

CITY OF ALAMEDA ORDINANCE NO. _____

New Series

AMENDING ALAMEDA MUNICIPAL CODE CHAPTER XXVII, SECTION 27-3 CONCERNING DEVELOPMENT IMPACT FEES

WHEREAS, approximately 78,000 people live in the City of Alameda; and

WHEREAS, new development is expected to continue to occur in the City of Alameda and the population is expected to increase to 88,000; and

WHEREAS, increased population due to this new development will place additional burdens on park and recreation facilities, transportation infrastructure, public safety facilities and other general public facilities throughout the City; and

WHEREAS, to maintain existing levels of service to the population, new facilities are required; and

WHEREAS, the City has adopted a citywide General Plan that establishes park and recreation service standards, public safety facility service goals, public facility needs, and transportation facility needs and priorities; and

WHEREAS, the existing city parks provide 2.3 acres of park land per 1,000 residents; and

WHEREAS, these planning documents reflect the City's commitment to parks and recreation for its residents, safe neighborhoods, effective transportation infrastructure, and general public facilities; and

WHEREAS, to implement these policies, the City intends to require every person who develops or redevelops land in the City to mitigate the impacts of such development or redevelopment by paying fees that will be used to develop and improve park and recreation facilities, transportation infrastructure, public safety facilities and other general public facilities; and

WHEREAS, a Development Impact Fee Study was prepared by Willdan Financial Services in 2014 to analyze the relationship between new development in the City, the increased demand for and use of public facilities, and the amount of fee revenue necessary to fund new public facilities in response to the increased demand ("2014 Nexus Study"); and

WHEREAS, in response to judicial guidance and staff's ongoing evaluation of the existing Development Impact Fees, staff has caused Willdan to prepare an updated nexus study ("2019 Nexus Study") to refine the park and recreation component, establish a park fee credit for projects that provide public park land in excess of legal

requirements, provide a fee exemption for deed restricted affordable housing and accessory dwelling units, reduce fees for eligible transit oriented residential projects, and provide other ordinance clarifications; and

WHEREAS, with respect to the park and recreation component, the 2019 Nexus Study used a Facility Standards and Cost Allocation Approach to calculate the fees to maintain the current level of service; and

WHEREAS, under this approach, the current levels for the provision of parks and recreation facilities and parkland by the City were used as the basis for determining the fair share contribution of new development; and

WHEREAS, these development impact fees will be used for a broad range of parks and recreation facilities investments, including the capital improvement of existing and new park facilities and development of new parks and recreation facilities; and

WHEREAS, the amount of fees collected pursuant to this Ordinance is limited to the cost of these public facilities attributable to new development and the amount of these fees do not include the cost of facilities attributable to demand generated by existing development.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY COUNCIL OF THE CITY OF ALAMEDA THAT:

Section 1. Chapter XXVII of the Alameda Municipal Code is hereby amended as follows:

27-3 - DEVELOPMENT IMPACT FEES.

27-3.1 - Authority.

This Section 27-3 of the Alameda Municipal Code may be referred to as the Development Impact Fee Ordinance and is adopted pursuant to the police power of the City, ~~and under Government Code Section 66000 et seq. (Mitigation Fee Act), and Government Code Sections 65000 et seq. (Planning and Zoning Law of the State of California), and in accordance with the findings set forth in the ordinance codified herein.~~ All words, phrases, and terms used in this section shall be interpreted in accordance with the definitions set forth in the Mitigation Fee Act, unless otherwise specifically defined herein. All references to "this section" shall refer to Section 27-3.

27-3.2 - Application.

This section applies to development impact fees charged as a condition of development in the portion of the City outside Alameda Point to defray the cost of certain public improvements, services, and amenities. The cost of developing and administering the City's development impact fee program may be included as a component of the established fees. The fees charged under this section do not replace or repeal any other fee or charge levied pursuant to any section of the Alameda Municipal Code, nor do the

fees charged under this section replace any subdivision map exactions; other site-specific mitigation measures or conditions; other regulatory, or processing fees, funding required pursuant to a development agreement or reimbursement agreement, or special assessments, unless such charges, exactions or assessments relate to the facilities funded pursuant to this section.

27-3.3 - Intent and Purpose.

