



CITY OF EMERYVILLE MEMORANDUM

DATE: July 1, 2014

TO: Sabrina Landreth, City Manager

FROM: Charles S. Bryant, Community Development Director
Michael G. Biddle, City Attorney

SUBJECT: Development Impact Fees:

Presentation Of Proposed New Fees For Affordable Housing And Parks And Increased Fee For Transportation Facilities To Be Imposed Upon The Issuance Of Permits For Construction Or Reconstruction Of A Development Project

Introduction And First Reading Of An Ordinance Of The City Council Of The City Of Emeryville Adding Article 19 To Chapter 5 Of Title 9 Of The City Of Emeryville Planning Regulations Titled “Development Impact Fees” And Repealing Article 3 Of Chapter 2 Of Title 3 Of The City Of Emeryville Municipal Code Titled “Traffic Facilities Impact Fee Fund”

Introduction And First Reading Of An Ordinance Of The City Council Of The City Of Emeryville Amending Article 4 Of Chapter 5 Of Title 9 Of The City Of Emeryville Planning Regulations Titled “Affordable Housing Set Aside Program” And Retitling As “Affordable Housing Program”

RECOMMENDATION

Staff recommends that the City Council:

- Hear a presentation and take public testimony about proposed development impact fees.
- Adopt the first reading of the attached ordinance adding Article 19, “Development Impact Fees” to Chapter 5 of Title 19 of the Emeryville Municipal Code and repealing Article 3, “Traffic Facilities Impact Fee Fund” of Chapter 2 of Title 3 of the Emeryville Municipal Code.
- Adopt the first reading of the attached ordinance amending and retitling Article 5, “Affordable Housing Program” of Chapter 5 of Title 19 of the Emeryville Municipal Code.

At the July 15 meeting, the Council will be requested to pass and adopt the two ordinances and to consider adoption of three (3) resolutions adopting the development impact fees.

BACKGROUND

Based on information provided to the City Council at its December 4, 2012 Study Session, in 2013, the City Council authorized the City Manager to move ahead with the process of developing impact fees to mitigate the impacts of development on public facilities (transportation, parks and general government facilities) and affordable housing which theretofore had been funded with redevelopment tax increment funds. The City Council was already in the process of updating its transportation impact fee and desired to evaluate additional fees related to parks and recreation, general government facilities, and affordable housing. The City retained Keyser Marston Associates, Inc. (KMA) to prepare affordable housing impact fee reports and Willdan Financial Services (Willdan) to prepare two impact fee reports for General Government Facilities and Park and Recreation Facilities. The City also retained Willdan to prepare two additional memorandums pertaining to a comparison of development fees charged in local East Bay cities and a fee burden analysis comparing proposed fee amount to estimated development value. The City had already retained Fehr & Peers to prepare the update of its transportation impact fee.

On April 1, 2014, the City Council held a study session to hear findings from the reports and to provide direction on the method of setting the actual fees that it would consider charging new development. The proposed fees were then discussed by the Economic Development Advisory Committee on April 2, Housing Committee on April 2, Parks and Recreation Committee on April 16, and Planning Commission on April 24. A summary of recommendations from the Committees and Commission is included later in this report.

DISCUSSION

Impact Fee Studies and Maximum Supported Fees

The impact fee studies are attached to this report, and are available for downloading from the City's website at emeryville.org/impactfees. They are as follows:

1. Transportation Impact Fee Study (Attachment 1)
2. Parks and Recreation Facilities Impact Fee Study (Attachment 2)
3. Residential Nexus Study (Attachment 3)
4. Non-Residential Jobs-Housing Nexus Study (Attachment 4)

These reports fulfill the requirements of the Mitigation Fee Act (Government Code Sections 66000-66008), the law governing the imposition and administration of impact fees. Section 66001 of the Mitigation Fee Act provides that in any action establishing,

increasing, or imposing a fee as a condition of approval of a development project by a local agency, the local agency shall do all of the following:

- Identify the purpose of the fee;
- Identify the use to which the fee is to be put. If the use is financing public facilities, the facilities shall be identified and that identification may be made by reference to a capital improvement plan, an applicable general or specific plan, or other public documents that identify the public facilities.
- Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed; and
- Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

The impact fee studies identify the maximum fee, or cap, that can justifiably be imposed on new development. The City Council may set the fee at any level up to the cap justified by the study. The methodology employed in each study is described below.

