ORDINANCE NO. 14-008

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"

RECITALS

WHEREAS, after an extensive community engagement process involving residents, business owners, and development representatives, the Emeryville City Council adopted a new General Plan on October 13, 2009 to guide the growth and development of the City of Emeryville; and

WHEREAS, as part of the General Plan ten guiding principles were enunciated that provide the platform for the goals, policies, and actions of the Plan, a few of which are relevant in the context of this ordinance; namely, as set forth in guiding principle 2, a "connected place" that "fosters new connections-for automobiles, pedestrians, and bicyclists-between the western and eastern halves of the city; better connections to the Peninsula; and new and safe pedestrian and bicycle linkages to San Francisco"; further, an "enhanced and connected open space network and green streets" as described in principle 3, that builds on the "strength and connectivity of the city's greenways, with a range of new parks, plazas, community commons, and recreational paths"; and as directed in principle 4, "a diversity of transportation modes and choices", which includes "transit, car/vanpooling, bicycling, walking"; and

WHEREAS, in the context of transportation within the City, the transportation element provides that "the design, construction, operation, and maintenance of the city streets shall be based on a 'complete streets' concept that enables safe, comfortable, and attractive access and travel for pedestrians, bicyclists, motorists, and transit users" (Policy T-P-2), and that "the City's Traffic Impact Fee shall include bicycle, pedestrian, transit, and road improvements so that development pays its fair share toward a circulation system that optimizes travel by all modes" (Policy T-P-6), while the implementation program provides that the City's Traffic Impact Fee should be maintained "to insure that development pays its fair share toward a circulation system that optimizes travel by all modes" (Action T-A-3); and

WHEREAS, in the context of parks and recreation facilities, the General Plan identifies a desire to "increase park acreage to serve the needs of the growing population" (Policy PP-P-1), create "two new large parks....one each north and south of Powell Street, shall be provided" (Policy PP-P-2), as well as "new smaller open spaces – including public

plazas and places, community gardens, and pocket parks" (Policy PP-P-3), and "other park opportunities to maximize accessibility for residents, such that every resident ....has access to a park within a five-minute walk" (Policy PP-P4), to name but a few of the General Plan's policies; and

WHEREAS, to further refine the General Plan's goals with respect to parks and recreation facilities, the implementation program directed that a strategic parks master plan should be prepared which identifies needs and identifies options for financing and implementation (Action PP-A-1); and

WHEREAS, on January 18, 2011, the City Council adopted the Parks and Recreation Strategic Plan which provides, among other options, that the City should pursue impact fees to help off-set the impacts of an increased population; and

WHEREAS, in order to implement these policy directives to maintain the City's Traffic Impact Fee to insure that development pays its fair share toward a circulation system that optimizes travel by all modes and provide a park and recreation impact fee to off-set the impacts of an increased population, the City Council must provide a statutory framework to establish, impose, and collect impact fees for transportation and park and recreation facilities; now, therefore, be it resolved that

THE CITY COUNCILOF THE CITY OF EMERYVILLE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION ONE. **PURPOSE AND INTENT.** The purpose and intent of this ordinance is to provide authority and a process for the city to establish and collect fees which will be imposed upon development projects for the purpose of mitigating the impacts that the development projects have upon the city's ability to provide transportation facilities and park and recreation facilities. These provisions will be set forth in a new Article 19 to Chapter 5 of Title 9 of the City of Emeryville Planning Regulations. Further, since existing authority to establish, impose and collect traffic facility impact fees is being replaced, the existing provisions set forth in Article 3 of Chapter 2 of Title 3 of the City of Emeryville Municipal Code are being repealed.

SECTION TWO. **FINDINGS.** In accordance with Section 9-7.1305 of Article 13 of Chapter 7 of Title 9 of the City of Emeryville Planning Regulations, the City Council hereby finds that as described in the Recitals above, this ordinance is consistent with the City of Emeryville General Plan, will be of benefit to the public, and as provided by Section Five herein, this ordinance is exempt from the requirements of the California Environmental Quality Act.

SECTION THREE. Adding Article 19 to Chapter 5 of Title 9 of the City of Emeryville Planning Regulations titled "Development Impact Fees". Article 19 of Chapter 5 of Title 9 of the City of Emeryville Planning Regulations titled "Development Impact Fees" is hereby added to read as follows:

Article 19
DEVELOPMENT IMPACT FEES

9-5.1901. Authority and reference to article.