The intent and purpose of the development impact fee is to mitigate the impacts of new residential and new or intensified industrial and commercial development on transportation, parks and recreation, general public facilities, and public safety as more specifically described in the projects listed in Appendix B to the 2014 Nexus Study, and the park and recreation facilities identified in Table 11 of the 2019 Nexus Study Update or in a capital improvement plan for park and recreation facilities adopted by the City in accordance with Government Code section 66002. The purpose of each component of the development impact fee is as follows:

- a. The purpose of the transportation component is to fund required improvements related to public safety such as traffic signals, street overlays, handicap ramps at intersections, and other traffic safety improvements and to mitigate the degradation in the levels of service on public roads from new developments.
- b. The purpose of the parks and recreation component is to fund a portion of the capital improvement of existing and new park facilities and costs associated with construction of new park and recreation improvements and facilities.
- c. The purpose of the general public facilities component is to fund a portion of the capital costs associated with library improvements and collections, seismic upgrades, and other improvements to existing public facilities and equipment.
- d. The purpose of the public safety facilities and improvements component is to fund a portion of the costs associated with construction of public safety facilities and the purchase of public safety equipment.

27-3.4 - Findings.

The City Council finds and declares:

- a. The City provides public services and constructs and maintains public improvements for the benefit of residents, businesses and employees within the City.
- b. New development potential in the City has been made available by the redevelopment of the northern waterfront area and intensification of existing uses and development of new uses such as housing as well as other infill or urban redevelopment activity throughout the City.
- c. This anticipated residential and commercial development will generate an increase in the need for City services and the corresponding capital facilities necessary to provide

those services. New residential and new or intensified commercial development will thus create an additional burden on the existing capital facilities and services.

d. If additional capital facilities and public services are not added as development occurs, the existing facilities and services will not be adequate to serve the community. This could result in adverse impacts, such as inadequate public safety services, inadequate traffic safety and transportation improvements, inadequate parks and recreation facilities, as well as inadequate other general public facilities.

e. There is a reasonable relationship between the need and use of development impact fee projects and new development.

1. There is a reasonable relationship between the need for transportation projects and the type of development project on which the fee will be imposed since new development throughout the City will increase ~~trips demand~~ on local, citywide, and regional roads, leading to ~~potential deterioration of service levels and~~ the need for more traffic signals, additional turn lanes, and other improvements. ~~The City's General Plan establishes a service standard for traffic congestion. New development will lower the level of service unless improvements are made.~~ The resurfacing of streets and pathways ensures that both drivers and pedestrians are safe from accidents resulting from cracks, potholes, and other damage that occurs. New development also adds to the wear of city streets. Further, there is a reasonable relationship between the need for the transportation projects and the type of development project on which the fee will be imposed since each new development project will add to the incremental need for new roadway capacity, safety or replacement projects in order to meet public safety standards.

2. There is a reasonable relationship between the need for parks and recreation facilities and improvements and the type of development project on which the fee will be imposed since new residents will use parks and recreational facilities throughout the City. Further, there is a reasonable relationship between the need for the parks and recreation projects and the type of development project on which the fee will be imposed since current parks and recreation service levels will fall if additional facilities and equipment are not provided and a greater variety of facilities, as called for in the General Plan and the Park Master Plan, will not be able to be provided.

3. There is a reasonable relationship between the need for public improvements and the type of development project on which the fee will be imposed since new residential and commercial development will result in new City residents and employees who will demand and use the services offered by the new public buildings and improvements included in this program. Further, there is a reasonable relationship between the need for the public improvement projects and the type of development project on which the fee will be imposed as further explained in the City's Capital Improvement Program and the City's General Plan.

4. There is a reasonable relationship between the need for public safety facilities and improvements and the type of development project on which the fee will be imposed since new development throughout the City will increase the need for public safety improvements. Further, there is a reasonable relationship between the need for public safety facilities and improvements and the type of development project on which the fee will be imposed since current levels of police and fire services cannot be maintained if additional facilities and equipment are not provided to serve new development. The need for these facilities and equipment is further explained in the Land Use Element of the General Plan and the City's Capital Improvement Program.

