



# AGENDA REPORT

**TO:** Edward D. Reiskin  
City Administrator

**FROM:** William A. Gilchrist  
Director, Planning &  
Building Department

**SUBJECT:** Appeal of Jobs/Housing Impact Fees  
for 1300 Maritime Street

**DATE:** September 3, 2021

City Administrator Approval

Date: Sep 23, 2021

## **RECOMMENDATION**

**Staff Recommends That The City Council Conduct A Public Hearing And Upon Conclusion Adopt One of The Following Two (2) Options:**

**1) Adopt A Resolution Upholding The Decision Of The Impact Fee Review Board To Deny A Fifty Percent (50%) Reduction Of The Jobs/Housing Impact Fee (Oakland Municipal Code Chapter 15.68) For A Warehouse Project At 1300 Maritime Street (Permit B1901472); Or**

**2) Provided The City Council Can Make The Appropriate Findings, Direct The City Administrator Or Designee To Prepare A Resolution For Future City Council Consideration To Impose The Jobs/Housing Impact Fee In A Different Amount.**

## **EXECUTIVE SUMMARY**

The City's Impact Fee Review Board reviewed the information CenterPoint Properties (hereinafter referred to as the "applicant" or "appellant") submitted for a new 463,664 square foot warehouse at 1300 Maritime Street (the "Project") under Oakland Municipal Code (OMC) Section 15.68.070 for reduction and exceptions of the Jobs/Housing Impact Fee and has determined that a **reduced** Impact Fee **does not apply** to the project and the Project is subject to a fee of \$5.89 per square foot.

On May 28, 2021, the applicant filed an appeal of the determination of the Impact Fee Review Board. Appeals of decisions of the Impact Fee Review Board are referred to the Oakland City Council for review.

Based on findings made by the Impact Fee Review Board, staff recommends that the City Council adopt a resolution upholding the Impact Fee Review Board's decision, which maintains the Jobs/Housing Impact Fee based on the need for affordable housing generated by the project. However, provided the Council can make appropriate findings, the Council may opt to direct the City Administrator to impose a fee in a different amount.

City Council  
October 5, 2021

## **BACKGROUND / LEGISLATIVE HISTORY**

On April 22, 2019, the applicant submitted a building permit application to the City of Oakland for the Project. The building permit record number was filed as B1901472. On October 9, 2019, the applicant filed an appeal of the City's assessment of Jobs/Housing Impact Fees on the basis that the Project is subject to a 50 percent local hire requirement (**Attachment A**).

On April 13, 2021, the Impact Fee Review Board was convened as required under the OMC to review the request to reduce fees for the Project. The Impact Fee Review Board is comprised of the directors of the Planning and Building (PBD), Housing and Community Development (HCD), and Economic and Workforce Development (EWD) Departments. At that meeting, the City's Impact Fee Review Board reviewed the information the applicant submitted for 1300 Maritime Street under Oakland Municipal Code (OMC) Section 15.68.070 for reduction and exceptions of the Jobs/Housing Impact Fee, and determined that the Project is subject to the Jobs/Housing Impact Fee. The building permit was issued on August 8, 2019. The fee for 2019-2020 was \$5.89 per square foot ([https://cao-94612.s3.amazonaws.com/documents/Master-Fee-Schedule-Combined-FY-19-20-MFS\\_Final.pdf](https://cao-94612.s3.amazonaws.com/documents/Master-Fee-Schedule-Combined-FY-19-20-MFS_Final.pdf)).

On May 20, 2021, written confirmation of the Impact Fee Review Board's decision was sent to the applicant (**Attachment B**).

On May 28, 2021, the applicant filed an appeal of the Impact Fee Review Board's decision and paid the required fee for the appeal to City Council. Their appeal request is provided as **Attachment C**.

## **ANALYSIS AND POLICY ALTERNATIVES**

### Overview of the Jobs/Housing Impact Fee

OMC Chapter 15.68 (Ordinance No. 12442 C.M.S.) establishes a Jobs/Housing Impact Fee in the City of Oakland to assure that certain commercial development projects compensate and mitigate for the increased demand for affordable housing generated by such development projects within the City of Oakland. Any new office or warehouse/distribution development project in a new or existing building over 25,000 square feet must pay to the City the Jobs/Housing Impact Fee or may elect to construct affordable housing as per OMC Section 15.68.080.

The Affordable Housing Trust Fund established under OMC Chapter 15.62 receives all Jobs/Housing Impact Fees collected and all interest and investment earnings thereon 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.