This article may be referred to as the "Impact Fee Ordinance," and is adopted pursuant to the authority of Article XI, Section 7 of the California Constitution, Cal. Gov't Code §§ 66000 et seq. (hereinafter "Mitigation Fee Act"), Cal. Gov't Code §§ 65000 et seq. (the planning and zoning law of the state of California), and in accordance with the findings set forth in the ordinance codified herein.

9-5.1902. Purpose of fees.

Pursuant to this article, the City has established fees which will be imposed upon projects for the purpose of mitigating the impacts that the projects have upon the City's ability to provide public facilities.

9-5.1903. Use of fees.

(a) The fees imposed by the City pursuant to this article, including any interest earnings thereon, shall be used to pay, in whole or in part, the estimated reasonable cost of providing specified public facilities, as described in implementing resolutions; to reimburse the City for the cost of specified public facilities constructed by the City with funds from other sources; and to make reimbursement payments in accordance with Section 9-5.1915.

(b) As described in each implementing resolution, the specified public facilities will be categorized into separate and distinct sets of public facilities based upon the type of public facility to be provided, or other identifying features. Each separate set of specified public facilities described in an implementing resolution shall be referred to in this chapter as a "public facility category." Public facility categories include, but are not limited to: transportation and park and recreation facilities.

(c) For each separate public facility category, a separate fee shall be calculated and imposed, and each separately imposed fee shall be collected by the City and deposited

in a separate and distinct "fee fund," subject to the accounting requirements of the Mitigation Fee Act.

9-5.1904. Calculation of fees by implementing resolutions.

Pursuant to the Mitigation Fee Act, in any action establishing, increasing, or imposing a fee as a condition of approval of a project, a technical report shall be prepared for each public facility category, subject to City Council approval by implementing resolution. Each implementing resolution shall include the following:

(a) Identify the purpose of the fee by identifying the estimated types and quantities of projects subject to the fee, and the public facility category to be funded by the fees.

(b) Identify the use of the fee by identifying the specified public facilities to be funded by the fees.

(c) Determine how there is a reasonable relationship between the City's use of the fee and the types of projects on which the fee is to be imposed by demonstrating how the project will benefit from the specified public facilities to be funded by the fees.

(d) Determine how there is a reasonable relationship between the need for the specified public facilities and the types of projects on which the fee is to be imposed, by demonstrating how the project creates a demand for the construction of the specified public facilities to be funded by the fees.

(e) Determine how there is a reasonable relationship between the amount of the fee and the cost of the specified public facility attributable to the project on which the fee is to be imposed. This shall include two elements: (1) a quantification of the estimated reasonable cost of providing the specified public facility, which may include the estimated costs of land acquisition, design, construction, construction administration, general administration (including establishment and enforcement) of the fee program, and contingencies; and (2) an identification of the method by which the City quantifies the proportionate responsibility of each project for the cost of the specified public facilities, which may be satisfied by establishing a formula which reasonably quantifies

the proportionate responsibility of various types of projects using standardized units of measurement

9-5.1905. Obligation to pay fees.

(a) Each applicant for City approval of a project (including applications for a change of use and remodels) shall pay impact fees to the City, in accordance with the amounts set forth in implementing resolutions, unless the applicant establishes, to the satisfaction of the Director, entitlement to a fee adjustment pursuant to Section 9-5.1908 of this article, a fee exemption pursuant to Section 9-5.1909 of this article, or approval of a fee credit pursuant to Section 9-5.1913 of this article..

(b) The obligation to pay impact fees pursuant to this article shall not replace an applicant's obligation to mitigate development project impacts in accordance with other requirements of state or local law, or to otherwise comply with applicable City site development standards (Chapter 4 of Title 9 of the Planning Regulations), citywide use and development regulations (Chapter 5 of Title 9 of the Planning Regulations), or subdivision requirements (Chapter 6 of Title 9 of the Planning Regulations).

9-5.1906. Timing of payment.

(a) At Permit Issuance. Except as otherwise provided in this section, the fees for each project shall be paid in full prior to the issuance of the permit required for that project.

(b) After Permit Issuance. Upon application by an applicant, and approval by the Director, the fees for a project may be paid as follows:

(1) For projects that include residential dwelling units, if application of this subsection (b)(1) is specifically requested by the applicant, fees shall be paid before: (i) final inspection, or (ii) issuance of a certificate of occupancy, whichever occurs first. The amount of the fee to be paid shall be the amount of the fee in effect on the date of permit issuance. Notwithstanding the

foregoing, the Director may deny the application to defer payment of fees for a residential project that does not meet the criteria set forth in Cal. Gov't Code § 66007 (b)(2)(A) pertaining to lower income affordable housing, and thus require the earlier payment of fees only if the criteria set forth in Cal. Gov't Code § 66007 (b)(1) is satisfied.

