



# AGENDA REPORT

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

**FROM:** William A. Gilchrist  
Director, PBD

Shola Olatoye  
Director, HCD

**SUBJECT:** SUPPLEMENTAL – Audit of Impact  
Fee Assessment Process

**DATE:** September 28, 2020

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City Administrator Approval 

Date: October 22, 2020

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## **RECOMMENDATION**

**Staff Recommends That The City Council Receive An Informational Report On: 1) The City Of Oakland's Assessment Of The Affordable Housing, Jobs/Housing, Transportation And Capital Improvements Impact Fee Programs From July 2016 To June 2019, And 2) Affordable Housing Impact Fee (AHIF) Collections, Budgeting For 2019/21 And Deployment.**

## **REASON FOR SUPPLEMENTAL**

At the September 22, 2020 Community and Economic Development (CED) Committee meeting, the Committee requested that staff return with additional information regarding how Impact Fees are assessed, collected and deployed. This supplemental report has been prepared in response to that request.

## **Background / Legislative History**

On January 29, 2019, the Planning and Building Department (PBD) and Housing and Community Development Department (HCD) presented the Annual Impact Fee Report for fiscal year ending June 30, 2018 to the CED Committee of Oakland's City Council. Based upon testimony and comments received from members of the public, including the Policy Director of the East Bay Housing Organizations (EBHO), as to whether Impact Fees were being assessed and collected as required under Oakland Municipal Code (OMC), Chapter 15.72 (Affordable Housing Impact Fees) and OMC Chapter 15.74 (Transportation and Capital Improvements Impact Fees), the CED Committee Members requested PBD and HCD prepare a summary

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Supplemental Report and detailed listing of all residential and mixed-use projects that were issued building permits during the reporting period and include the following information:

- Location of project - Address and Parcel Number,
- Impact Fee Zone,
- Date permit issued,
- Current project status,
- Number of housing units,
- Amount of Impact Fee assessed for each project,
- Amount of Impact Fee collected for each project, exemptions and fee reductions and the reason(s) for them, and
- Affordable housing units provided in lieu of paying the fee, including the number and affordability level (very low, low or moderate income) of those units.

Both HCD and PBD committed to returning to the CED Committee after assessing the resources that would be required to complete this detailed report.

PBD later determined that over 10,000 building permits have been filed since September of 2016 and based on the volume and resources required to complete this assessment it was determined that it would be necessary to engage a professional accounting and/or financial service(s) firm to conduct the assessment.

At the November 12, 2019 CED Committee meeting, staff provided an informational report with an update on the status of the City of Oakland's current efforts to complete the Impact Fee assessment.

The CED Committee continued the item to December 3, 2019 with the request that staff expand the list of projects to include the top thirty (30) largest residential project applications issued permits since September 2016 and to add additional columns of information to the list of projects, namely:

- The amount developer was assessed,
- The first installment and date paid,
- The second installment and date paid,
- If the fee was not paid, the basis by which an exemption was granted, and
- If the project provided on-site or off-site units, how many units were provided and at what affordability level.

On December 3, 2019, PBD staff and the Assistant City Administrator responded to the November 12th CED Committee's request and presented a supplemental agenda report on "Impact Fee Assessment 2019". The CED Committee requested a supplemental report be provided at the following CED Committee meeting on January 14, 2020 that provided information on building permits, the Comprehensive Annual Financial Report (CAFR), and housing element discrepancies.

On December 26, 2019, PBD and the Finance Department produced an annual Impact Fee report for fiscal year ending June 30, 2019 as prescribed by California Code, Government Code - GOV § 66006. The report has been posted on the City's website, at:

<https://www.oaklandca.gov/documents/city-of-oakland-annual-impact-fee-reports>

At the January 14, 2020 CED Committee meeting, PBD staff provided a tentative timeline on the Department's professional services agreement with Macias, Gini, and O'Connell, LLP (MGO) and the timeline for completion of the firm's assessment of the Impact Fee Program. At this meeting, PBD committed to providing the February 11, 2020 CED Committee the requested supplemental report with information on building permits, the CAFR and housing element discrepancies. At the July 21, 2020 City Council meeting, Vice Mayor Reid requested that the PBD provide an update of the Impact Fee audit at the September 22, 2020 CED Committee meeting.