The 2001 Commercial Development Linkage Fee Analysis (Linkage Fee Analysis) for the Jobs/Housing Impact Fee (<https://cao-94612.s3.amazonaws.com/documents/Commercial-Development-Nexus-Fee-Analysis-for-the-Jobs-Housing-Impact-Fee.pdf>) was prepared to determine the legally justifiable amount of the Jobs/Housing Impact Fee, based on the demand for affordable housing generated by new development in Oakland. The Linkage Fee Analysis' formula calculated that a fee amount that would mitigate the affordable housing demand for a

typical warehouse development was \$12.85 per square foot. However, the Jobs/Housing Impact Fee started on July 1, 2006 and was initially set at \$4.00 per square foot, which is 68.87 percent lower than the maximum justifiable fee determined by the Linkage Fee Analysis. The \$4.00 per square foot rate has increased to the 2019-2020 rate of \$5.89 per square foot based on the increase in the residential building cost index published by Marshall and Swift. Section 15.68.050 of the OMC requires that Jobs/Housing Impact Fees be calculated as follows:

*number of gross square feet in the development project devoted to office or warehouse/distribution uses - 25,000 square feet x the current Jobs/Impact Fee = the amount of the fee.*

#### Requirements for Reductions and Exceptions to the Jobs/Housing Impact Fee

The Jobs/Housing Impact Fee has the following provision for reductions and exceptions as written below.

##### **15.68.070 - Reductions and exceptions.**

*Reductions and exceptions to the impact fee and in-lieu housing production mitigation measures may be granted to a development project by the City Administrator or his or her designee(s) pursuant to Section 15.68.090 only if (1) the development project 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 development project 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.*

*The burden of establishing by satisfactory factual proof the applicability and elements of this Section shall be on the applicant. 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.*

*(Ord. No. 13365, § 7, 5-3-2016; Ord. 12442 § 2 (part), 2002)*

#### Applicant's Request for Reduction of Impact Fees

The applicant's appeal to the Impact Fee Review Board is included as **Attachment A**. In short, the applicant requested a 50 percent reduction of the Jobs/Housing Impact Fee because "increased needs for affordable housing created by the Project will be limited such that it justifies a reduced impact fee or reduced housing mitigation obligation." The applicant's reasoning was based on the Operations Jobs Policy required by the Port of Oakland, which "must ensure that the majority of employees or service providers at the Project are existing local residents and are paid an elevated wage."

If the appellant's analysis was applied, the Jobs/Housing Impact Fee for this Project would be **\$1,291,865.48**  $([(463,664 - 25,000) = 438,664] \times .50 \times \$5.89 = \mathbf{\$1,291,865.48})$ .

### Basis of Impact Fee Review Board's Determination

The appellant submitted documentation which stated that employee wages are required to be in alignment with the [City's Living Wage Ordinance in OMC Chapter 2.28 \(LWO\)](#), and that at least 50 percent of the employees be current Oakland residents because of the Project's Operations Jobs Policy requirement.

The Impact Fee Review Board reviewed the information submitted by the applicant and used the Linkage Fee Analysis to guide in determining whether there was a reasonable relationship between the full adopted impact fee and the demand for affordable housing generated by the Project.

The Impact Fee Review Board determined that the Project did not qualify for a reduced Jobs/Housing Impact Fee because even with adherence to the City's LWO and with 50 percent local hire requirements, the current adopted impact fee is necessary to offset the demands for affordable housing to the new employees. The Impact Fee Review Board further determined that even if a 50 percent reduction were applied, as requested, this would be 50 percent of the maximum justified fee as determined by the Linkage Fee Analysis, and would still exceed the adopted fee.

Therefore, the Impact Fee Review Board determined that the Jobs/Housing Impact Fee for this Project is:  $[(463,664 - 25,000) = 438,664] \times \$5.89 = \underline{\$2,583,730.96}$ . The Impact Fee Review Board's Determination letter is provided as **Attachment B**.

### Staff's Analysis of Applicant's Appeal of Impact Fee Review Board Decision

The applicant submitted their appeal of the Impact Fee Review Board on May 28, 2021. This document is provided as **Attachment C** to this report.

The applicant argues that there is not a nexus to charge the full Jobs/Housing Impact Fee because 50 percent of the Project's employees are required to be Oakland residents and therefore, the applicant claims the Project would only generate 50 percent of the demand for affordable housing related to new households to Oakland. The applicant cites from the Linkage Fee Analysis that "a small percentage of new jobs will be filled by existing residents in Oakland" and contrasts the Project, which would hire 50 percent of employees from Oakland.

Staff recommends that the City Council reject the applicant's request for a reduction and find that there is a reasonable relationship between the full fee and the Project's demand for affordable housing, despite the 50 percent local hire requirement. The Linkage Fee Analysis was developed to demonstrate the economic relationship between non-residential development and the need for affordable housing in Oakland. The Linkage Fee Analysis uses a series of conservative assumptions to calculate the number of new resident households that would need affordable housing from new commercial development.

The first step in the calculation is to determine how many new workers will be needed per square foot of new development. This step considered the possibility that new hires in a development might be local and still calculated the justifiable impact fee based on all new employees, even if some are local. The Linkage Fee Analysis reasoned that if local hires have

relocated from other buildings, they will have vacated spaces somewhere else so that new employees in the chain would need to move to Oakland.

The second step in the analysis estimates the percentage of those new hired employees that will choose to live in Oakland. The Linkage Fee Analysis determined that 40 percent of new hires would live in Oakland, or would if there were affordable housing. If this number increased to 50 percent assuming that all of the Project's local hires would continue to live in Oakland, the ultimate calculation of how many new households need affordable housing in Oakland would actually **increase**.

