

## OAKLAND CITY COUNCIL

ORDINANCE NO. \_\_\_\_\_ C.M.S.

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### AN ORDINANCE

(1) AMENDING TITLE 15 OF THE OAKLAND MUNICIPAL CODE TO UPDATE AND REVISE THE REGULATIONS FOR THE JOBS/HOUSING IMPACT FEE (CHAPTER 15.68), AFFORDABLE HOUSING IMPACT FEE (CHAPTER 15.72), AND TRANSPORTATION AND CAPITAL IMPROVEMENT IMPACT FEES (CHAPTER 15.74);

(2) AMENDING THE CITY OF OAKLAND MASTER FEE SCHEDULE (ADOPTED BY ORDINANCE NO. 13799 C.M.S., AS AMENDED) TO CALCULATE IMPACT FEES FOR RESIDENTIAL PROJECTS ON A SQUARE FOOTAGE BASIS; AND

(3) MAKING APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS.

**WHEREAS**, the City of Oakland ("City") has a critical need to ensure impacts from new development to transportation, capital improvement, and affordable housing resources are addressed, and development impact fees are a commonly used mechanism to address this need; and

**WHEREAS**, Government Code Section 66000-66025 establish the legal requirements for a jurisdiction to implement a development impact fee program for fees that meet the terms of the Mitigation Fee Act, California Government Code Sections 66000 to 66025; and

**WHEREAS**, the City has determined that the Affordable Housing Impact Fee should be administered consistent with the requirements applicable to fees for public facilities in the California Government Code Section 66000 et seq., commonly referred to as the "Mitigation Fee Act," without determining that it is required to do so; and

**WHEREAS**, on July 30, 2002, the City Council approved Ordinance No. 12442 C.M.S. adopting the City of Oakland Jobs/Housing Impact Fee, supported by the report "Commercial Development Linkage Fee Analysis" prepared by David Paul Rosen & Associates to examine the

link between non-residential development and the need for affordable housing in the City, and subsequently amended the City of Oakland Jobs/Housing Impact Fee on May 3, 2016, through Ordinance No. 13365 C.M.S. into the Oakland Municipal Code Chapter 15.68; and

**WHEREAS**, on May 3, 2016 the City Council approved Ordinance No. 13365 C.M.S. adopting the City of Oakland Affordable Housing Impact Fee into the Oakland Municipal Code Chapter 15.72; and

**WHEREAS**, on May 3, 2016, the City Council approved Ordinance No. 13366 C.M.S. adopting the City of Oakland Transportation and Capital Improvement Impact Fees into the Oakland Municipal Code Chapter 15.74; and

**WHEREAS**, in support of the adoption of the 2016 ordinances, the City, assisted by Hausrath Economics Group, Vernazza Wolfe Associates, Inc., BKF Engineers, and Fehr & Peers, conducted Nexus Studies examining the link between (1) new market-rate residential development, the growth of employment associated with the consumer expenditure of new residents, and the demand for affordable housing to accommodate the new worker households in Oakland (“Oakland Affordable Housing Impact Fee Nexus Analysis”); and (2) new development and additional burdens on transportation and capital improvement infrastructure (“Oakland Transportation and Capital Improvements Impact Fee Nexus Analysis”); and

**WHEREAS**, the Affordable Housing Impact Fee is charged per unit and is based upon the Impact Fee Zone in which the Development Project is located; and

**WHEREAS**, there are three Impact Fee Zones in the City and the fee levels in these zones reflect differences in the cost of housing, the feasibility of market-rate development, and the demand for new housing; and

**WHEREAS**, an applicant for a development project that is otherwise subject to the Affordable Housing Impact Fee will be exempt from the fee if the applicant provides affordable housing units pursuant to Oakland Municipal Code Section 15.72.100 – On-Site Affordable Housing Option; and

**WHEREAS**, in addition to providing affordable units pursuant to Oakland Municipal Code Section 15.72.100, an applicant for a development project may also utilize the provisions of 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; and

**WHEREAS**, the Transportation Improvement Impact Fees and Capital Improvement Fees for residential projects is based upon the Impact Fee Zone in which the Development Project is located and;

**WHEREAS**, on January 31, 2023, the City approved Resolution No. 89565 C.M.S., adopting the 2023-2031 Housing Element as a General Plan Amendment to the Oakland General Plan, and the 2023-2031 Housing Element includes a program, referred to as the Housing Action Plan, that includes proposed actions to increase production of affordable housing, to allow for “missing middle” housing in existing neighborhoods, to produce mixed-income housing

throughout the city, to address geographic inequities, racial segregation, and associated disparities in housing opportunities and outcomes; and