On September 22, 2020, the CED Committee received an informational report on the findings of an evaluation conducted by MGO pertaining to the accuracy of Impact Fees assessed during the review period from July 2016 to June 2019. MGO also provided recommendations to the City on ways that it can improve its management and control systems for the Impact Fee assessment process. The CED Committee continued the item with the request that staff return with additional information regarding how Impact Fees are assessed, collected and deployed.

### Overview of the Impact Fee Program

#### ***Affordable Housing, Transportation, and Capital Improvements Impact Fees***

The Affordable Housing, Transportation, and Capital Improvements Impact Fees were adopted and went into effect in 2016 because Oakland continues to face a housing affordability crisis and is confronted with inadequate infrastructure. As Oakland experiences economic growth, it is important that the City plan for and provide funds for affordable housing, transportation improvements, and capital facilities (for fire, library, parks, police, and storm drain public facilities or infrastructure) to meet the current and evolving needs of residents. Multiple City policies and initiatives, such as the General Plan, Housing Equity Roadmap, and the Mayor's Housing Cabinet "Oakland At Home" report called for adopting development impact fees so that new development in the City pays its fair share towards funding affordable housing, transportation improvements, and capital facilities. While Impact Fees alone will not solve Oakland's pressing affordable housing and infrastructure improvement needs, they are an important component towards addressing these problems. These fees are calculated based on the type of development, the area where the development occurred ("zone"), the number of units or square footage of the development, and the date when the applicant applied for a building permit.

#### ***Development Projects Subject to Impact Fees and Exemptions***

The following projects are subject to the Affordable Housing, Transportation, and/or Capital Improvements Impact Fees:

1. Affordable Housing Impact Fees –
  - New housing units (including live/work and work/live units)
2. Transportation and Capital Improvements Impact Fees –
  - New housing units (including live/work and work/live units)
  - New nonresidential projects
  - Nonresidential projects with additional floor area
  - Nonresidential projects with a "Change and Intensification of Use"

The following projects are exempt from the Impact Fees:

1. Secondary Units.
2. Affordable housing projects (exempt from the Affordable Housing Impact Fee and the Capital Improvements Impact Fee, but subject to the Transportation Impact Fee).
3. Nonresidential projects converting less than 5,000 square feet of floor area to another use.
4. Nonresidential projects involving less than 5,000 square feet of building floor area occupied by institutional uses.

#### *Payment of Impact Fees*

The Impact Fees are paid during the building permit review process:

1. All Transportation and Capital Improvements Impact Fees are due prior to the issuance of a building permit.
2. The Affordable Housing Impact Fee is paid to the City in two installments:
  - a. The first installment of 50 percent of the Impact Fee is due prior to the issuance of a building permit; and
  - b. The second installment for the remaining 50 percent is due prior to the issuance of a temporary or permanent certificate of occupancy, whichever comes first.

Allowing for Impact Fee payment in a phased approach benefits economic feasibility by reducing the carrying cost timeframe.

#### *Impact Fee Zones for Residential Development Projects*

For residential projects, there are three (3) different Impact Fee zones which correspond to three (3) geographic zones of the City that have different market characteristics (i.e., support different prices and rents) and different levels of economic feasibility, and therefore different abilities to pay Impact Fees. A general description of the zones is listed below.

1. Impact Fee Zone 1: Downtown, the east side of Lake Merritt, much of North Oakland, and the Hills above Interstate-580.
2. Impact Fee Zone 2: West Oakland, a small part of North Oakland, the area east of Lake Merritt to 23rd Avenue.
3. Impact Fee Zone 3: areas east of 23rd Avenue and below Interstate-580

The collection of fees for the Affordable Housing, Transportation, and Capital Improvements Impact Fees started September 1, 2016. The Impact Fees are phased in and increased on July 1, 2017, and on July 1, 2018; while fees for residential projects stay the same through June 30, 2020, with the exception of Zone 3, which was phased in over five years, and will continue to increase with inflation starting on July 1, 2021 and on July 1st of each year thereafter. For nonresidential projects, the Impact Fees will continue to increase on July 1, 2019, July 1, 2020, and then will increase with inflation on July 1st of each year thereafter. Councilmember Taylor asked at the September 22, 2020 CED meeting whether the zone designations of the fee structure might expire. There is no expiration date in the legislation for either the zone designations or the fees. The City Council would have to take legislative action to modify or to eliminate consideration of geography from the fee assessment process.

