

CITY OF ALAMEDA ORDINANCE NO. _____

New Series

AMENDING ALAMEDA MUNICIPAL CODE CHAPTER XXVII, SECTION
27-3 (CITYWIDE DEVELOPMENT FEE) AND ADDING SECTION 27-4
(ALAMEDA POINT DEVELOPMENT IMPACT FEES)

BE IT ORDAINED by the City Council of the City of Alameda that:

Chapter XXVII of the Alameda Municipal Code is amended by amending section 27-3 and adding section 27-4:

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). 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.

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 Nexus Study. 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 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 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 Study.

- 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's City of Alameda Development Impact Fee Update and Nexus Study, dated June 2014 (Nexus Study). The Nexus Study is on file with the City Clerk.
- i. The Nexus Study identifies the development potential of the City from the year 2014 until 2040; identifies 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. 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 in adopting this section.

27-3.5 Development Impact Fee Established.

- 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. The development impact fee shall be imposed upon all new, or expanded existing, commercial development and on new residential development 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.
- b. The improvements summarized by category in subsection 27-3.4(j) are listed specifically in Appendix B to the Nexus Study.
- c. Except as otherwise provided in subsection 27-3.5(d), the development impact fee shall be paid by each developer prior to the issuance of a building permit.
- d. 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.

1. Regardless of whether a building permit is required, a structure, subject to any permit, which has been vacant (as defined in 27-3.5(g)(6)) shall be assessed the Development Impact Fee based on the proposed use at the time of permit issuance. No credit shall apply to such vacant structure.
 2. Notwithstanding Section 27-3.5(d)(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 assessed consistent with the provisions of subsection 27-3.11.
- e. 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.
 - f. The City Council shall review the development impact fee annually following the first deposit into the accounts established pursuant to subsection 27-3.6, 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.
 - g. Definitions. For the purposes of the Development Impact Fee, the following definitions apply:
 1. Single Family Residential. Any residential development that consists of a single residential unit (or units) on individual parcels.
 2. Multifamily Residential. Any residential development that consists of more than one residential unit on individual parcels.
 3. 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, 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 and other commercial developments that provide sleeping, eating, and/or other services to temporary or permanent residents.
 4. Retail. Any non-residential building or portion of a building that is defined by the California Building Code as a Mercantile Group M.
 5. 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.

6. Vacant. For the purpose of this section, a non-residential property or a multifamily 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, the property is “vacant” if Alameda Municipal Power records do not show energy usage consistent with occupancy of the building and/or adjacent single family properties that were occupied during the two-year period.
7. 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.
8. Alameda Point. For the purposes of this section, “Alameda Point” is the area covered by the Alameda Point Zoning Ordinance, adopted on February 4th, 2014, by the City.

27-3.6 Use of Development Impact Fee.

Development impact fee revenues shall be deposited in segregated accounts and all interest earned on deposited fee revenues shall be used solely to:

- a. Pay for the cost of providing the specified projects listed in Appendix B to the Nexus Study. The projects are divided into four (4) categories: transportation; parks and recreation; general public facilities; and public safety.
- b. 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.
- c. Fund reimbursement or refund under subsections 27-3.7 or 27-3.9.
- d. Fund loans or transfers made in conformance with Government Code Section 66006(b)(1)(G).
- e. 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(e) 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 Nexus Study.
 2. Identify the estimated cost of providing the specified public improvements (including construction, design, and/or land acquisition), as set forth in Section 27-3.7 (c) 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, the applicant 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 Section 27.3.7 (b) 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 chapter.
 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 Nexus Study.
 4. The amount of credit available to the applicant for land dedication shall be equal to the amount identified in Section 27-3.7 (a) (5).
 5. The applicant provides improvement security in a form and amount acceptable to the City (e.g., construction bond).
 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 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 Section 27-3.7 (c) (3)) less amount of credit previously allocated to offset fees pursuant to Section 27-11.

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 Section 27-3.7(d), 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 Section 27-3.7 (c).
 2. The City shall make reimbursement payments to the applicant (or the entity identified by the applicant) pursuant to Section 27-3.7 (d). The right to receive reimbursement payments, if any, shall not run with the land.
 3. 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.
 4. 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.