Transportation Impact Fee Study

Emeryville currently has a Traffic Impact Fee (TIF), which was adopted by Ordinance No. 90-008 in September 1990. Traffic Mitigation Fee Studies have been prepared to implement the program with the most recent update being adopted on October 6, 1998. In October 2009, the City adopted a new General Plan that calls for a multi-modal transportation system, including public transit, pedestrians, bicycles, and automobiles. One of the actions in the General Plan implementation program is to update the Traffic Impact Fee to insure that new development pays its fair share toward a circulation system that optimizes travel by all modes.

The City retained Fehr & Peers to prepare an update to the Traffic Impact Fee. The updated and renamed Draft Transportation Impact Fee Update is presented as Attachment 1. The revision gives all transportation modes (pedestrian, bicycle, transit, and automobile) equal emphasis. The methodology for calculating the maximum amount of the fee involves six steps, described below.

Step 1: Project Identification. The transportation infrastructure needed to serve Emeryville by the General Plan time horizon of 2030 would consist of a variety of improvement projects including intersection improvements, roadway widening, pedestrian connections, new bicycle facilities, and transit infrastructure. The proposed updated TIF program includes projects identified in the General Plan, Sustainable Transportation Plan (adopted March 2012), Pedestrian and Bicycle Plan (adopted May 2012), recently completed environmental studies, and other recent planning studies. Twenty-eight projects, with a total cost of about \$101 million, have been identified to be included in the program. (See Table 3 of Attachment 1)

Step 2: Identify Existing Deficiencies. The Transportation Impact Fee can only be used to fund projects that serve the transportation demands generated by new development, and not to correct existing deficiencies. Since the current study is an update of the 1998 Traffic Mitigation Fee Study, the “baseline” for identifying existing deficiencies is 1998. Thus, existing conditions identified as deficient in the 1998 study have been backed out of the project costs that may be funded by the fee.

Step 3: Calculate New Development. Different methodologies were used for traffic capacity enhancing projects (i.e., intersection and other street improvements) and non-capacity enhancing projects (i.e., bicycle, pedestrian, and transit projects) to calculate the cost of each project attributable to new developments. In combination with the existing deficiency analysis in Step 2, this results in a reduction of the total cost of the projects that can be funded by the TIF program to about \$88 million. (See Table 6 of Attachment 1)

Step 4: Anticipated New Emeryville Development. The General Plan includes population and employment growth forecasts for the year 2030 based on envisioned land use changes. About 3,800 new dwelling units and 2.5 million square feet of net new non-residential development are expected in Emeryville by 2030 to contribute to the fee program. (See Table 7 of Attachment 1)

Step 5: Calculate Trip Generation and Fee. Based on the General Plan Environmental Impact Report, the development calculated in Step 4 is expected to generate 7,030 new peak hour trips, including 5,650 new vehicle trips, 870 new transit trips, and 510 new bicycle and walking trips. Dividing the \$88 million total cost of the program by these peak hour trips results in **a maximum fee of \$12,541 per trip.**

Step 6: Define Fee for Specific Land Use Types. To determine the maximum fee for specific land uses, the auto trip generating potential of each use was determined based on the Trip Generation Manual, 9th Edition, published by the Institute of Transportation Engineers (ITE). Although projects in Emeryville are expected to generate fewer vehicle trips than estimated by ITE, this method treats all projects equally within the City as they will likely have similar trip generating characteristics relative to each other. The fee for a specific land use is calculated by multiplying its estimated peak hour trips by the fee per trip from Step 5. For certain nonresidential uses such as retail and restaurants, this is then adjusted using a “passby rate” to determine the percentage of primary trips attributable to that land use. For example, trips to a store and restaurant are likely to be combined, so each land use is assigned 50% of the primary trip, and the fee is adjusted accordingly.