### ***Summary of Jobs/Housing Impact Fee***

On July 30, 2002, the City Council adopted the Jobs/Housing Impact Fee, OMC Chapter 15.68 (Ordinance No. 12442 C.M.S.). The Jobs/Housing Impact Fee went into effect for development projects submitting a building permit on or after July 1, 2005. The Jobs/Housing Impact Fee started at \$4.00 per square foot and has adjusted with inflation; currently, it is charged at \$5.89 per square foot. The Jobs/Housing Impact Fee only applies to projects that are 25,000 square feet or greater.

### ***Development Projects Subject to Jobs/Housing Impact Fee and Exemptions Development***

Projects that are subject to the Jobs/Housing Impact Fee:

- New nonresidential Office or Warehouse projects that exceed 25,000 square feet.
- Nonresidential Office or Warehouse projects with additional floor area that exceeds 25,000 square feet.
- Nonresidential projects with a “Change and Intensification of Use” to an office or warehouse that exceeds 25,000 square feet.
- A building over 25,000 square feet that is vacant for a year or more that obtains a building permit for an office or warehouse activity.
- Development projects subject to the Jobs/Housing Impact Fee only pay for square footage of the building that exceeds 25,000 square feet.

### ***Payment of Jobs/Housing Impact Fee***

Development projects subject to the Jobs/Housing Impact Fee only pay for square footage of the building that exceeds 25,000 square feet.

The Jobs/Housing Impact Fee is paid to the City in three installments:

- The first installment of 25 percent of the Impact Fee is due prior to the issuance of a building permit;
- The second installment of 50 percent is due prior to the issuance of a temporary or permanent certificate of occupancy; and
- The third installment for the remaining 25 percent is due 18 months after the temporary certificate of occupancy.

### **Staff Responses to Requests And Questions Posed By The CED Committee At The September 22<sup>nd</sup> 2020 Meeting**

#### **Document requests**

As requested by the CED Committee, staff has made the following available in Excel spreadsheet format and has posted to the City of Oakland website (<https://www.oaklandca.gov/documents/city-of-oakland-annual-impact-fee-reports>):

- An Excel version of the Appendix that was provided by MGO at the September 22<sup>nd</sup> CED Committee meeting (included in PDF format as **Attachment A**).

- An Excel doc (included in PDF format as **Attachment B**) that lists:
  - Each project that was eligible for Impact Fees,
  - The amounts assessed for each type of Impact Fees,
  - The reason why Impact Fees were assessed or not assessed.
- An Excel document that lists all the projects that built low-income housing in lieu of impact fees, the number of market rate and affordable units, and the level of affordability for the low-income housing that was built (included in PDF format as **Attachment C**).
- An Impact Fee Zone map (**Attachment D**).

#### Additional Information on Projects That Were Not Assessed Impact Fees

There were 13,970 projects that were not assessed for Impact Fees in the report MGO provided to the CED Committee on September 22<sup>nd</sup>, 2020. As requested by the Committee, the information below provides a detailed breakdown of why the projects were not assessed for impact fees.

- 11,212 of the 13,970 projects were not development projects as defined under the Oakland Municipal Code 15.72.040 and 15.74.040
- 1,313 of the 13,970 projects were submitted prior to September 1, 2016
  - 1,133 of the 1,313 projects were not development projects
  - 180 of the 1,313 projects failed all four (4) requirements that would qualify it for impact fees
- Four (4) of the 13,970 records were test records that were created in Accela simply for the purpose of examining system record management

- 1,441 of the 13,970 projects were exempt, per **Table 1** below:

**Table 1 Project Exemptions**

<u>Number of Records</u>	<u>Percentage</u>	<u>Exemption / Reason</u>	<u>Number of Units</u>
1	0.07%	Affordable housing	403
1	0.07%	Institutional use with less than 5,000 square footage	N/A
2	0.14%	Change in intensification is less than 5,000 sq. ft.	N/A
2	0.14%	Change to a lower intensification	N/A
7	0.49%	City or Port of Oakland project	N/A
7	0.49%	Demolished and same # units rebuilt	11
56	3.89%	Prior vested rights	435
613	42.54%	Secondary unit	613
752	52.19%	Residential additions	N/A
Total: 1441			