(2) For any non-residential project, fees shall be paid in their entirety on a date before the project receives (i) its final inspection, or (ii) its certificate of occupancy, whichever occurs first. However, the amount of the fee to be paid for a project shall be the amount of the fee in effect, pursuant to implementing resolution, at the time that full payment is made to the City.

(c) Implementation. The Director shall develop an application form for applicants to request payment of fees after permit issuance pursuant to subsection (b) of this Section and shall establish departmental guidelines for approval or denial of such applications. The Director is authorized to execute and approve an application under this subsection (c).

(d) Compliance. No City official may issue a permit with respect to a project unless the fees required by this article have been paid as required by subsection (a) of this Section or an application meeting the criteria set forth in subsection (c) of this Section has been approved by the Director in connection with the project. No City official may certify final inspection or issue a certificate of occupancy for a project, or otherwise allow occupancy of a project, until the fees required by this article with respect to such project are paid in accordance with this section.

9-5.1907. Amount of payment.

(a) The amount of any fee to be paid for a project shall be the amount of the fee in effect, pursuant to implementing resolution, on the date of permit issuance. However, for any project besides one covered by Section 9-5.1906(b)(1), if any fee is paid after the date of permit issuance in accordance with an application approved by the Director pursuant to Section 9-5.1906(c), then the amount of the fee shall be the amount in effect, pursuant to implementing resolution, at the time that full payment is made to the City.

(b) The amount of any fee to be paid in connection with a change of use shall be: (1) the amount of the fee required pursuant to subsection (a) of this Section for the proposed use, (2) minus the amount of the fee paid for the last legal use of the existing structure.

(c) The amount of any fee to be paid in connection with a remodel shall be the amount of the fee required pursuant to subsection (a) of this Section for that portion of the remodel which generates impacts greater than the last legal use of the existing structure.

(d) In the event that the land use of a project is not included in the implementing resolution for determination of the amount of the fee, the Director shall determine their fee as set forth in the implementing resolution.

9-5.1908. Fee adjustments by the City.

The City reserves the right to update and adjust each fee from time to time, in accordance with the Mitigation Fee Act. The fee in effect at the time any applicant has obtained a vested development right shall be subject to adjustment by the City, as incorporated in updated implementing resolutions in effect at the time that full payment of the fee is made, based upon any or all of the following criteria:

(a) Adjustments in the amount of the estimated construction costs of providing the specified public facilities based upon adjustments in accordance with the inflation index.

(b) Adjustments to replace estimated costs with actual costs (including carrying costs) of providing the specified public facilities.

(c) Adjustments to reflect more accurate cost estimates of providing the specified public facilities based upon more detailed analysis or design of the previously identified specified public facilities.

9-5.1909. Exemptions.

(a) Residential projects are exempt from impact fees for any remodel, as long as it does not result in a change of use.

(b) A project shall be exempt from the requirements of this Impact Fee Ordinance if the applicant provides documentation, to the satisfaction of the Director, of federal, state, or local law (including a duly adopted resolution of the City Council) which establishes entitlement to the exemption.

9-5.1910. Request for refund.

An applicant may request a refund of a fee previously paid in accordance with this article, and the Director may approve said refund, only if the applicant provides written documentation to the satisfaction of the Director that: (1) the permit (including any planning permit or City approval on which the fee was imposed) is cancelled or voided, and (2) work has not progressed on the permit which would allow commencement of a new use or change of use, and (3) the City has not already committed the fees to the construction of public facilities. Any refund made pursuant to this subsection shall include a deduction to cover the City's administrative costs of processing the refund.

9-5.1911. Application for potential credit.

An applicant may be eligible for a credit against impact fees otherwise owed, in return for providing a specified public facility to the City, only if the applicant submits a written application to the Director which establishes compliance with all of the following requirements to the satisfaction of the City Council:

(a) Describe the specified public facilities (or portion thereof) proposed to be provided by the applicant, with a cross-reference to the description of the specified public facilities in the relevant implementing resolution.

(b) Identify the estimated cost of providing the specified public facilities (including construction, design, and/or land acquisition) for which the applicant is requesting credit.

