

NOTE: Proposed text additions are shown as underline and proposed deletions are shown as ~~strikethrough~~.

Chapter 15.68 JOBS/HOUSING IMPACT FEE

15.68.010 Purpose.

The purpose of this Chapter is to establish a Jobs/Housing Impact Fee in the City of Oakland to assure that certain commercial ~~e~~Ddevelopment ~~p~~Projects compensate and mitigate for the increased demand for affordable housing generated by such development projects within the City of Oakland.

15.68.020 Findings.

The City Council finds and determines the following:

- A. New development of office and warehouse/distribution space creates new employment opportunities in Oakland.
- B. New employment opportunities will attract new workers into the City of Oakland.
- C. Many of those new workers will choose to move their residence to Oakland.
- D. Many of those new Oakland residents will qualify as low and very low income households.
- E. Low and very low income households have difficulty finding affordable housing in Oakland.
- F. New development of office and warehouse/distribution space therefore increases the demand for housing for low and very low income households and exacerbates the housing crisis, and thus there is a clear rational nexus between such development and the need for affordable housing.
- G. Through the payment of an impact fee into an affordable housing trust fund dedicated to affordable housing production, developers of employment generating office and warehouse/distribution projects will mitigate at least a portion of the impact of their developments on the housing market.
- H. The jobs/housing impact fee created by this Chapter serve the public interest and is necessary to protect the health, morals, safety, property, general welfare, well being and prosperity of the residents of Oakland, and is within the home rule powers and police powers of the city.
- I. The City of Oakland conducted a nexus study in March 2016 that recognizes that development within Oakland will result in further growth, and that such growth will place additional burdens on transportation and capital improvements infrastructure in the City. The nexus study further recognizes the locations and types of development that will generate those impacts, necessitating the construction of facilities and improvements, and/or the expansion of services and infrastructure needed to meet and accommodate development. The City of Oakland updated the nexus study in December 2021 in preparation for proposed refinements to the City's impact fee program.

15.68.030 Definitions.

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

"Affordable Housing Project" means residential Development Projects where one hundred percent (100%) of the housing units, other than manager's units, are restricted to very low-, low-, and moderate-income households.

"Affordable Housing" means each unit of 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 office or warehouse/distribution dDevelopment pProject.

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

"Development pProject" means any activity for new construction, construction in an existing building that has been substantially vacant for a continuous period of at least one year, or any change and intensification of use of an existing building, involving or requiring the issuance of a building permit by the City.

"Housing production mitigation measures" or "in-lieu housing production mitigation measures" mean those requirements or measures imposed on or elected by applicants for certain dDevelopment pProjects in lieu of payment of impact fees, as such requirements and measures are set forth under Section 15.68.080 of this Chapter.

"Impact fee" means that jobs/housing impact fee imposed under this Chapter on applicants for certain dDevelopment pProjects.

15.68.040 Requirements.

The regulations, requirements and provisions of this Chapter shall apply to any office dDevelopment pProject and any warehouse/distribution dDevelopment pProject. The applicant for any such dDevelopment pProject, as a condition of its building permit, must pay to the city those impact fees, or must provide to the city those housing production mitigation measures in lieu of such impact fees, necessary to eliminate, mitigate, or reduce to an acceptable level those impacts on and increased demand for affordable housing which are anticipated to be generated by or attributable to such dDevelopment pProject, as such impact fees and in-lieu housing production mitigation measures are set forth in this Chapter.

Nothing in this Chapter shall be construed as waiving, reducing, or modifying any other requirements for issuance of any permit, variance, approval or other entitlement by the city under any other law.

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

15.68.050 Amount of impact fee.

The impact fee shall be calculated for each dDevelopment pProject as follows:

(number of gross square feet in the dDevelopment pProject devoted to office or warehouse/distribution uses minus 25,000 square feet) × \$4.00 = the amount of the fee.

The applicable dollar multiplier shall be adjusted yearly on July 1st beginning on July 1, 2006, by the City Administrator in accordance with the percentage increase or decrease in the residential building cost index published by Marshall and Swift, or if such index ceases to be published, by an equivalent index chosen by the City Administrator, with appropriate adjustments for regional and local construction costs as necessary.

15.68.060 Payment of impact fee.

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

Payment of the impact fees shall be due in one installment 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 one hundred percent (100%) of the impact fee.

The impact fee will be assessed at the time a building permit is issued for the amount specified in Section 15.68.050. Payment of the impact fee shall be due in three installments. The first installment shall be due prior to the issuance of a building permit for all or any portion of the development project, and shall be in the amount of twenty five (25) percent of the impact fee. The second installment shall be due prior to the issuance of a Temporary Certificate of Occupancy for all or any portion of the development project, and shall be in the amount of fifty (50) percent of the impact fee. The third installment shall be due eighteen (18) months from the date of the issuance of a Temporary Certificate of Occupancy for all or any portion of the development project, and shall be in the amount of the remainder of the impact fee.

Except as provided elsewhere in this Chapter, no building permit may be issued for any development project subject to this Chapter unless and until the first installment of the impact fee is paid to the Building Official. No temporary certificate of occupancy or Certificate of Occupancy may be issued for any dDevelopment pProject subject to this Chapter unless and until the second installment of the impact fee is paid to the City Building Official. The City Building Official shall deposit the impact fee in the Affordable Housing Trust Fund established under Chapter 15.62 of this Code.

The city may also enforce the requirement to pay the impact fee by recording a lien or liens against the real property which is the subject of the dDevelopment pProject for the amount of the impact fee, revoking or suspending the Certificate of Occupancy for the property, or by taking any other action necessary and appropriate to secure payment.