The determination of how there is a reasonable relationship between the use of the development impact fee and the type of development project on which the fee is imposed is set forth in more detail in the Nexus Studies as that term is defined in Section 27-3.4h.

f. To prevent these undesirable consequences, and to reduce the impacts of new development on capital facilities, equipment, and services, the City's capital facilities must be constructed, and the City's public services must be provided, at a rate which will accommodate the expected growth in the City.

g. The development impact fees established by this section will be imposed upon development projects for the purpose of mitigating the impact of the development on the ability of the City to provide specified public improvements and services.

h. The City has caused to be prepared Willdan Financial Service's City of Alameda Development Impact Fee Update and Nexus Study, dated June 2014 ("2014 Nexus Study") and the City of Alameda Park and Recreation Facilities Development Impact Fee Nexus Study dated June 2019 ("2019 Nexus Study Update") (collectively, the 2014 Nexus Study and the 2019 Nexus Study Update are referred to as the "Nexus Studies"). The Nexus Studies are on file with the City Clerk.

i. The Nexus Studies identify the development potential of the City from the year 2014 until 2040; identify four (4) categories of capital facilities and equipment required to serve and accommodate new development; and provides a summary of the portion of each improvement category's costs that can be funded by new development.

j. The four (4) categories of capital facilities and equipment that will be funded by the development impact fee established by this section are (1) transportation; (2) parks and recreation facilities; (3) general public facilities; and (4) public safety. The improvements summarized by these categories are more specifically described in Appendix B to the 2014 Nexus Study and the park and recreation facilities identified in Table 11 of the 2019 Nexus Study Update or in a capital improvement plan for park and recreation facilities adopted by the City in accordance with Government Code section 66002. These capital facilities and equipment are needed to promote and protect the public health, safety and general welfare within the City, to facilitate orderly urban

development, to maintain existing levels of service, and to promote economic and social well-being.

k. The City Council has relied upon the factual information, analysis, and conclusions in the Nexus Study~~s~~y in adopting this section.

27-3.5 - Development Impact Fee Established; Timing of Payment; Application; Review; Definitions.

a. A development impact fee is hereby established on development in the City to pay for transportation improvements and facilities; parks and recreation improvements and facilities; general public facilities; and public safety facilities. The development impact fee will be imposed by land use category of development. Except as otherwise provided in subsection 27-3.10, ~~the~~ development impact fee shall be imposed upon any:~~all~~

1. new, or expanded existing, commercial development and on new residential or nonresidential development upon improved or unimproved land; and also upon uses which intensify the use of existing commercial or residential structures as set forth herein, except as provided in subsection 27-3.11

2. expansion of any nonresidential development of more than two hundred (200) square feet or more than ten (10) percent of the existing structure(s), cumulatively over a two (2) year period;

3. addition of any dwelling unit to any residential development except accessory dwelling units or accessory dwelling units—junior, as those terms are defined in subsection 27-3.5f; or

4. change in a use which results in an intensification of the existing use.

~~b. The improvements summarized by category in subsection 27-3.4j are listed specifically in Appendix B to the Nexus Study.~~

~~cb. Except as otherwise provided in subsection 27-3.5d, the development impact fee shall be paid by each developer prior to the issuance of a building permit. The project applicant shall pay fees according to the schedule of fees in place on the date the fees are paid, except that the applicant for a vesting tentative map for a development project shall pay the fees in effect on the date the application for the vesting tentative map is deemed complete.~~

1. No building permit or, if no building permit is required, no certificate of occupancy for any project shall be issued unless the fees have been paid, except for residential uses where state law requires payment before final inspection or the issuance of certificate of occupancy, whichever comes first. If state law applies, a contract to pay the fees shall be executed with the City, in which case, no final inspection shall be approved until the fees have been paid. If a residential development project contains more than one dwelling unit and is approved for development in phases, the developer shall pay the fees in installments based on the phasing of the residential development project. Each

fee installment shall be paid at the time when the first dwelling unit within each phase of development has received its final inspection.

2. For all projects subject to this section the City may require the payment of fees at an earlier time if the fees will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the City has a proposed construction schedule or plan prior to final inspection, or the fees are to reimburse the City for expenditures previously made.

~~dc.~~ For development which intensifies the use of an existing non-vacant structure or a structure for which the development impact fee has not been paid, the fees shall be payable ~~prior to issuance of a building permit, or if no building permit is required, prior to the issuance of a certificate of occupancy, the final inspection, or the commencement of the use (pursuant to a use permit or other similar permit), whichever occurs first~~consistent with subsection b above.