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 a reduction or adjustment to the fee, or a waiver of the fee, based upon 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 Study.
- b. 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.

- c. The Public Works Director shall consider the application and respond in writing setting forth the reasons for the decision within thirty (30) days. The decision of the Public Works Director is appealable pursuant to subsection 27-3.13.
- d. If a reduction, adjustment, or waiver is granted, any change in use within the project shall invalidate the waiver, adjustment or reduction of the fee.
- e. The cost of an application for a reduction or adjustment to the fee or a waiver of the fee shall be borne by the applicant in an amount established by 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 canceled 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.
- 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 residential structure so long as the remodeling or addition does not add a dwelling unit.
- 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 Section 27-3.5(g)(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 Section 27-3.5(g)(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 Section 27-3.5(g)(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:

<u><i>Residential - Fee per Dwelling Unit</i></u>	
Single Family Unit	\$16,601
Multi-family Unit	\$13,140
<u><i>Nonresidential - Fee per 1,000 Sq. Ft.</i></u>	
Retail	\$4,383
Commercial or Office	\$4,892
Warehouse or Manufacturing	\$3,530

- b. A resolution may provide 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.
- c. The development impact fee may be adjusted from time to time, based upon amendments or updates to the Nexus Study, to reflect extraordinary changes in the cost of construction of any of the improvements listed in Appendix B of the Nexus Study, 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.

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 shall file an appeal to the City Council in writing 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 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.

27-4 ALAMEDA POINT DEVELOPMENT IMPACT FEES.

27-4.1 Authority.

This Section 27-4 of the Alameda Municipal Code may be referred to as the Alameda Point 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). 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.

27-4.2 Application.

This section applies to development impact fees charged as a condition of development at Alameda Point to defray the cost of certain public improvements, services, and amenities. 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 other contract or reimbursement agreement or special assessments, unless such charges, exactions or assessments relate to the facilities funded pursuant to this section.

27-4.3 Intent and Purpose.

The intent and purpose of the Alameda Point Development Impact Fee is to provide for the public improvements needed at Alameda Point as part of its redevelopment as more specifically described in the Nexus Study and in the Master Infrastructure Plan for Alameda Point.

27-4.4 Findings.

The City Council finds and declares:

- a. The City provides and will provide public services and construct and maintain public improvements for the benefit of residents, businesses and employees at Alameda Point.
- b. New development potential in the City has been made available by the redevelopment of Alameda Point.
- c. The anticipated residential and commercial development at Alameda Point 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. The required new capital facilities and improvements are detailed in the Nexus Study and in the Master Infrastructure Plan for Alameda Point.

- 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 important public improvements.
- e. There is a reasonable relationship between the need and use of development impact fee projects and new development. The current infrastructure is inadequate for even current uses, and must be replaced or newly constructed for new development to occur, as detailed in the Alameda Point Master Infrastructure Plan.
 - 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 at Alameda Point will increase trips 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 at Alameda Point. 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.
 - 3. There is a reasonable relationship between the need for utility improvements, including water, sewer, and storm drain, since new residential and commercial development will result in new City residents and employees who will demand and use utilities.
 - 4. There is a reasonable relationship between the need for flood protection facilities and the type of development project on which the fee will be imposed to mitigate the risk of flooding and sea level rise to that development.

5. 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 at Alameda Point will increase the need for public safety improvements and other public facilities, including a new fire station. Further, there is a reasonable relationship between the need for public facilities and improvements and the type of development project on which the fee will be imposed since current levels of public facility services cannot be maintained if additional facilities and equipment are not provided to serve new development at Alameda Point.

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 Study.

- 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 at Alameda Point.
- 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's City of Alameda Development Impact Fee Update and Nexus Study, dated June 2014 (Nexus Study). The Nexus Study is on file with the City Clerk.
- i. The Nexus Study identifies the development potential at Alameda Point and identifies the categories of improvements required to serve and accommodate new development.
- j. The categories of facilities that will be funded by the Alameda Point Development Impact Fee include flood protection facilities, transportation facilities, water facilities, sanitary sewer facilities, storm drain facilities, dry utilities, parks and open space, and public facilities. The capital facilities to be funded at Alameda Point 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 in adopting this section.

