civic Activities		
	Special Health Care Civic Activities		
	Utility and Vehicular Civic Activities		
	Extensive Impact Civic Activities		

Use Fee Category	Planning Code Activity	Planning Code Facility	Additional Requirements (References are to O.M.C.)
	Residential Care Residential Activities	Rooming House Residential Facilities	Are part of an institutional dormitory or are an activity listed on the left
	Supportive Housing Residential Activities		
	Transitional Housing Residential Activities		
	Emergency Shelter Residential Activities		
	Semi-Transient Residential Activities		
Retail, Freestanding	General Food Sales Commercial Activities	n/a	Not part of a multi-story mixed use building
	Full Service Restaurant Commercial Activities		
	Limited Service Restaurant Commercial Activities		
	Fast-Food Restaurant Commercial Activities		
	Convenience Market Commercial Activities		
	Alcoholic Beverage Sales Commercial Activities		
	General Retail Sales Commercial Activities		
	Large-Scale Combined Retail and Grocery Sales Commercial		
	Check Cashier and Check Cashing Activity		
	Consumer Cleaning and Repair Service Commercial Activities		
	Consumer Dry Cleaning Plant Commercial Activities		
	Group Assembly Commercial Activities		
	Personal Instruction and Improvement Services Commercial		

Use Fee Category	Planning Code Activity	Planning Code Facility	Additional Requirements (References are to O.M.C.)
	Broadcasting and Recording Service Commercial Activities		
	General Wholesale Sales Commercial Activities		
	Building Material Sales Commercial Activities		
	Automotive and other Light Vehicle Sales and Rental Commercial		
	Automotive & other Light Vehicle Gas Station & Servicing Commercial		
	Automotive and other Light Vehicle Repair and Cleaning Commercial		
	Taxi and Light Fleet-Based Service Commercial Activities		
	Automotive Fee Parking Commercial Activities		
	Animal Boarding Commercial Activities		
	Animal Care Commercial Activities		
	Undertaking Service Commercial Activities		
Retail, Ground Floor	See Retail, Freestanding	n/a	Basement, ground floor, and second floor of multi-story mixed use building when, at time of submittal of a Complete Building Permit Application, the use of those floors either is designated for retail activities (see Retail, Freestanding), or is not designated.

APPENDIX D: CITYWIDE TRANSPORTATION INFRASTRUCTURE

O.M.C. 15.74.100

Citywide Transportation Infrastructure is shown in the figures on the following pages.

Figure 3

Roadways and Bicycle Boulevards (West)