To illustrate how the maximum fee is calculated for a specific use, the ITE PM peak hour trip rate for a supermarket is 9.48 trips per 1,000 square feet, and the “percent primary trips” is 45%. Dividing 9.48 trips by 1,000 square feet, and then multiplying by 45% yields a rate of 0.004266 PM peak hour trips per square foot. Multiplying this by

the maximum fee of \$12,541 per trip results in a maximum fee for a supermarket of \$53.50 per square foot.

The following table shows the maximum fee for certain common land uses. More detail, including additional land uses, can be found in Table 10 of Attachment 1.

Table 1 – Examples of Maximum Transportation Impact Fees for Various Land Uses

Land Use	ITE PM Peak Hour Rate	Percent Primary Trips	Maximum Fee
Single-Family Residence	1.00 per unit	100%	\$12,541 per unit
Townhome/Condominium	0.52 per unit	100%	\$6,521 per unit
Apartment	0.62 per unit	100%	\$7,775 per unit
Live/Work	0.65 per unit	100%	\$8,151 per unit
Day Care Center	12.34 per 1,000 s.f.	100%	\$154.75 per s.f.
General Office	1.49 per 1,000 s.f.	100%	\$18.69 per s.f.
Medical Office	3.57 per 1,000 s.f.	100%	\$44.77 per s.f.
Research and Development	1.07 per 1,000 s.f.	100%	\$13.42 per s.f.
General Retail	3.73 per 1,000 s.f.	50%	\$23.39 per s.f.
Bank	12.13 per 1,000 s.f.	35%	\$53.24 per s.f.
Health Club	3.53 per 1,000 s.f.	100%	\$44.27 per s.f.
Supermarket	9.48 per 1,000 s.f.	45%	\$53.50 per s.f.
Convenience Market	52.41 per 1,000 s.f.	30%	\$197.17 per s.f.
Quality Restaurant	7.49 per 1,000 s.f.	30%	\$28.18 per s.f.
High Turnover Restaurant	9.85 per 1,000 s.f.	30%	\$37.06 per s.f.
Fast Food Restaurant	26.15 per 1,000 s.f.	50%	\$163.97 per s.f.
Hotel	0.6 per room	70%	\$5,267 per room
Light Industry	0.97 per 1,000 s.f.	100%	\$12.16 per s.f.
Manufacturing	0.73 per 1,000 s.f.	100%	\$9.15 per s.f.
Warehousing	0.32 per 1,000 s.f.	100%	\$4.01 per s.f.

Park and Recreation Facilities Impact Fee Study

Willdan's Draft Parks and Facilities Fee Study is presented as Attachment 2. The park and recreational facilities fee is calculated applying the cost per capita of the service population for new park and recreation facilities to the same occupancy assumptions for various land use types as those used in the Draft General Facilities Impact Fee Report. Service population includes residents and employees, with employees discounted by 50% due to lower utilization of parkland. The cost per capita is developed by calculating the existing facility standard of acres of existing park per 1,000 of the service population and multiplying this standard by the estimated cost per acre of developing new parkland. Using the existing per capita standard assures that the fee is not sized to address existing deficiencies. The maximum fee calculations are summarized below:

Table 2 - Park and Recreation Facility Impact Fee Methodology

Existing service population		
Residents	10,196	
Workers	10,204	.5 of total ¹
Total	20,400	
Existing acres parkland	26.93 ²	
Existing Facility Standard (acres/1000 service population)	1.32	
Cost per Acre	\$6,096,800	
Cost/1000 service population (1.37 x cost per acre)	\$8,048,000	
Cost/capita residential	\$8,048	
Cost/capita worker	\$4,024	.5 of total
Maximum Justified Fee		
Single family/townhome (1.86 persons/unit)	\$14,969	per unit
Multifamily (1.79 persons/unit)	\$14,406	per unit
Office (3.64 emp/1000 sf)	\$14,647	per 1000 sf
Research and Development (2.5 emp/1000 sf)	\$10,060	per 1000 sf
Hotel (1 emp/1000 sf)	\$4,024	per 1000 sf
Retail (2.0 emp/1000 sf)	\$8,048	per 1000 sf
Restaurant (5 emp/1000 sf)	\$20,120	per 1000 sf

¹ Workers are weighted at .5 based on the assumption that parks are designed for and primarily used by residents and workers use parks more than government facilities.