1. Regardless of whether a building permit is required, a structure, subject to any permit, which has been vacant (as ~~that term is defined in subsection 27-3.5f.9g.6~~) shall be assessed the ~~d~~Development ~~i~~Impact ~~f~~Fee based on the proposed use at the time ~~the of-permit is issued~~issuance. No development impact fee credit shall apply to such vacant structure.

2. Notwithstanding ~~S~~subsection 27-3.5cd.1, a structure for which the development impact fees have been paid shall not be considered vacant for the purposes of the fee and shall be provided a fee offset ~~assessed~~consistent with the provisions of subsection 27-3.11.

~~ed.~~ The City Council shall adopt a resolution or ordinance setting forth the specific amount of the fee. The amount of the fee shall not exceed the estimated reasonable cost of providing the facility, equipment, or improvement for which the fee is imposed.

~~fe.~~ The City Council shall review the development impact fee annually following the first deposit into the accounts established pursuant to subsection 27-3.6 as required by applicable laws, ~~and shall identify the purpose of the fee, demonstrate a reasonable relationship between the fee and the purpose for which it is charged; identify all sources and amounts of funding anticipated to complete financing incomplete improvements funded by the fee; designate the approximate dates on which the funding referred to is expected to be deposited into the appropriate accounts; and adjust the fee schedule if necessary.~~

~~gf.~~ Definitions. For the purposes of the development impact fee, the following definitions apply:

1. Accessory dwelling unit shall mean the same as that term is defined in Section 30-2b.

- 2. Accessory dwelling unit — Junior shall mean the same as that term is defined in Section 30-2b.
- 3. Inclusionary Unit shall mean the same as that term is defined in Section 30-16.3.
- 4. Dwelling, multiple family shall mean a building designed and/or used to house two (2) or more families, living independently of each other.
- 5. Dwelling, one family shall mean the same as that term is defined in Section 30-2b.

~~1. Single-Family Residential. Any residential development that consists of a single residential unit (or units) on individual parcels.~~

~~2. Multi-family Residential. Any residential development that consists of more than one residential unit on individual parcels.~~

~~36. Commercial or Office. Any building or portion of a building that is defined by the California Building Code as an Assembly Group A, Business Group B, Educational Group E, or Institutional Group I. This category also includes Group R-1, R-2, and R-4 buildings or portions of buildings designed for hotels, motels, residential care facilities, congregate living health facilities, work/live studios consistent with the provisions of Section 30-15, and other commercial developments that provide sleeping, eating, and/or other services to temporary or permanent residents.~~

~~47. Retail. Any non-residential building or portion of a building that is defined by the California Building Code as a Mercantile Group M.~~

~~58. Warehouse/Manufacturing. Any non-residential building or portion of a building that is defined by the California Building Code as a Factory Industrial Group F, High Hazard Group H, or Storage Group S.~~

~~69. Vacant. For the purpose of this section, a non-residential property or a multi-family residential property shall be deemed “vacant” during the two years prior to the issuance of the building permit for a new structure, if the property owners or property tenants failed to maintain an active business license for the property during the entire two year period. For the purpose of a single family ~~home~~dwelling, the property is “vacant” if Alameda Municipal Power records do not show energy usage consistent with occupancy of the building ~~and/or~~ with similar adjacent single family dwellingsproperties that were occupied during the two-year period.~~

~~710. Improvement Plans. For the purpose of this section, “improvement plans” shall be defined as a building permit to construct improvements on real property which are designed to be occupied for the purpose of residential, commercial, office, retail, or warehouse manufacturing use as defined in this section.~~

~~811. Alameda Point. For the purposes of this section, “Alameda Point” is the area covered by the Alameda Point Zoning Ordinance, Section 30-4.24, adopted on February 4th, 2014, ~~by the City.~~~~

27-3.6 - Use of Development Impact Fee.

a. Development impact fees ~~revenues~~ shall be deposited in segregated accounts and all interest earned on deposited fees ~~revenues~~ shall be used solely to:

a₁. Pay for the cost of providing the specified projects listed in Appendix B to the 2014 Nexus Study and the park and recreation facilities identified in Table 11 of the 2019 Nexus Study Update or in a capital improvement plan for park and recreation facilities adopted by the City in accordance with Government Code section 66002. The projects are divided into four (4) categories: transportation; parks and recreation; general public facilities; and public safety.

b₂. Reimburse the City for such projects if funds were advanced by City for such projects from other sources to pay new development's share of such costs.

c₃. Fund reimbursement or refund under subsections 27-3.7 or 27-3.9.

d₄. Fund loans or transfers made in conformance with Government Code Section 66006(b)(1)(G).

e_b. The use of each component of the development impact fee is more specifically set forth in the resolution or ordinance referenced in subsection 27-3.5_de establishing the amount of the fee and making certain findings.