27-4.5 Alameda Point Development Impact Fee Established.

- a. A development impact fee is hereby established on development at Alameda Point to pay for flood protection facilities, transportation facilities, water facilities, sanitary sewer facilities, storm drain facilities, dry utilities, parks and open space, and public facilities. The development impact fee shall be imposed upon all new, or expanded existing, commercial development and on new residential development and also upon use permits which intensify the use of existing commercial or residential structures as set forth herein, except as provided in

subsection 27-4.10 or a development agreement or other contractual agreement with the City.

- b. The improvements summarized by category in subsection 27-4.4(j) are listed specifically in Appendix C to the Nexus Study and in the Master Infrastructure Plan.
- c. Except as otherwise provided in subsection 27-4.5(d) or subsection 27-4.7(a), the development impact fee shall be paid or otherwise satisfied by each developer prior to the issuance of building permit.
- d. 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.
 - 1. Regardless of whether a building permit is required, a structure, subject to any permit, which has been vacant (as defined in 27-4.5(g)(3)) shall be assessed the Development Impact Fee based on the proposed use at the time of permit issuance. No credit shall apply to such vacant structure.
 - 2. Notwithstanding Section 27-4.5(d)(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 assessed consistent with the provisions of subsection 27-4.11.
- e. The City Council shall adopt a resolution setting forth the specific amount of the fee. The amount of the fee shall not exceed the estimated reasonable cost of providing the facility for which the fee is imposed.
- f. The City Council shall review the development impact fee annually following the first deposit into the accounts established pursuant to subsection 27-4.6, 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.
- g. Definitions. For the purposes of the Development Impact Fee, the following definitions apply:
 - 1. Residential/Mixed Use. Any development that consists of a residential unit (or units) only, or residential unit (or units) and commercial development on a single parcel.
 - 2. Commercial. Any development on a parcel or parcels consisting solely of non-residential uses. This category also includes buildings or portions of buildings designed for hotels, motels, residential care facilities, congregate

living health facilities and other commercial developments that provide sleeping, eating, and/or other services to temporary or permanent residents.

3. Vacant. For the purpose of this section, a non-residential property or a multifamily residential property shall be deemed “vacant” during the five 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 five-year period. For the purpose of a single family home, the property is “vacant” if Alameda Municipal Power records do not show energy usage consistent with occupancy of the building and/or adjacent single family properties that were occupied during the five- year period.
4. 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.
5. Alameda Point. For the purposes of this section, “Alameda Point” is the area covered by the Alameda Point Zoning Ordinance, adopted on February 4th, 2014, by the Alameda City Council.
6. Master Infrastructure Plan for Alameda Point, or “MIP”. For the purposes of this section, the “Master Infrastructure Plan” or “MIP” is the document of that name approved by the City Council on February 4th, 2014.

27-4.6 Use of Development Impact Fee.

Development impact fee revenues shall be deposited in segregated accounts and all interest earned on deposited fee revenues shall be used solely to:

- a. Pay for the cost of providing the specified projects listed in Appendix C to the Nexus Study.
- b. 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.
- c. Fund reimbursement or refund under subsections 27-4.7 and 27-4.9.
- d. Fund loans or transfers made in conformance with Government Code Section 66006(b)(1)(G).
- e. The use of each component of the development impact fee is more specifically set forth in the resolution referenced in subsection 27-4.5(e) establishing the amount of the fee and making certain findings.

27-4.7 Fee Credits and Reimbursements.

- a. Fee Credit or Reimbursement under a Development Agreement or other contract. At the discretion of the City Manager, an applicant may construct public improvements or make a payment under the terms of a development agreement

or other contractual agreement with the City in lieu of part or all of the fees otherwise owed under this section. All procedures for credit and reimbursement shall be governed by the terms of said agreement.