The quotation the applicant relies on is in the Linkage Fee Analysis' third assumption, which adjusts for the potential increase in labor force participation of people living in Oakland but **entering the work force for the first time**. The Project's Operation Jobs Policy is not relevant to this assumption because the policy does not require the applicant to hire only unemployed Oakland residents. As explained above, the first assumption considered all new hires that had previous jobs in Oakland would still generate a need for affordable housing by vacating those other jobs.

Therefore, the 50 percent local hire requirement does not change the calculations of the justifiable impact fee in the Linkage Fee Analysis.

The applicant further argues that the analysis for reduction of fees should be based off of the adopted fee, not the maximum justified fee determined by the Linkage Fee Analysis.

OMC Section 15.68.070 allows a reduction in the fee only if the adopted fee is not justified. The Impact Fee Review Board, and the City Council, is obligated to determine whether there is a reasonable relationship between the amount of the Jobs/Housing Impact Fee charged and the Project's demand for affordable housing. The Linkage Fee Analysis was developed for this purpose and justifies a higher fee than was adopted by the City Council.

The Linkage Fee Analysis' formula calculated that a fee amount that would mitigate the affordable housing demand for a typical Warehouse development was \$12.85 per square foot. Even if City Council accepts the applicant's analysis that the Project would generate only 50 percent of the demand for affordable housing as a typical development, the Linkage Fee Analysis' calculation of the justifiable fee would still be used as the basis for the reduction. Fifty (50) percent of the maximum justifiable fee would be \$6.46 per square foot, which would still exceed the current amount of the fee adopted by Council.

For all of the reasons outlined above, staff recommends that the City Council find that there is a reasonable relationship between the amount of the full impact fee and the Project's demand for new housing, and to therefore uphold the Impact Fee Review Board's decision to deny a reduction of the Jobs/Housing Impact Fee for the Project.

Alternatively, the City Council could direct staff to reject the Impact Fee Review Board's determination, make alternative findings that a reduced fee is appropriate and direct the City Administrator to prepare a resolution for future City Council consideration to impose the Jobs/Housing Impact Fee in a different amount.

### **FISCAL IMPACT**

The Project involves a private warehouse development and will not require or result in direct costs to the City. If constructed, the Project would provide a positive fiscal impact through increased property taxes, sales taxes, utility user taxes and business license taxes, while at the same time increasing the level of municipal services that must be provided. The City's Jobs/Housing Impact Fee is intended to offset, in part, the effects of new commercial development. The Jobs/Housing Fees collected on this project will be deposited into the Affordable Housing Trust Fund and will be available and appropriated to support affordable housing development within the City. The appellant has requested a reduced impact fee of \$1,291,865.48 (50 percent of the adopted fee of \$5.89) and the Impact Fee Review Board has determined that the full fee of \$2,583,730.96 is the appropriate amount. The difference between the reduced Jobs/Housing Impact Fee requested by the appellant and the fee determined by the Impact Fee Review Board and recommended by staff is \$1,291,865.48.

### **COORDINATION**

This report and resolution were reviewed by the City Attorney's Office, EWD, HCD and the Budget Bureau.

### **SUSTAINABLE OPPORTUNITIES**

***Economic:*** Jobs/Housing Impact Fees are used to offset the effects of commercial development, in particular displacement of long-time residents. The Jobs/Housing Impact Fees for this Project will be used to support affordable housing development within the City, and to increase opportunities for Oaklanders of all income levels to remain in the City.

***Environmental:*** Projects supported by these Affordable Housing Trust Funds will adhere to established standards for environmental review and compliance.

***Race and Equity:*** Impact fees collected from this Project will be pooled to provide assistance on affordable housing projects throughout Oakland that would ensure that the City's resources are distributed equitably to residents.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff Recommends That The City Council Conduct A Public Hearing And Upon Conclusion Adopt One of The Following Two (2) Options:

- 1) Adopt A Resolution Upholding The Decision Of The Impact Fee Review Board To Deny A Fifty Percent (50%) Reduction Of The Jobs/Housing Impact Fee (Oakland Municipal Code Chapter 15.68) For A Warehouse Project At 1300 Maritime Street (Permit B1901472); Or
- 2) Provided The City Council Can Make The Appropriate Findings, Direct The City Administrator Or Designee To Prepare A Resolution For Future City Council Consideration To Impose The Jobs/Housing Impact Fee In A Different Amount.

For questions regarding this report, please contact Angela Robinson Piñon, Assistant Director, at 510-238-3707.

Respectfully submitted,



WILLIAM A. GILCHRIST  
Director, Planning and Building Department

Reviewed by:  
Shola Olatoye, Director  
Housing and Community Development Department

Alexa Jeffress, Director  
Economic and Workforce Development Department

Prepared by:  
Angela Robinson Piñon, Assistant Director  
Bureau of Operation and Administration

Attachments (3):

- A. Applicant Appeal of Impact Fees
- B. Determination Letter from Impact Fee Review Board
- C. Applicant Appeal Impact Fee Review Board Decision