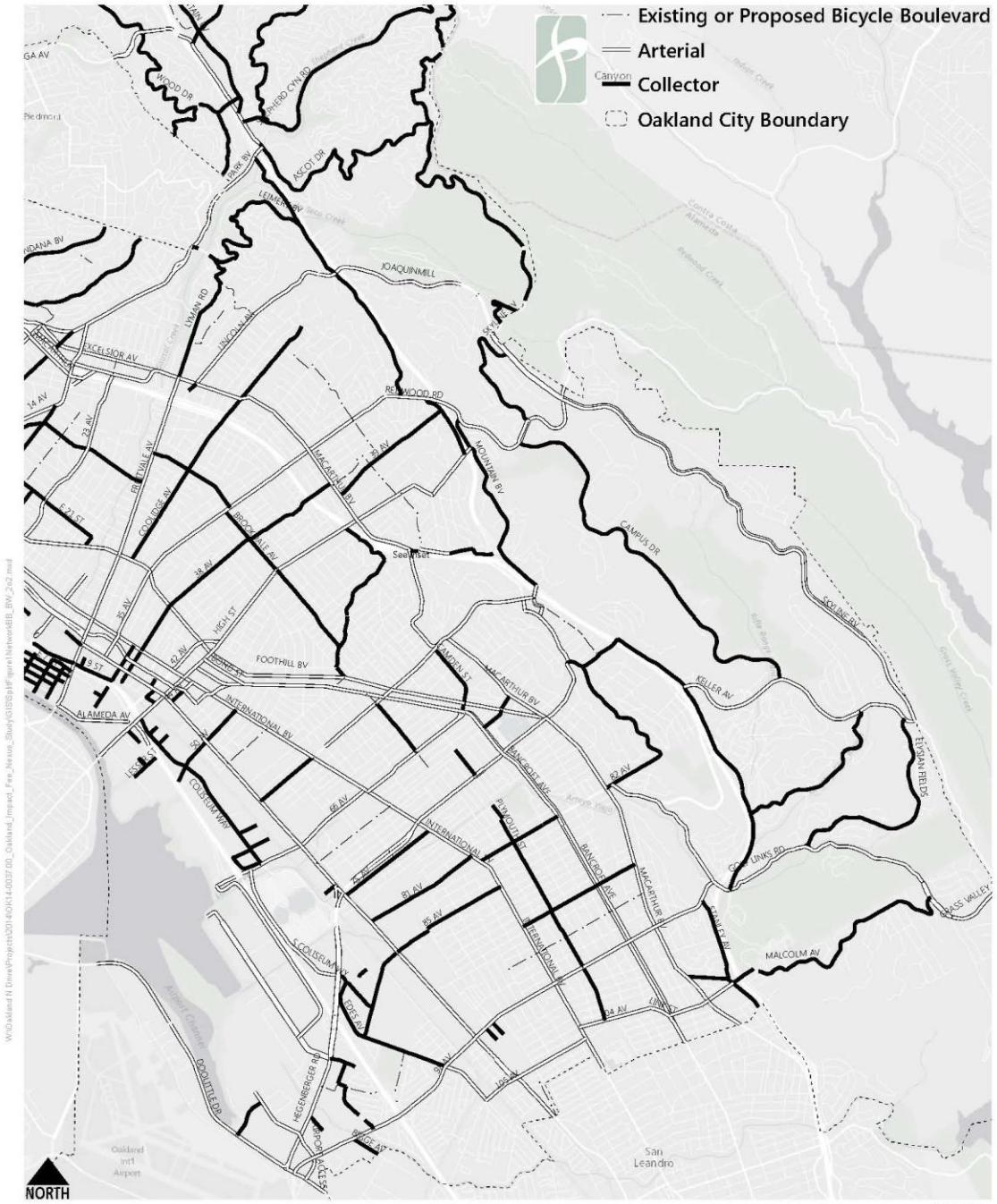


Figure 4
Roadways and Bicycle Boulevards

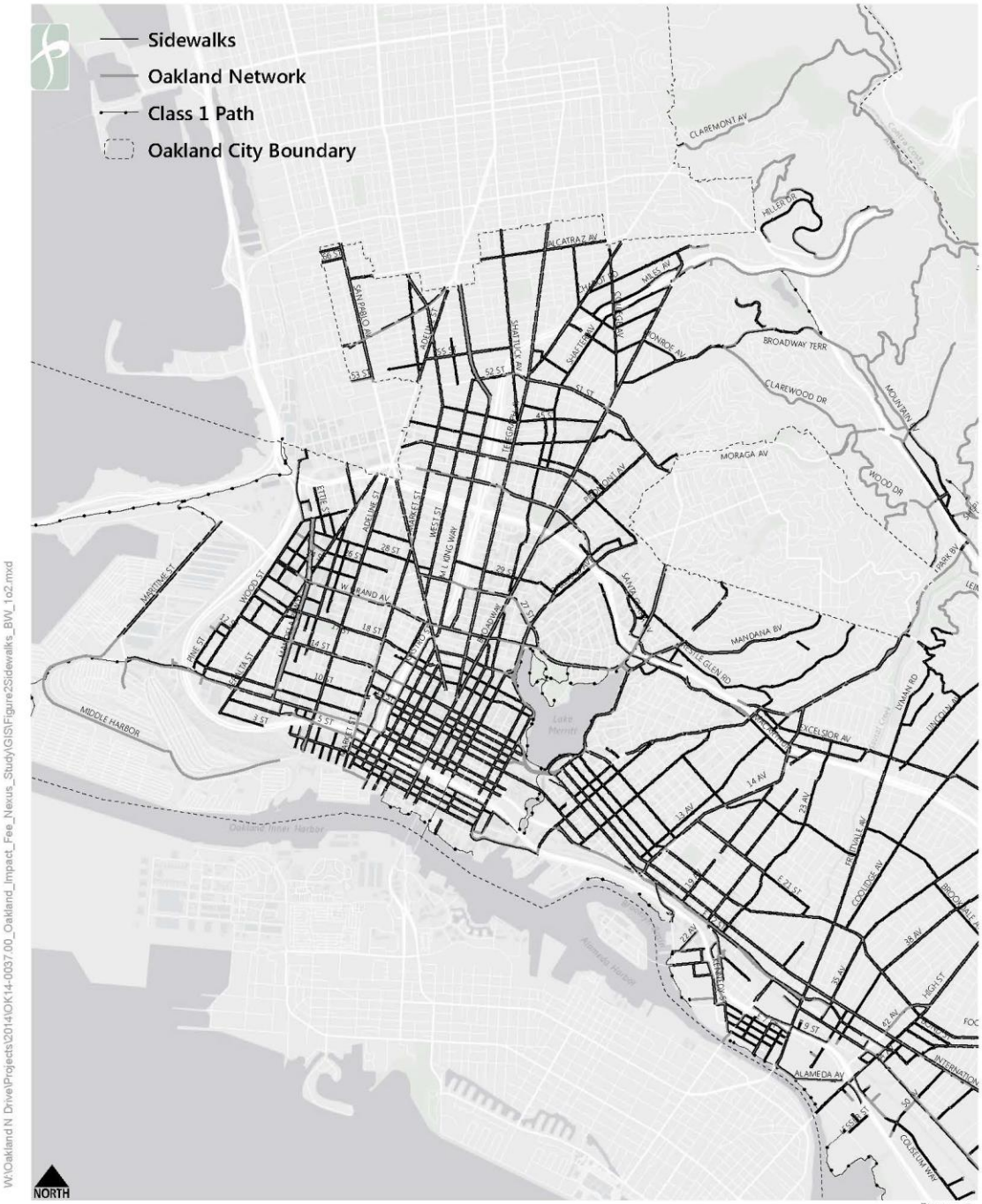