² Existing Acres of parkland are summarized in Table 3.5 of the Park and Recreational Facilities Impact Fee Report

Residential Nexus Study and Non-Residential Jobs-Housing Nexus Study

KMA has prepared a Draft Residential Nexus Study and a Draft Non-residential Job-Housing Nexus Study (Attachment 3 and Attachment 4), which identifies the maximum fee for affordable housing that could be applied to both multifamily rental residential and commercial development in Emeryville. Because the City's Affordable Housing Set Aside Ordinance applies to ownership projects, KMA has not included this housing type in the draft report. As with other impact fees, once the maximum amount is established through the fee study, the City Council can set the fee at any level under this cap.

In the report, KMA identifies the demand for affordable housing created in Emeryville by jobs generated through purchases of households living in a 100-unit prototype rental project. To conduct this analysis, KMA used two models: the IMPLAN model, and a proprietary jobs-housing nexus model. The IMPLAN model has been widely used in planning applications throughout the United States for more than 30 years. KMA has been using its proprietary jobs housing nexus model for over 25 years in similar impact fee reports. This analysis is conducted in a series of steps as set forth below.

- **Gross Income in Project:** The gross income of residential project occupants is estimated, relying on a market study that identifies the average rents of new Emeryville apartment units. KMA then assumes 30% of income is spent on rental housing costs to develop an estimated annual household income. Annual income, multiplied by 100 units in a prototype project, equals \$9.9 million of gross income in the project.
- **Jobs Generated by Expenditures:** Gross household income, adjusted for income available for expenditures, is input to the IMPLAN model for Alameda County, an economic model that estimates the number of jobs created by household expenditures. The total number of jobs totals 47.9. After an adjustment to account for changing industries, the report finds 35.9 jobs generated by project resident expenditures.
- **New Jobs Converted to New Households:** Total new jobs is converted to 22.3 households based on a U.S. Census factor of workers per household.
- **Households by Income:** KMA uses its proprietary model, which imports local wage and salary data from the California Employment Development Department to analyze the occupational distribution and compensation levels of new jobs generated and develops a household income distribution for very low, low, and moderate income households for the new households created by project resident expenditures. Of the 22.3 new worker households, 8.64 are very low, 4.57 are low, and 4.96 are moderate income.
- **Maximum Impact Fee:** The maximum impact fee is calculated by multiplying an affordability gap per unit for very low, low and moderate income households by

the number of worker households in each income group. The affordability gap per unit is the difference between the total development cost of an affordable unit and the unit value supported by affordable rents at each income level. The affordability gap for very low income units is slightly lower than that for low income units because additional sources of subsidy (mainly tax credits) are assumed to be available to offset the cost of providing units for this income bracket. The resulting Total Nexus Cost of the project is then converted to a per unit fee by dividing by 100, the number of units in the prototype project.

Calculations of each of these steps are shown in Tables III through Table IV of the Affordable Housing Impact Fee Report. A summary of these calculations is as follows:

Table 3 – Maximum Affordable Housing Impact Fee – Multifamily Rental Residential Methodology

Average Square Feet per Unit in Prototype	850
Annual Household Income by type of unit (assuming 30% of income spent on rent)	\$99,000
Gross Income per 100 units	\$9,900,000
Jobs created by occupants' purchases	47.9
Less 25% Adjustment for Changing Industries	35.9
Number of Households of New Workers (1.63/household)	22.3
Household income distribution	
Very Low - under 50% AMI	8.64
Low - (50-80%)	4.57
Moderate (60 - 120%)	4.96
Above Moderate	4.17
Total	22.34
Affordability Gap Per Unit	
Very Low - under 50% AMI	\$212,500
Low - (50-80%)	\$255,000
Moderate (80 - 120%)	\$115,000

Total Nexus Cost for 100 Units (affordable unit demand x affordability gap)	
Very Low - under 50% AMI	\$1,827,500
Low - (50-80%)	\$1,173,000
Moderate (80 - 120%)	\$575,000

Total Nexus Cost Per Unit (total gap per 100 units)	
Very Low - under 50% AMI	\$18,300
Low - (50-80%)	\$11,600
Moderate (80 - 120%)	\$5,700
Total	\$35,600