27-3.7 - Fee Credits and Reimbursements.

a. *Application for Potential Fee Credit or Reimbursement.* Absent a development agreement or other contract with the City that specifically addresses fee credits and reimbursements for development impact fees, an applicant may be eligible for a credit against impact fees otherwise owed, in return for providing a public facility to the City, only if the applicant submits a written application to the Director of Public Works which establishes compliance with all of the following requirements to the satisfaction of the Public Works Director:

1. Describe the specified public improvements (or portion thereof) proposed to be provided by the applicant, with a cross-reference to the description of the specified public improvements. The applicant shall provide a design of the specified public facility, which must be on the project list in Appendix B of the 2014 Nexus Study, identified in Table 11 of the 2019 Nexus Study Update or identified in a capital improvement plan for park and recreation facilities adopted by the City in accordance with Government Code section 66002.

2. Identify the estimated cost of providing the specified public improvements (including construction, design, and/or land acquisition), as set forth in §subsection 27-3.7c for which the applicant is requesting credit.

3. Describe the development project or projects to which the fee credit is requested to apply. The description shall be limited to all or a portion of the development project for which specified public improvements are a condition of approval.

4. Document that either: (A) the applicant is required, as a condition of approval for the development project, to construct the specified public improvements; or (B) the applicant requests to build one or more specified public improvements which benefit the development project; and the Public Works Director determines in writing prior to the commencement of construction that it is in the City's best interests for the specified public improvements to be built by the applicant.

5. To the extent that credit for land acquisition costs are requested, document that: (A) the location of the land is advantageous to the public facility needs of the City; and (B) the amount of credit for the land acquisition is equal to a reasonable estimate of the fair market value of the land based upon either: (i) documentation provided by the applicant to the City, or (ii) in the event that the Public Works Director determines that the documentation provided by the applicant does not provide a reasonable basis for determining the fair market value of the land, documentation provided by an expert selected by the Public Works Director and paid for by the applicant, which expert is qualified to express an opinion as to the fair market value of the property shall pay for the costs of a property appraisal by an expert selected by the Public Works Director which is qualified to express an opinion as to the value of the property.

6. Provide a schedule of completion for the specified public improvements to be built by the applicant, which ensures that the public improvements will be completed concurrent with the development project or projects.

b. *Timing of Application.* The application for credit shall be submitted by the applicant to the Public Works Director in accordance with the following timing requirements: (1) to the extent that the applicant requests credit for design or construction, the application shall be submitted concurrently with the submittal of improvement plans or building permit; (2) to the extent that the applicant requests credit for land dedication, the application shall be submitted prior to the recordation of the final map or parcel map for the development project. The applicant may submit a late application only if the applicant establishes, to the satisfaction of the Public Works Director, that, in light of new or changed circumstances, it is in the City's best interests to allow the late application.

c. *Amount of Potential Credit.* In the event that the Public Works Director determines that the applicant has submitted a timely application in compliance with ~~§~~sub~~section~~ 27-3.7b and it is in the City's best interest to allow the applicant to provide the proposed specified public improvement, the applicant may be eligible for a credit against fees otherwise owed in accordance with this section; provided that the applicant enters into an agreement with the City which includes the following essential terms:

1. The design of the specified public improvement is approved by the City.
2. The applicant agrees to provide the specified public improvement in return for the credit to be allocated in accordance with the terms of the agreement and this sectionchapter.

3. The amount of credit available to the applicant shall not exceed the lesser of: (A) the applicant's actual cost of providing the specified public facility, to be evidenced by the submittal of written documentation to the satisfaction of the Public Works Director, or (B) the estimated cost of providing the specified public improvement, as identified in the project list on Appendix B of the 2014 Nexus Study and the park and recreation facilities identified in Table 11 of the 2019 Nexus Study Update or in a capital improvement plan for park and recreation facilities adopted by the City in accordance with Government Code section 66002.

4. The amount of credit available to the applicant for land dedication shall be equal to the amount identified in §subsection 27-3.7a.5.