As an alternative to payment of the impact fee set forth in this Chapter, an applicant for a dDevelopment pProject subject to the impact fee may elect to comply with those requirements through the production of housing as provided in Section 15.68.080 of this Chapter.

15.68.070 Reductions and exceptions Appeals.

A. An appeal of the impact fee may be submitted by the applicant of the Development Project for purposes of seeking a Reductions and exceptions in the amount or waiver from to the impact fee and in-lieu housing production mitigation measures. Such appeals may be granted to a dDevelopment pProject by the City Administrator or his or her their designee(s) pursuant to Section 15.68.090 only if (1) the dDevelopment pProject is rendered infeasible by imposition of all or a portion of the impact fee or the housing production mitigation measures, there are demonstrated special circumstances unique to the financing or economics of the project not generally applicable to other projects, and no feasible alternative means of compliance are available which would be more effective in attaining the purposes of this Chapter than the relief requested, or (2) the dDevelopment pProject will not generate any need for additional affordable housing, or the increase in such need will be limited so as to justify a reduced impact fee or reduced housing production mitigation obligation. For purposes of this Section, "infeasible" means incapable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, and technological factors.

B. Applications for appeals to reduce or waive the impact fee and in-lieu housing production mitigation measures must be made no later than ninety (90) days from the date of application for the building permit for the Development Project on a form provided by the City and shall include payment of processing fees as established by the Master Fee Schedule.

C. 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. For purposes of this Section, "infeasible" means incapable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, and technological factors.

D. The City Administrator shall deliver to the applicant a final, written determination on the appeal. The City Administrator's decision is final and not administratively appealable.

15.68.080 In-lieu housing production mitigation measures.

As an alternative to payment of all or part of the impact fee required under this Chapter, an applicant subject to the requirements of this Chapter may elect to produce affordable housing in lieu of the impact fee to mitigate the impacts of the dDevelopment pProject. Any applicant electing this in-lieu option must demonstrate that it will construct or cause to be constructed new affordable housing units (of any tenure type) as determined by the following formula:

(number of gross square feet in dDevelopment pProject devoted to office or warehouse/distribution uses minus 25,000 square feet) × .00004 = number of affordable housing units.

This unit production requirement shall be adjusted by the City Administrator as appropriate to account for any partial payment of impact fees to be made by the applicant.

In the event that an applicant chooses the in-lieu housing production option, the applicant must submit satisfactory evidence to the City Administrator of site control and issuance of a use permit for the project intended to produce the affordable housing units, prior to receipt of the building permit for the dDevelopment pProject. The applicant must obtain a building permit for the affordable housing project prior to the issuance of the Certificate of Occupancy for the dDevelopment pProject. The applicant must secure a Certificate of Occupancy for all affordable housing units no later than eighteen (18) months from the issuance of the Certificate of Occupancy for the dDevelopment pProject.

An applicant who elects to comply with the requirements of this Chapter through the production of housing must submit to the City Administrator an affordable housing production proposal with sufficient information to enable the City Administrator to determine that the applicant will construct or cause to be constructed the required number of affordable housing units. The application must demonstrate to the City Administrator's satisfaction that it possesses the financial means, technical expertise and experience to commence and complete the construction of the affordable housing within the required time period.

Where the applicant intends to construct housing units through participation in a joint venture, partnership or similar arrangement, the applicant must certify to the city to the City Administrator's satisfaction that the applicant has made a binding commitment, enforceable by the applicant's joint venturers or partners, to contribute an amount of funds to the joint venture or partnership equivalent to or greater than the amount of the impact fee that would otherwise be imposed under Section 15.68.060 of this Chapter, less the portion of the housing requirements of this Chapter actually met through the payment of impact fees, and that such joint venture or partnership is legally obligated to use such funds to develop the affordable housing required by this Section. Any joint venturer or partner must meet the qualifications for an affordable housing developer as provided by regulations to be adopted by the City Administrator. No building permit may be approved for a dDevelopment pProject subject to this paragraph until the applicant has paid in full or has posted an irrevocable letter of credit or other form of financial security acceptable to the City Administrator in the amount of the required monetary contribution. Additionally, the city may require a lien on the dDevelopment pProject property in the amount of any unpaid monetary contribution to assure compliance with this Chapter.

The City Administrator may issue guidelines for the administration of the in-lieu housing production mitigation measures provisions of this Section. If the City Administrator approves an affordable housing production proposal, he or she shall issue a certificate so indicating. This certificate shall be recorded on title of the dDevelopment pProject property as a covenant running with the land, and indicate that compliance with this Chapter is a binding obligation of the owner of the dDevelopment pProject property, and the owner's assignees and successors in interest enforceable by the city.

In the event the application of this Section to an applicable eDevelopment pProject creates an obligation to construct a fractional housing unit, that fraction shall be converted into an addition to the impact fee, or in the alternative, at the discretion of the City Administrator, an additional affordable housing unit.

In the event all affordable housing units required under the certification are not timely produced as required by this Section, the City Administrator may impose a charge on the applicant equal to one hundred fifty (150) percent of the impact fee which would have been otherwise due and owing under Section 15.68.060 of this Chapter, together with interest accrued from the date of the first building permit issuance for the eDevelopment pProject, 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 eDevelopment pProject property in the amount of any charge and interest owed, or in the alternative the city may revoke or suspend the Certificate of Occupancy for the eDevelopment pProject use.

15.68.120 Applicability.

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