The fee on commercial development mitigates the demand for affordable rental housing generated by new jobs in Emeryville as a result of new commercial development. In each case, the cost of providing affordable housing to meet this demand is converted into fee per square foot. Based on employment density assumptions for each land use prototype, the analysis calculates the total number of jobs created in the project and converts these jobs to worker households. Using the same methodology as that applied in the residential analysis, worker households are distributed into very low, low and moderate income categories for each separate land use prototype and expressed as the number of households required per 1,000 square feet of building area. This factor is multiplied by the affordability gap for each income level, and then divided by 1,000, to develop the per square foot fee that would be required to fund the affordable housing demand. These calculations are summarized below.

Table 4 – Maximum Affordable Housing Impact Fee - Commercial Development Methodology

	Office	R&D	Retail Mix	Hotel
Square Feet	100,000	150,000	25,000	70,000
Emp Density/1000 sf	3.6	2.5	2.6	1
Jobs Created	360	375	65	70
Jobs Created after Adjustment for Changing Industries	270	281	49	53
Number of Households	167.8	174.8	30.3	32.6

Number of Households by Income				
Very Low - under 50% AMI	16.6	7.1	18.5	17.4
Low - (50-80%)	20.7	13.2	6.7	7.5
Moderate (80 - 120%)	47.6	44.9	4.2	5.5
Over 120%	82.9	109.6	0.9	2.2
Total	167.8	174.8	32.6	32.6

Number of Housing Units per 1000 SF of Building Area				
Very Low - under 50% AMI	0.16551	0.04709	0.74062	0.24885
Low - (50-80%)	0.20674	0.08799	0.26858	0.10729
Moderate (80 - 120%)	0.47638	0.29943	0.16845	0.07924
Affordability Gap by Household Income				
Very Low - under 50% AMI	\$212,500	\$212,500	\$212,500	\$212,500
Low - (50-80%)	\$255,000	\$255,000	\$255,000	\$255,000
Moderate (80 - 120%)	\$115,000	\$115,000	\$115,000	\$115,000
Nexus Cost per 1,000 SF				
Very Low - under 50% AMI	\$35.10	\$10.00	\$157.00	\$52.80
Low - (50-80%)	\$52.70	\$22.40	\$68.50	\$22.40
Moderate (80 - 120%)	\$54.80	\$34.40	\$19.40	\$9.10
Total	\$142.60	\$66.80	\$244.90	\$89.30

Summary of Maximum Fees Supported by Impact Reports

The maximum fees supported by the impact fee studies described above are summarized below:

Table 5 - Maximum Fees Supported by Impact Reports

	Multi-family Rental	Multi-family Ownership	Town-homes	Office	R&D	Retail & Restaurant Mix	Hotel
	per unit	per unit	per unit	per square foot	per square foot	per square foot	per room (350 s.f.)
Transportation	\$7,775	\$6,521	\$6,521	\$18.69	\$13.42	\$24.64	\$5,267
Parks and Recreation	\$14,406	\$14,406	\$14,969	\$14.65	\$10.06	\$10.46	\$1,407
Affordable Housing	\$35,600	\$0	\$0	\$142.60	\$66.80	\$244.90	\$31,255
Total	\$57,781	\$20,927	\$21,490	\$175.94	\$90.28	\$280.00	\$37,929

Recommended Impact Fees

On July 15, the City Council will be requested to adopt resolutions setting the recommended impact fees. These recommended fees are based on the assumption that each development type pay its proportionate share of fees, while maintaining an overall comparable fee level with competitive cities. In providing this recommendation, staff has attempted to distribute the total fee burden between each impact fee so sufficient revenue can be obtained to fund needed improvements. Staff is recommending not pursuing the General Government Facilities fee. Other recommendations are as follows:

- The Transportation and Parks and Recreation Impact Fees are proposed to be set at a flat percent of the maximum fee. Staff is proposing that the Transportation Impact Fee be set at 20% of the maximum and the Parks and Recreation Impact Fee be set at 25% of the maximum. This approach distributes the fees evenly between different types of development, while limiting the total fee burden charged.
- Staff is recommending a different approach in setting the affordable housing fee. Since multifamily rental residential is experiencing the strongest market and most significant growth, the recommended affordable housing fee is \$20,000 per unit, approximately 56% of the maximum fee, while the fee on commercial projects is proposed to be minimized at \$2.00 per square foot. Minimizing the commercial affordable housing fee reserves most of commercial development's impact fee capacity for the other fees, while maintaining overall comparability with the fees in competitive cities.