Figure 5

Sidewalks and Paths (West)

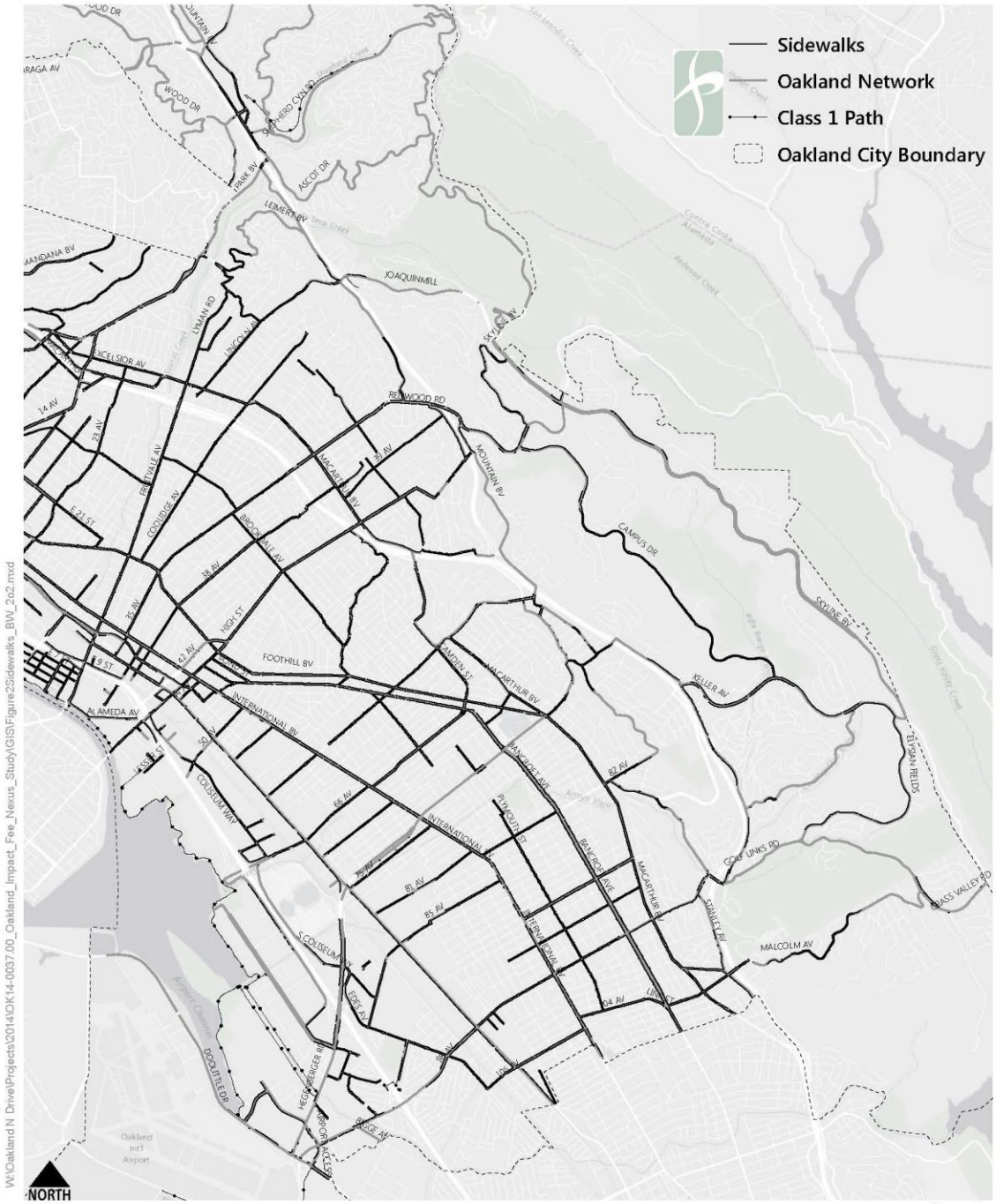


Figure 6
Sidewalks and Paths (East)