Waiver of Local Participation Requirement for MGO

- The Request for Proposals (RFP) for the work was put out for bid in April 2019.
- A review of City certified firms by industry code reflected less than 3 Local/Small Local Business Enterprise (L/SLBE) businesses eligible and able to perform the work.
- MGO was the only firm that responded to the RFP.
- In MGO’s initial bid, a SLBE subcontractor, Williams Adley & Co, CA, LLP, was slated to do 50 percent of the work. After discussing the project in more depth with MGO, the scope of work was revised to account for the level of professional skillsets needed to complete the project. MGO had the expertise to perform more of the scope of work than previously reflected.
- As a result, a Request for Proposals (RFQ) was put out for a second bid with a revised work scope in July 2019.
- MGO was the only firm that responded to the second RFP bid.
- In MGO’s second bid, Williams Adley & Company was slated to handle 25 percent of the work.
- Participation was not waived as is standard practice, it was reduced to 25 percent given the knowledge of at least one local firm

### Using unpaid fee balances as Accounts Receivable

As noted in this report, the payment of Impact Fees for Affordable Housing is phased over milestones of permit application and certificate of occupancy. Although these second-phase Impact Fee payments are required at the certificate of occupancy as a term of project completion, inasmuch as these payments are not contractually obligated to the City by applicant irrespective of project disposition, such as abandonment, the City of Oakland cannot treat those future payments as Accounts Receivable.

### Impact Fee Budgeting and Deployment

The Budget Bureau in the Finance Department budgets the Affordable Housing Impact Fees based on the amount collected up to a certain point in the budget calendar year. When additional funds are received after this point, they are added as needed. **Attachment E** provides a presentation prepared by the Department of Housing and Community Development of the budgeted amounts and deployment of these funds for Fiscal Years (FYs) 2018-19, 2019-20, and 2020-21. The presentation includes:

- Commitment of funds by project, broken out by Impact Fee type
- Numbers of units that will be produced, project addresses, sources of additional City funding being provided to Impact Fee-funded projects, and development status of each project
- Summary of Impact Fees budgeted, committed, and expended
- Comparison of affordable units created in the last four years versus Regional Housing Needs Allocation for very low-income housing

The presentation also includes a description of the Notice of Funding Availability (NOFA) process.

### Fee Deferral, Discounts, or Waivers

At the September 22, 2020 CED Committee meeting, the Committee asked staff to reevaluate ways to support affordable housing development, including:

- Allowing timing deferral in payments of permitting fees;
- Adding flexibility in the permitting process and collection of permit fees, especially for developers who cannot afford to pay large upfront permit costs (fee deferral); and
- Granting fee waivers or discounts.

A report on this matter will be scheduled through the Rules and Legislation Committee for a future CED Committee meeting.

### Coordination

This report was prepared with support and input from PBD, HCD, the Finance Department, and the Department of Workplace and Employment Standards (Contract Compliance).



**ACTION REQUESTED OF THE CITY COUNCIL**

Staff Recommends That The Committee for Community and Economic Development City Council Receive An Informational Report On The Status Of: 1) The City Of Oakland's Current Efforts To Complete An Assessment Of The Affordable Housing, Jobs/Housing, And Transportation And Capital Improvements Impact Fee Programs From July 2016 To June 2019, And 2) Affordable Housing Impact Fee (AHIF) Collections, Budgeting For 2019/21 And Deployment.

For questions regarding this report, please contact Albert Merid, Management Assistant at 510-238-3588.

Respectfully submitted,



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Attachments (5):

- A – Appendix provided by MGO at the September 22nd CED Committee Meeting
- B – Detailed Impact Fee Info for Projects Eligible for Impact Fees
- C – Projects That Built Low-Income Housing In-Lieu of Impact Fees
- D – Impact Fee Zone Map
- E – Housing Department Presentation

To view Attachments A through C in Excel format, visit:

<https://www.oaklandca.gov/documents/city-of-oakland-annual-impact-fee-reports>