Table 6 - Recommended Impact Fees

	Multifamily Rental	Multifamily Ownership	Townhomes	Office	R&D	Retail & Restaurant Mix	Hotel
	per unit	per unit	per unit	per s.f.	per s.f.	per square foot.	per room
Transportation	\$1,555	\$1,304	\$1,304	\$3.74	\$2.68	\$4.93	\$1,053
Parks and Recreation	\$3,602	\$3,602	\$3,742	\$3.66	\$2.52	\$2.62	\$352
Affordable Housing	\$20,000	\$0	\$0	\$2.00	\$2.00	\$2.00	\$700
Total	\$25,157	\$4,906	\$5,046	\$9.40	\$7.20	\$9.54	\$2,105

Attachment 5 provides a comparison of the total development fee burden in Emeryville, including the recommended impact fees, to the total development fee burden of other cities.

Fee Credits

The attached ordinance adding Article 19, "Development Impact Fees" to Chapter 5 of the Planning Regulations establishes a procedure for an applicant to apply to the City Council for an impact fee credit in return for providing a specified public facility that is to be otherwise funded by the fee.

Affordable Housing Alternative Compliance

The attached ordinance amending Article 4, retitled "Affordable Housing Program", of Chapter 5 of the Planning Regulations establishes a procedure for a housing developer to provide affordable housing instead of paying an affordable housing impact fee. The construction of such affordable housing may be provided either on-site or off-site, through the dedication of land, or through other means. The Planning Commission may approve or conditionally approve such an alternative if the Planning Commission determines that such alternative compliance will provide as much or more affordable housing at the same or lower income levels as will payment of the affordable housing impact fee, is consistent with the General Plan and Housing Element, and will otherwise provide as great a public benefit as would payment of the affordable housing impact fee.

Based on assumptions used in the City of Emeryville's affordability table, KMA calculated the affordability gap to provide a low-income unit in the 850 square foot market rate unit prototype. The affordability gap at 60% of area median income (low-income) for a 2.25 person household is estimated to be \$290,000 per unit. The recommended \$20,000 per unit would generate a total of \$2 million from the 100-unit prototype project. Dividing \$2 million by the \$290,000 per unit cost, 6.9 units could be created in the project, thereby supporting an equivalent on-site compliance percentage of 6.9% low income units.

Advisory Body Recommendations

The impact fee studies and staff's recommended fees have been presented to the Economic Development Advisory Committee, Housing Committee, Parks and Recreation Committee, and Planning Commission. Recommendations from each advisory body are summarized below:

- *Economic Development Advisory Committee* – At its meeting on April 2, 2014, the Economic Development Advisory Committee approved the following motions related to the impact fee reports and recommendations: (1) Because Emeryville benefits from a strong positive statement of being competitive and business friendly, the City needs to set fees at a level where they are materially lower than competitive cities; and (2) The Emery Go-Round bus yard should be placed at the top priority of projects to be funded by the transportation fee.

- *Housing Committee* – The Housing Committee reviewed the residential and non-residential nexus studies and staff’s proposed fee structure at its meeting on April 2, 2014. A motion to approve the staff recommendation and forward the impact fee studies to the City Council was passed unanimously.
- *Parks and Recreation Advisory Committee* – The Parks and Recreation Advisory Committee reviewed the impact fee studies and staff recommendation at its meeting on April 16, 2014. The Committee unanimously approved a motion to recommend that the City Council approve the fee studies and support staff’s fee recommendations. The Committee approved this motion with the caveat that the level of fee approved by the City Council should be sensitive to the other costs being born by businesses in Emeryville such as the Emery Go-Round assessment.
- *Planning Commission* - The Commission heard staff’s report on the fees at a study session on April 24, 2014. The Commission did not adopt a formal recommendation, but forwarded comments as follows: several members believe the fees should be lowered to maintain Emeryville’s competitiveness with other cities, especially in light of the fact that Emeryville does not have a BART station; other members supported staff’s recommendation and commented that the fees were appropriate, noting that the residential rental market is strong enough to bear the affordable housing fee; several members were concerned about the scalability of fees and the potential negative impact of fees on smaller developments; members also commented that they would like the fees to be reviewed on an annual basis.