**WHEREAS**, the State of California passed Assembly Bill 602 in 2021, which requires that a local jurisdiction calculate a fee levied or imposed on a housing development project proportionately to the square footage of the proposed units to lower the relative burden on multifamily and other small units, or make specified findings explaining why the local jurisdiction will not be the appropriate metric to calculate the fees; and

**WHEREAS**, the State of California passed Senate Bill 937 in 2024, which prohibits a local agency that imposes fees or charges on a residential development for the construction of public improvements or facilities from requiring the payment of those fees or charges until the date of the final inspection or the date the certificate of occupancy is issued, whichever occurs first, and exempts specified units in a residential development proposed by a nonprofit housing developer if the housing development meets certain conditions; and

**WHEREAS**, on July 1, 2024, Senate Bill 684 (SB 684), Land use: streamlined approval processes: development projects of 10 or fewer residential units on urban lots under 5 acres, took effect to incentivize and facilitate more types of ownership housing by simplifying the regulatory process and allowing for smaller lots; and

**WHEREAS**, California Government Code Section 66001(d) requires that for the fifth fiscal year following the first deposit into the account or fund, and every five years thereafter, the City shall make a five-year impact fee report with respect to that portion of the account or fund remaining unexpended, whether committed or uncommitted; and

**WHEREAS**, said five-year impact fee reports for transportation, capital improvements, jobs/housing, and affordable housing impact fees were prepared by Hausrath Economic Group in December 2021, made available to the public, and presented to the Community and Economic Development Committee (“CED”) of the City Council on June 28, 2022; and

**WHEREAS**, each five-year impact fee report additionally includes a review of the nexus analysis from the previously prepared Nexus Studies, confirms that the fees have an essential nexus and reasonable relationship/roughly proportional to the impacts of development, as provided in greater detail in the five-year impact fee reports and which are hereby incorporated in full into these recitals, and identifies the maximum legal affordable housing, jobs/housing, transportation, and capital improvements impact fees on a per square footage basis based on the level of impacts on the need for affordable housing, transportation, and capital improvements from various types of development projects; and

**WHEREAS**, subsequent to preparation and presentation of the statutorily required five-year impact fee reports, the City in coordination with Hausrath Economic Group performed a development feasibility analysis and housing strategy study (“Feasibility Analysis”) of the impact fees in alignment with Action 3.3.7 of the City of Oakland 2023-2031 Housing Element in July 2024; and

**WHEREAS**, the Feasibility Analysis analyzed development feasibility for office, housing, retail and dining, hotel, and warehouse development and has documented and confirmed that new construction is not feasible in most sectors, except for modern warehouse facilities due to economic factors and its impact on the real estate market and development costs; and

**WHEREAS**, the Feasibility Analysis also found that applicants of development projects utilize the provisions of 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 and provide higher percentages of on-site affordable units required by Oakland Municipal Code Section 15.72.100 – On-Site Affordable Housing Option; and

**WHEREAS**, City Staff analyzed six potential refinements to the City’s Impact Fee Program using the findings from the Feasibility Analysis; and

**WHEREAS**, the findings from the Feasibility Analysis and potential refinements to the City’s Impact Fee Program were discussed in Working Group meetings which consisted of City staff and a broad group of Oakland stakeholders and subject matter experts for input; and

**WHEREAS**, City Staff presented the conclusions from the development feasibility analysis and the potential refinements to the City’s Impact Fee Program to the CED Committee on December 10, 2024 for input; and

**WHEREAS**, the CED Committee discussed the potential refinements to the City’s Impact Fee Program and provided feedback to City Staff; and

**WHEREAS**, City Staff considered feedback from the CED Committee and have proposed amendments to the City’s Impact Fee Program, that is legally compliant, and in alignment with the findings from Feasibility Analysis; and

**WHEREAS**, in conformance with Assembly Bill 602, City Staff have proposed updating the current Affordable Housing Impact Fee structure and the Transportation and Capital Improvements Impact Fee structures for residential development to be assessed per square foot of residential development, and make related amendments to the Master Fee Schedule; and

**WHEREAS**, City Staff have proposed maintaining current level of impact fees, adjusting the fees only for inflation as the development feasibility study findings indicate that both the zone boundaries and impact fee levels are consistent with and supported by the Feasibility Analysis; and