5. The applicant provides improvement security in a form and amount acceptable to the City (e.g., performance and labor and material construction bonds).

6. The applicant identifies the development projects to which the credit will be applied.

7. The credit may only be applied to fees which would otherwise be owed for the fee category relevant to the specified improvement.

8. The timing of the proposed construction of the public improvement shall be no later than the completion of the applicant's development project.

d. *Request for Reimbursement.* To the extent that the applicant has a balance of credit available, the applicant may submit a written request for reimbursement to the Public Works Director. The applicant may be entitled to potential reimbursement from the City, but only if the applicant submits a written request to the Public Works Director which meets the following requirements:

1. The request shall be made no later than one hundred eighty (180) days after the later to occur of: (A) issuance of the last permit within the development project for which the application for credit was made, or (B) the date of the City's acceptance of the specified public improvements as complete.

2. The request shall identify the specific dollar amount of the credit balance for which the applicant requests reimbursement, along with documentation in support thereof. This documentation shall include a calculation of the total credit available (pursuant to §subsection 27-3.7c.3) less the amount of credit previously allocated to offset fees pursuant to Section 27-3.11.

3. The request must include a designation of the name and address of the legal entity to which reimbursement payments are to be made.

e. *Allocation of Reimbursements.*

1. In the event the Public Works Director determines that the applicant has properly submitted a request for reimbursement pursuant to §subsection 27-3.7ed, the Public Works Director and the Finance Director shall prepare a written determination which will

identify the dollar amount of the potential reimbursement. The dollar amount of the reimbursement shall equal the amount approved by the Public Works Director and the Finance Director (not to exceed the actual credit available to the applicant), less the total of all credit allocations to offset fees pursuant to ~~§~~subsection 27-3.7c.

~~2. The City shall make reimbursement payments to the applicant (or the entity identified by the applicant) pursuant to Section 27-3.7d. The right to receive reimbursement payments, if any, shall not run with the land.~~

32. The City shall make reimbursement payments pursuant to a schedule to be established by the Public Works Director and Finance Director, and consistent with the approved capital improvement program. The City shall make no reimbursements to any applicant in excess of the amount of fees available in the relevant reimbursement account, as determined by the Finance Director.

43. No reimbursement payment shall be made to an applicant until after the completion of construction by the applicant and acceptance of improvements by the City. The right to receive reimbursement payments, if any, shall not run with the land.

27-3.8 - Fee Adjustments.

a. A developer of any project subject to the fee described in subsection 27-3.5 may apply to the Public Works Director for an reduction or adjustment, reduction to the fee, or a waiver of the fee, based upon a showing that applying the requirements of this section would effectuate an unconstitutional taking of property or otherwise have an unconstitutional or unlawful application to the property~~the absence of any reasonable relationship or nexus between the impacts of that development and the amount of fee charged or the type of facilities to be financed.~~ The application shall be made in writing and filed with the Public Works Director no later than the time of the issuance of a building permit authorizing construction of the project that is subject to the fee. The application shall state completely and in detail both the applicant's factual basis and legal theory for adjustment or waiver and compare its proposal with the analysis set forth in the Nexus Studiesy.

b. A developer of a residential project subject to the park and recreation facilities impact fee described in subsection 27-3.5 may apply to the Public Works Director for an adjustment, reduction or waiver of the fee if: 1) the applicant is providing park land that will be accessible to the public at no cost to the general public and available to the public during the same hours of the day as City park lands; 2) the public's right of access is recorded as a permanent deed restriction on the land; 3) the park lands accessible to the public are in excess of the open space requirements set forth in Section 30-5.12; and 4) the credit is based upon the costs incurred by the applicant to provide the excess public open space. Credit shall not be provided for park lands that are being developed to meet the minimum open space requirements of the set forth in Section 30-5.12 for the project.