Amendments to Emeryville Municipal Code

Before the City Council can adopt the new fees, the Municipal Code must be amended to establish regulations and procedures for their implementation (i.e. “enabling legislation”). To do this, staff proposes to amend the existing Affordable Housing Set-Aside Program (to be retitled “Affordable Housing Program”) in Article 4 of Chapter 5 of the Planning Regulations, and to add a new Article 19 of Chapter 5 of the Planning Regulations entitled “Development Impact Fees”. The proposed amendments to Article 4 would provide for affordable housing fees for both residential and nonresidential development, while the proposed Article 19 would cover all other impact fees including parks and transportation, and possibly other types of impact fees in the future. The existing provisions for traffic impact fees in Article 3 of Chapter 2 of Title 3 of the Municipal Code would be repealed.

Because the provisions for affordable housing and other development impact fees will be placed in the Planning Regulations, the Planning Commission must review them and make a recommendation to the City Council concerning their adoption. The Commission is scheduled to consider the proposed amendments at its June 26, 2014 meeting, following the publication of this City Council staff report. The Commission’s action will be reported verbally at the July 1 City Council meeting.

The proposed modifications to the Affordable Housing Program in Article 4 of Chapter 5 include the following:

- *Title of Article:* The title of Article 4 of Chapter 5 is changed from “Affordable Housing Set-Aside Program” to “Affordable Housing Program”. This title change is reflected throughout the Article wherever it appears.
- *Unit Threshold:* The threshold above which ownership residential projects must provide affordable housing units is lowered from 30 units or more to 10 units or more.
- *Collection of Impact Fees:* The amendment provides authority and a process for the City to establish and collect fees which will be imposed upon rental residential and non-residential development projects for the purpose of mitigating the impacts that these development projects have upon the city’s ability to provide affordable housing
- *Alternative Compliance.* The amendment establishes a procedure for a developer to provide affordable housing instead of paying an affordable housing impact fee either on-site or off-site, through the dedication of land, or through other means, if the Planning Commission determines it will provide as much or more affordable housing at the same or lower income levels as will payment of the affordable housing impact fee.
- *Affordable Housing Fund:* The amendment creates an affordable housing fund into which these fees will be deposited.
- *Uses of Affordable Housing Fund:* The amendment provides authority to expend these fees for the provision of affordable housing.

The proposed Development Impact Fee provisions in the new Article 19 of Chapter 5 include the following:

- *Authority and Purpose of Fees:* The Article is adopted pursuant to authority set forth in the State Constitution, the Mitigations Fee Act, and the State planning and zoning law and thereby establishes the authority for the City to impose development impact fees, and specifies that such fees are to be used to mitigate the impacts that development projects have upon the City’s ability to provide public facilities.
- *Types of Fees:* The Article provides that the specified public facilities will be categorized into separate and distinct types, including, but not limited to, transportation, parks, and recreation.
- *Calculation of Fees:* The Article stipulates that the type and amount of each fee shall be approved by the City Council by an implementing resolution and shall be supported by a technical report identifying the purpose and maximum amount of the

fee, and establishing the “nexus” between the fee and the development projects on which it is imposed.