**WHEREAS**, City Staff have proposed maintaining the current Impact Fee Zone boundaries as the development feasibility study findings indicate that both the zone boundaries and impact fee levels are consistent with and supported by the Feasibility Analysis; and

**WHEREAS**, City Staff have proposed that the Affordable Housing Impact Fee, Transportation and Capital Improvement Impact Fee, and Jobs/Housing Impact Fee be due prior to the issuance of a Temporary Certificate of Occupancy for all or any portion of the

Development Project associated with the building permit, and shall be in the amount of one hundred percent of the impact fee, in accordance with Senate Bill 937 and supported by the Feasibility Analysis; and

**WHEREAS**, City Staff have proposed modifying the percentage of affordable units required under Oakland Municipal Code Section 15.72.100 – On-Site Affordable Housing Option by zone, consistent with the different fee levels by impact fee zones, and supported by the Feasibility Analysis; and

**WHEREAS**, City Staff have proposed establishing project unit and size thresholds to encourage missing middle and multi-unit housing development, in alignment with Action 3.2.1 of the 2023-2031 Housing Element and State Law Senate Bill 684 as codified under California Government Code Sections 65852.28 and 66499.41; and

**WHEREAS**, the potential refinements to the City’s Impact Fee Program were scheduled to be considered at regular, duly noticed (including newspaper ads published on May 16, 2025 and May 30, 2025) public meeting of the CED Committee of the City Council on June 10, 2025; and

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**SECTION 1. Recitals.** The City Council finds and determines the foregoing recitals to be true and correct and an integral part of the City Council’s decision and hereby adopts such recitals as findings.

**SECTION 2. Amendment of the Oakland Municipal Code.** The Oakland Municipal Code Title 15, and regulations for the Jobs/Housing Impact Fee (Chapter 15.68), Affordable Housing Impact Fee (Chapter 15.72), and Transportation and Capital Improvement Impact Fees (Chapter 15.74) is hereby amended pursuant to **Exhibits A through C** attached hereto and incorporated by reference herein. Additions are shown as underline and deletions are shown as ~~striketrough~~.

**SECTION 3. Amendment of the Master Fee Schedule.** The City of Oakland Master Fee Schedule is hereby amended pursuant to **Exhibit D** attached hereto and incorporated by reference herein. Additions are shown as underline and deletions are shown as ~~striketrough~~. As shown in Exhibit D, the Affordable Housing Impact Fee rate for multi-family housing, townhome housing, and single-family housing in Zone 3 shall be charged at zero (0) percent of the listed square footage rate for remaining portion of Fiscal Year 2025-26 and during Fiscal Year 2026-27 and Fiscal Year 2027-28.

**SECTION 4. California Environmental Quality Act.** The City Council finds and determines the adoption of this Ordinance is (1) not a Project under the California Environmental Quality Act ("CEQA") and is therefore exempt pursuant to CEQA Guidelines section 15378 (b)(4); (2) statutorily exempt pursuant to CEQA Guidelines section 15273(a)(4) (Rates, Tolls, Fares and Charges for obtaining funds for capital projects necessary to maintain service within existing service area); (3) statutorily exempt pursuant to CEQA Guidelines section 15267

(Financial Assistance to Low or Moderate Income Housing); (4) not intended to apply to specific affordable housing projects and as such it is speculative to evaluate such future projects now and, moreover, they will be subject to appropriate environmental review at such time as approvals for those affordable housing projects are considered; (5) not intended to apply to specific capital improvement projects and as such it is speculative to evaluate such projects now and any specifically identified transportation projects were already evaluated under CEQA and imposed as mitigation measures in previously certified EIRs and/or adopted mitigated negative declarations; and/or (6) not intended to, nor does it, provide CEQA clearance for future development-related projects by mere payment of the fees. Each of the foregoing provides a separate and independent basis for CEQA compliance and when viewed collectively provides an overall basis for CEQA compliance.

**SECTION 5. Recording of Notice.** The Environmental Review Officer, or designee, is directed to file a Notice of Exemption/Notice of Determination with the appropriate agencies.

**SECTION 6. Effective Date.** Except as noted herein, this Ordinance shall become effective 60 days from the date of final passage by the City Council.

(a) This Ordinance shall not apply to projects that have obtained certificates of occupancy or temporary certificates of occupancy. The City will not grant any refunds for completed projects that have paid impact fees.