Figure 7
Medians (West)

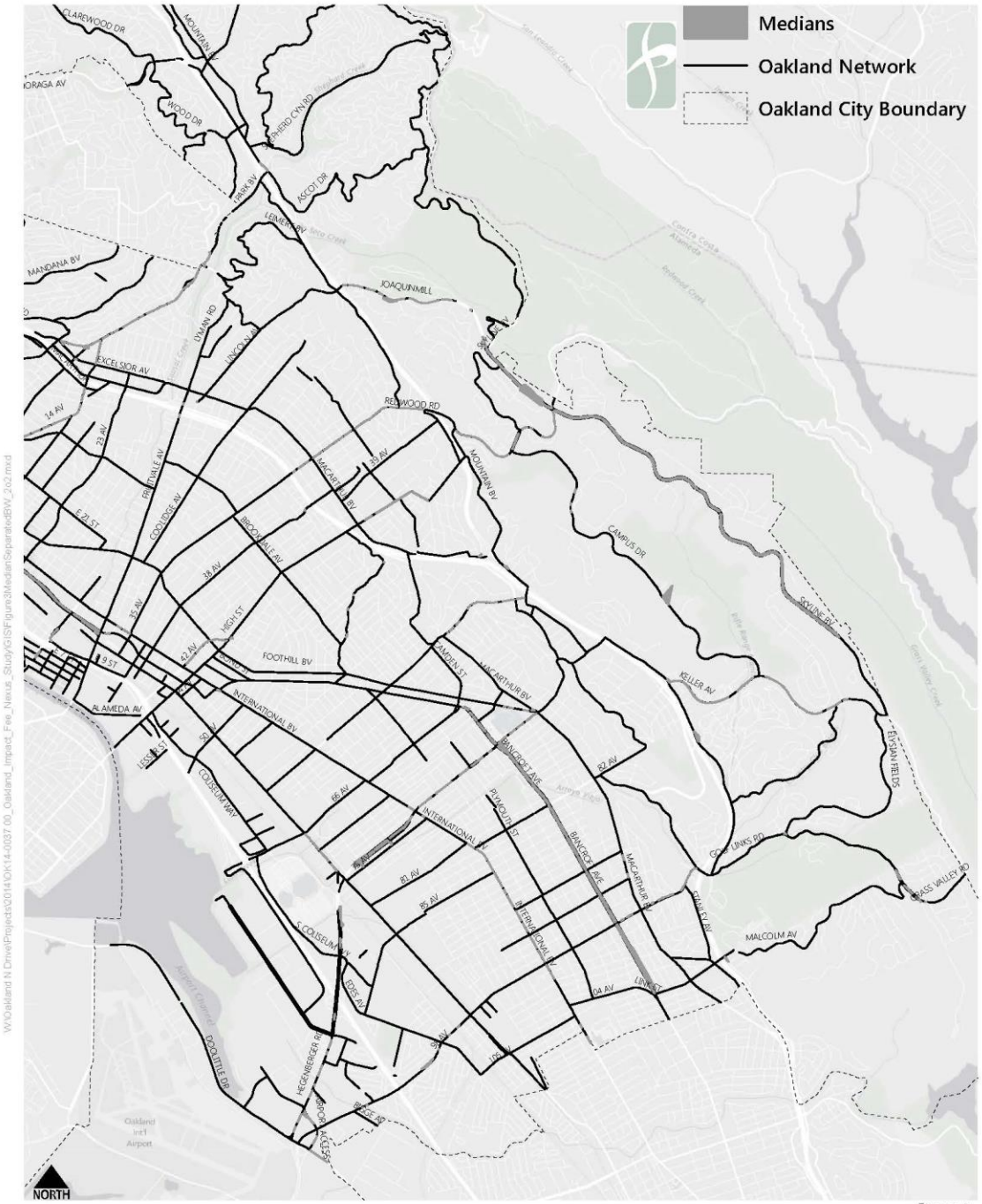


Figure 8

Medians (East)