- b. 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 City Manager which establishes compliance with all of the following requirements to the satisfaction of the City Manager:
 - 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 listed in Appendix C of the Nexus Study.
 - 2. Identify the estimated cost of providing the specified public improvements (including construction and design), as set forth in Section 27-4.7 (d) 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 City Manager 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. 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.
- c. Timing of Application. The application for credit shall be submitted by the applicant to the City Manager in accordance with the following timing requirement: 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 application for a building permit. The applicant may submit a late application only if the applicant establishes, to the satisfaction of the City Manager, that, in light of new or changed circumstances, it is in the City's best interests to allow the late application.
- d. Amount of Potential Credit. In the event that the City Manager determines that the applicant has submitted a timely application in compliance with Section 27.4.7 (b) and that it is in the City's best interest to allow the applicant to provide

the proposed specified public improvement, the applicant may be eligible to 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 chapter.
 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 City Manager, and (B) the estimated cost of providing the specified public improvement, as identified in the Appendix C to the Nexus Study.
 4. The applicant provides improvement security in a form and amount acceptable to the City (e.g., construction bond).
 5. The applicant identifies the development projects to which the credit will be applied.
 6. The credit may only be applied to fees which would otherwise be owed for the fee category relevant to the specified improvement.
 7. The timing of the proposed construction of the public improvement, which shall be no later than the completion of the construction of the applicant's development project.
- e. 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 City Manager. The applicant may be entitled to potential reimbursement from the City, but only if the applicant submits a written request to the City Manager which meets the following requirements:
1. The request shall be made no later than 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 Section 27-4.7 (d) (3)) less amount of credit previously allocated to offset fees pursuant to Section 27-4.11.
 3. The request must include a designation of the name and address of the legal entity to which reimbursement payments are to be made.
- f. Allocation of Reimbursements.
1. In the event the City Manager determines that the applicant has properly submitted a request for reimbursement pursuant to Section 27-4.7 (e), the

City Manager 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 City Manager (not to exceed the actual credit available to the applicant), less the total of all credit allocations to offset fees pursuant to Section 27-4.7 (d).

2. The City shall make reimbursement payments to the applicant (or the entity identified by the applicant) pursuant to Section 27-4.7 (e). The right to receive reimbursement payments, if any, shall not run with the land.
3. The City shall make reimbursement payments pursuant to a schedule to be established by the City Manager, 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.
4. 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.

27-4.8 Fee Adjustments.

- a. A developer of any project subject to the fee described in subsection 27-4.5 may apply to the City Manager for a reduction or adjustment to the fee, or a waiver of the fee, based upon 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 City Manager 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 Study.
- b. 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.
- c. The City Manager shall consider the application and respond in writing setting forth the reasons for the decision within thirty (30) days. The decision of the City Manager is appealable pursuant to subsection 27-4.13.
- d. If a reduction, adjustment, or waiver is granted, any change in use within the project shall invalidate the waiver, adjustment or reduction of the fee.

- e. The cost of an application for a 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 of the City Council.

27-4.9 Refund of Fee.

- a. If the development impact fee is paid and the building permit is later canceled 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 City Manager 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 City Manager; 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.
- 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.

27-4.10 Exemptions.

- a. The development impact fee shall not be imposed upon a building permit for remodeling on a parcel that has already paid fees due under this section.
- 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 parcel on which the structure is constructed already paid the fee due under this section.

27-4.11 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 previously paid impact fees under this section. The offset shall consist of any difference between the current applicable fee category and the fee category applicable to the previously existing use. The offset for existing use shall not exceed the amount computed for the proposed use.

27-4.12 Fee and Fee Escalators.

- a. The development impact fee for residential or mixed use is \$1,107,121 per acre, and for commercial use is \$978,965 per acre.
- b. A resolution may provide 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.
- c. The development impact fee may be adjusted from time to time, based upon amendments or updates to the Nexus Study, to reflect extraordinary changes in the cost of construction of any of the improvements listed in Appendix C of the

Nexus Study, 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.

27-4.13 Appeal Procedure.

- a. A decision of the City Manager 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 City Manager shall file an appeal to the City Council in writing pursuant to the Alameda Municipal Code not later than ten (10) days from the date of the City Manager'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 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 City Manager 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.

This Ordinance shall be in full force and effect from and after the expiration of sixty (60) 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 Council of the City of Alameda in regular meeting assembled on the 1st day of July, 2014, 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 2nd day of July, 2014.

Lara Weisiger, City Clerk
City of Alameda