(b) Adoption of this Ordinance shall not result in reassessments of fees for projects under construction that have already had fees assessed. Reassessment will only occur in accordance with the provisions of Sections 15.72.040 and 15.74.040, as amended. This provision of the ordinance shall become effective immediately on final adoption if the ordinance receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

(c) If a project previously subject to any impact fee now meets an exemption to an impact fee program, the project applicant shall not be granted a refund for payment of any previously paid installments but shall be exempt from payment of the subsequent installments of the fee. This provision of the Ordinance shall become effective immediately on final adoption if the ordinance receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

(d) The Affordable Housing Impact Fee rates applicable to Zone 3, as shown in Exhibit D, shall become effective immediately on final adoption if the Ordinance receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption. Any applicant who has submitted a complete building permit application prior to July 15, 2025 for a project located in Zone 3 shall not be granted a refund for payment of any previously paid installments but shall be exempt from payment of any subsequent installments of the fee.

(e) The provisions of newly added Section 15.72.050.C of the Oakland Municipal Code shall become effective immediately on final adoption if the Ordinance receives six

or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

**SECTION 7. Supporting Documentation.** The record before this Council relating to this Ordinance and supporting the findings made herein includes, without limitation, the following:

1. All final staff reports, and other final documentation and information produced by or on behalf of the City, including without limitation supporting technical studies and all related/supporting final materials, and all final notices relating to the impact fee program;
2. All oral and written evidence received by the CED Committee and City Council during the public meetings and hearings on the impact fee program and this Ordinance; and all written evidence received by the relevant City staff before and during the public meetings and hearings on the impact fees;
3. All matters of common knowledge and all official enactments and acts of the City, such as (a) the City's General Plan; (b) the Oakland Municipal Code and Planning Code; (c) other applicable City policies and regulations; and (d) all applicable state and federal laws, rules and regulations.

The custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based, are respectively: (a) Planning and Building Department – Bureau of Planning, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, California; and (b) Office of the City Clerk, One Frank H. Ogawa Plaza, 1st Floor, Oakland California.

**SECTION 8. Conflict with Laws.** Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any Federal or State law.

**SECTION 9. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

**SECTION 10. Authority.** This Ordinance serves the public interest and is necessary to protect the health, safety and/or general welfare of the citizens of Oakland and is enacted pursuant to the City of Oakland's general police powers, Section 106 of the Charter of the City of Oakland, Government Code Section 65852.2, and Article XI, Sections 5 and 7 of the California Constitution.

**SECTION 11. Conforming Changes.** The City Council hereby authorizes the City Administrator or designee to make nonsubstantive technical conforming changes (essentially correction of typographical and clerical errors), including omnibus cross-referencing conforming changes throughout the Oakland Municipal and Planning Codes, prior to formal publication of these amendments in the Oakland Municipal Code.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROWN, FIFE, GALLO, HOUSTON, RAMACHANDRAN, UNGER, WANG, AND  
PRESIDENT JENKINS

NOES –

ABSENT –

ABSTENTION –

ATTEST: \_\_\_\_\_  
ASHA REED  
City Clerk and Clerk of the Council of the  
City of Oakland, California

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## **NOTICE AND DIGEST**

### **AN ORDINANCE**

**(1) AMENDING TITLE 15 OF THE OAKLAND MUNICIPAL CODE TO UPDATE AND REVISE THE REGULATIONS FOR THE JOBS/HOUSING IMPACT FEE (CHAPTER 15.68), AFFORDABLE HOUSING IMPACT FEE (CHAPTER 15.72), AND TRANSPORTATION AND CAPITAL IMPROVEMENT IMPACT FEES (CHAPTER 15.74);**

**(2) AMENDING THE CITY OF OAKLAND MASTER FEE SCHEDULE (ADOPTED BY ORDINANCE NO. 13799 C.M.S., AS AMENDED) TO CALCULATE IMPACT FEES FOR RESIDENTIAL PROJECTS ON A SQUARE FOOTAGE BASIS; AND**

**(3) MAKING APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS.**

This Ordinance amends the Oakland Municipal Code to update and revise regulations for the Jobs/Housing Impact Fee (Chapter 15.68), Affordable Housing Impact Fee (Chapter 15.72), and Transportation and Capital Improvement Impact Fees (Chapter 15.74). This Ordinance also amends the City's Master Fee Schedule to calculate impact fees for residential projects on a square footage basis. Finally, this Ordinance adopts various findings including findings related to exemptions under the California Environmental Quality Act.