c. A developer of a residential project subject to the transportation impact fee described in subsection 27-3.5 may apply to the Public Works Director for an adjustment, reduction or waiver of the fee if the residential project is: 1) located within one-half mile of a ferry terminal or a "bus hub" which is defined as the intersection of three (3) or more bus routes with a minimum route headway of 10 minutes during peak hours; 2) located on a barrier-free walkable path not exceeding one-half mile in length with direct access to the ferry terminal or bus hub; 3) located within one-half mile of convenience retail uses, including a store that sells food; and 4) the housing development provides either the minimum number of parking spaces required by the City's parking ordinance, or no more than one onsite parking space for zero to two bedroom units, and two onsite parking spaces for three or more bedroom units, whichever is less. The application for the fee adjustment, reduction or waiver shall be accompanied by an automobile trip generation analysis prepared by a qualified traffic engineer that compares the automobile trip generation of the project to housing developments in Alameda without these characteristics. The transportation impact fee shall be reduced by the percentage that is equivalent to the percentage difference between the automobile trip generation for the project and the automobile generation for Alameda housing developments that do not meet the above characteristics.

bd. No building permit shall be issued prior to the payment of the fee, adjusted or reduced fee, or the grant of a fee waiver. The applicant may elect to pay the full fee under protest at the time of the submittal of the fee adjustment application in order to obtain a building permit in advance of the determination of the fee adjustment application. If the full fee is paid under protest and the application is subsequently granted, then the applicant shall receive a refund in the amount of the difference between the amount of the fee paid and the amount of the fee due after the application of the adjustment, ~~waiver or reduction or waiver~~.

ee. The Public Works Director shall consider the application and respond in writing setting forth the reasons for the decision within thirty (30) days of receipt of the request for an adjustment, reduction or waiver of the fee. The decision of the Public Works Director is appealable pursuant to subsection 27-3.13.

df. If an ~~adjustment~~, ~~reduction~~, adjustment, reduction or waiver is granted, any change in use within the project shall invalidate the ~~waiver, adjustment, or reduction or waiver~~ of the fee.

eg. The cost of an application for an adjustment, reduction or ~~adjustment to the fee or a waiver of the fee~~ shall be borne by the applicant in an amount established by the Master Fee Resolution or ordinance of the City Council.

27-3.9 - Refund of Fee.

a. If the development impact fee is paid and the building permit is later expired, vacated ~~cancelled~~ or voided, or if a use permit which triggers the application of the fee fails to vest within the term of the use permit, the Public Works Director shall, upon written request of the developer, order return of the fee and interest earned on it less administrative costs if (1) the fees paid have not been committed as determined by the

Public Works Director and Finance Director; and (2) work on the private development project has not progressed to a point that would permit commencement of a new, changed or expanded use for which a fee would be payable. Any such request for a refund shall be submitted within one year of the date that the permit expires or is vacated or voided. Failure to submit a timely request for refund shall constitute a waiver of any right to a refund.

b. If the findings required by Government Code Section 66001(d) are not made, a refund to the then owner of the property for which the fee was paid shall be made pursuant to Government Code Section 66001.

27-3.10 - Exemptions.

a. The development impact fee shall not be imposed upon a building permit for remodeling or for an addition to an existing occupied residential structure so long as the remodeling or addition does not add a dwelling unit. Consistent with subsection 27-3.5c.1, the exemption for remodeling of an existing residential structure shall not apply if the building is vacant (as defined in subsection 27-3.5f.9).

b. The development impact fee shall not be imposed upon a building permit for the demolition of an existing structure and the construction of a new structure on the same site, provided the demolished structure was not “vacant” (as defined in ~~§~~subsection 27-3.5f.9g-6) prior to the issuance of a building permit for the new structure, and the size and use of the new structure is substantially similar to the size and use of the demolished structure.

~~c. The development impact fee shall not be imposed on any alteration of a nonresidential structure, where the square footage is not increased by more than two hundred (200) square feet or ten (10) percent of the existing structure, whichever is less, cumulatively over a two (2) year period, unless the alteration includes an intensification of use such as a shift to a higher cost fee category.~~

27-3.11 - Fee Offsets.

The amount of development impact fee shall be offset or adjusted to account for any previously existing use, so long as the structure holding that use is not defined as “vacant” as specified in ~~§~~subsection 27-3.5f.9g-6. The offset shall consist of any difference between the current applicable fee category and the fee category applicable to the previously existing non-“vacant” use, as defined in ~~§~~subsection 27-3.5f.9g-6. The offset for existing use shall not exceed the amount computed for the proposed use.