- *Payment of Fees:* The Article includes provisions for the timing and amount of impact fee payments. Generally, payment is due upon issuance of a building permit. The applicant can request deferral until final inspection or certificate of occupancy, but in this case the fee will be whatever is in effect at the time, even if it has been increased. (Pursuant to State law, such an increase in fees does not apply to residential projects.) Note that payment of the fee does not replace an applicant’s obligation to mitigate development impacts in accordance with other requirements of law or to otherwise comply with Citywide use and development regulations (e.g. on-site landscaping).
- *Fee Adjustments:* The Article provides for the City to adjust each type of fee from time to time to reflect updated information about the costs of the projects funded by the fee.
- *Exemptions:* The Article establishes exemptions from impact fees for residential remodeling projects, and for any project for which the applicant can demonstrate a basis in local, state, or federal law for such an exemption.
- *Refunds:* The Article provides for refunds of impact fees for development projects that are abandoned after the fee is paid, under certain circumstances.
- *Credits:* The Article establishes a procedure for an applicant to apply to the City Council for an impact fee credit in return for providing a specified public facility that is to be otherwise funded by the fee. Note that no credit is available to the extent the applicant has received a development bonus for providing the specified public facility.
- *Protests:* The Article establishes a procedure for an applicant to protest the imposition of any required impact fee through an administrative proceeding before the Planning Director and thereafter an independent hearing officer.

FISCAL IMPACT

Applying the recommended impact fees to a future five-year projection of development anticipated to occur in Emeryville provides an estimate of the amount of funding that could be generated by the fees. Over the next five years, a total of 13 projects could potentially be developed. These projects include 2,043 residential rental units, 171 hotel rooms, 248,300 square feet of laboratory space, 77,000 square feet of office space, and 131,000 square feet of retail. A list of projected future development projects along with their projected impact fee revenues is included as Attachment 6. Assuming all of these

projects pay the fees during this period, the City would receive a total of about \$55.5 million in impact fee revenues, as follows:

Table 7 - Revenues from Proposed Impact Fees

	Dollars	Percent
Transportation	\$4,955,142	8.93%
Parks and Recreation	\$8,666,171	15.61%
Affordable Housing	\$41,891,616	75.46%
Total	\$55,512,930	100.00%

LEGAL CONSIDERATIONS

Revenue from impact fees can only be used to offset the impact of future development and cannot fund existing deficiencies. As such, transportation and parks improvements funded with impact fee revenue must also include funding from an alternative source to account for the degree to which the improvement reduces an existing deficiency. At present the City Council has adopted a policy to devote 75% of “boomerang” property tax funds to capital improvements, which is estimated to be at least \$2 million a year. Funds from the Affordable Housing Impact Fee must be spent on new affordable housing development. Funding renovation and First Time Homebuyer Assistance would not be allowed because the funding would not be creating new units. Nevertheless, 20% of the aforementioned “boomerang” funds, estimated at \$500,000 to \$1 million a year, are devoted to affordable housing and those funds do not have any restrictions on their use.

CONCLUSION

Staff recommends that the City Council take the following actions:

1. Proposed development impact fees:
 - a. Hear a presentation from staff.
 - b. Take public testimony regarding the proposed development impact fees.
2. Ordinance adding Article 19, “Development Impact Fees” to Chapter 5 of Title 19 of the Emeryville Municipal Code and repealing Article 3, “Traffic Facilities Impact Fee Fund” of Chapter 2 of Title 3 of the Emeryville Municipal Code:
 - a. Introduce the Ordinance after a motion to read by title only.
 - b. Take public testimony regarding the Ordinance.
 - c. Adopt the first reading of the Ordinance.

3. Ordinance amending and retitling Article 5, "Affordable Housing Program" of Chapter 5 of Title 19 of the Emeryville Municipal Code:
 - a. Introduce the Ordinance after a motion to read by title only.
 - b. Take public testimony regarding the Ordinance.
 - c. Adopt the first reading of the Ordinance.

**APPROVED AND FORWARDED TO THE
CITY OF EMERYVILLE CITY COUNCIL:**



Sabrina Landreth, City Manager

Attachments:

1. Transportation Impact Fee Study
2. Parks and Recreation Facilities Impact Fee Study
3. Residential Nexus Study
4. Non-Residential Jobs-Housing Nexus Study
5. Development Fees Comparison with Other Cities
6. Projected Fees from Future Development
7. Proposed Ordinance adding Article 19, "Development Impact Fees" to Chapter 5 of Title 19 of the Emeryville Municipal Code and repealing Article 3, "Traffic Facilities Impact Fee Fund" of Chapter 2 of Title 3 of the Emeryville Municipal Code.
8. Proposed Ordinance amending and retitling Article 5, "Affordable Housing Program" of Chapter 5 of Title 19 of the Emeryville Municipal Code.