27-3.12 - Fee and Fee Escalators.

a. The development impact fees shall be:

Residential	Fee per Dwelling Unit
<u>Dwelling, One Family (subsection 27-3.5f)</u> Single Family Unit	<u>\$13,844</u> \$16,601
<u>Dwelling, Multiple family (subsection 27-3.5f)</u> Multi-family Unit	<u>\$10,436</u> \$13,140
<u>Accessory Dwelling Unit or Accessory Dwelling Unit—Junior (subsection 27-3.5f)</u>	<u>\$0</u>
<u>Inclusionary Unit (subsection 27-3.5f)</u>	<u>\$0</u>

Nonresidential	Fee per 1,000 Sq. Ft.
Retail	<u>\$4,9584,383.00</u>
Commercial or Office	<u>\$5,5344,892.00</u>
Warehouse or Manufacturing	<u>\$3,9933,530.00</u>

b. ~~A resolution may account for an annual increase in the amount of the fee to reflect the percentage increase in the cost of construction or public improvements as reported in the Engineering News Record Construction Cost Index for the San Francisco Bay Area, or similar index if this one is not published.~~ To account for inflation in construction costs, the fee established by this section shall be adjusted automatically on July 1 of each year, beginning on July 1, 2020, by a percentage equal to the change in the appropriate Construction Cost Index as published by Engineering News Record, or its successor publication, for the preceding twelve (12) months.

c. The development impact fee may be adjusted from time to time, based upon amendments or updates to the Nexus Studies, to reflect extraordinary changes in the cost of construction of any of the improvements listed in Appendix B of the 2014 Nexus Study and the park and recreation facilities identified in Table 11 of the 2019 Nexus Study Update or in a capital improvement plan for park and recreation facilities adopted by the City in accordance with Government Code section 66002, changes in the levels of actual or projected development, or the actual or estimated proportionate share of costs as determined by additional or amended engineering analysis. Such adjustments may be established by a resolution of the City Council.

27-3.13 - Appeal Procedure.

a. A decision of the Public Works Director or Finance Director pursuant to this section shall be appealable in accordance with this subsection. A person seeking review of a decision shall first complete an appeal under this subsection.

b. Any person wishing to appeal a decision of the Public Works Director or Finance Director shall file an appeal to the City Council in writing by filing such appeal with the City Clerk pursuant to the Alameda Municipal Code not later than ten (10) days from the date of the Public Works Director or Finance Director's written decision. The written appeal shall state completely and in detail the factual and legal grounds for the appeal.

c. The City Council shall consider the appeal following generally the procedures set forth in Section 30-25.5 except the hearing shall not be de novo but shall be based on

applying the substantial evidence standard to the decision of the Public Works Director or Finance Director pursuant to the Alameda Municipal Code.

d. The decision of the City Council shall be final.

e. The cost of the appeal shall be borne by the applicant in an amount established by the Master Fee Resolution of the City Council. ~~The cost of an appeal from the decision of the Public Works Director to~~

~~City Council shall be borne by the applicant in the amount of a fee set forth in the Master Fee Resolution of the City Council.~~

27-3.14 - Regulations.

The City Manager, or the City Manager's designee, is authorized to adopt written administrative regulations that are consistent with and that further the terms and requirements set forth within this section.

Section 2. CEQA DETERMINATION

The City Council finds and determines that the adoption of this Ordinance is exempt from review under the California Environmental Quality Act (CEQA) pursuant to the following, each as a separate and independent basis: CEQA Guidelines, Section 15378(b)(4), which excludes from the definition of Project "the creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment", Section 15061(b)(3) (where it can be seen with certainty that the proposed ordinance does not have the potential to significantly impact the environment), and 15273(a) (rates, tolls, fares and charges).

Section 3. SEVERABILITY

If any provision of this Ordinance is held by a court of competent jurisdiction to be invalid, this invalidity shall not affect other provisions of this Ordinance that can be given effect without the invalid provision and therefore the provisions of this Ordinance are severable. The City Council declares that it would have enacted each section, subsection, paragraph, subparagraph and sentence notwithstanding the invalidity of any other section, subsection, paragraph, subparagraph or sentence.

Section 4. IMPLIED REPEAL

Any provision of the Alameda Municipal Code inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

Section 5. EFFECTIVE DATE

This Ordinance shall be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.

Presiding Officer of the City Council

Attest:

Lara Weisiger, City Clerk

* * * * *

I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the ___ day of _____, 2019, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City this ___ day of _____, 2019.

Lara Weisiger, City Clerk
City of Alameda

APPROVED AS TO FORM:

Yibin Shen, City Attorney
City of Alameda