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

(d) Document that either: (1) the applicant is required, as a condition of approval for the project, to construct the specified public facilities; or (2) the applicant requests to build

one or more specified public facilities which benefit the project, and the City Council determines by resolution prior to the commencement of construction that it is in the City's best interests for the specified public facilities to be built by the applicant.

(e) To the extent that credit for land acquisition costs are requested, document that: (1) the location of the land is advantageous to the public facility needs of the City; and (2) 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: (A) documentation provided by the applicant to the City, or (B) in the event that the City 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 City which is qualified to express an opinion as to the value of the property (pursuant to Cal. Civ. Proc. Code § 1255.010).

(f) Notwithstanding the foregoing, no credit shall be provided against impact fees otherwise owed if an applicant has received a development bonus in accordance with Section 9-4.204 of these Planning Regulations for providing the specified public facility.

9-5.1912. Timing of application for potential credit.

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

9-5.1913. Amount of potential credit.

In the event that the City determines that the applicant has submitted a timely application in compliance with Section 9-5.1912, and it is in the City's best interest to allow the applicant to provide the proposed specified public facility, the applicant shall

be entitled to credit against fees otherwise owed in accordance with this article; provided, that the applicant enters into a public improvement agreement with the City approved by resolution of the City Council which includes the following essential terms:

(a) The design of the specified public facility is approved by the City.

(b) The applicant agrees to provide the specified public facilities in return for the credit to be allocated in accordance with the terms of the public improvement agreement and this article.

(c) The amount of credit available to the applicant shall not exceed the lesser of: (1) 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, and (2) the estimated cost of providing the specified public facility, as identified in the implementing resolution.

(d) The amount of credit available to the applicant for land dedication shall be equal to the amount identified in 9-5.1911(e).

(e) The land to be dedicated to the City shall not contain hazardous substances, waste or materials, as defined by state or federal law, including petroleum, crude oil or any fraction thereof, or shall otherwise be remediated in accordance with a cleanup plan approved by the City and applicable state or federal regulatory agencies to a level suitable for the intended use. Further, the applicant shall agree to thereafter defend, indemnify, and hold the City harmless from all demands, claims, orders, costs, expenses, fees, penalties, and causes of action related to hazardous substances, waste or materials, as defined by state or federal law, including petroleum, crude oil or any fraction thereof, located on or emanating from the property.

(f) The applicant provides improvement security in a form and amount acceptable to the City.

(g) The applicant agrees to pay prevailing wages for all public works as defined in the California Labor Code related to the specified public facility. The requirement for payment of prevailing wages shall be limited to the construction of the specified public facility for which a fee credit is granted, unless an exception to prevailing wage

requirements applies under the California Labor Code, in which case the requirement for prevailing wages shall not apply.

(h) The applicant identifies the project to which the credit will be applied.

(i) The credit may only be applied to fees which would otherwise be owed for the public facility category relevant to the specified public facility.

9-5.1914. Request for reimbursement.

To the extent that the applicant has a balance of credit available, the applicant may be entitled to potential reimbursement from the City only if the applicant submits a written request to the Director which establishes the following:

(a) The request shall be made no later than 180 days after the later to occur of: (1) issuance of the last permit within the project for which the application for credit was made, or (2) the date of the city's acceptance of the specified public facilities as complete.

(b) 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 9-5.1913 (c)) less amount of credit previously allocated to offset fees pursuant to Section 9-5.1913 (h).

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

9-5.1915. Allocation of reimbursements.

(a) In the event the Director determines that the applicant has properly submitted a request for reimbursement pursuant to Section 9-5.1914, the Director shall prepare a written determination to be approved by resolution of the City Council which will identify the dollar amount of the reimbursement. The dollar amount of the reimbursement shall be based upon the amount specified in the applicant's request, not to exceed the actual

credit available to the applicant, less the total of all credit allocations to offset fees pursuant to Section 9-5.1913, as determined by the City.

(b) The City shall make reimbursement payments to the applicant or the entity identified by the applicant pursuant to Section 9-5.1914(c). The right to receive reimbursement payments, if any, shall not run with the land.

(c) The City shall make reimbursement payments pursuant to a schedule approved by resolution of the City Council, and consistent with the approved capital improvement program. No interest shall accrue on the amount subject to reimbursement. The City shall not make and shall have no obligation to make reimbursement payments to an applicant from any source other than the relevant fee fund, nor shall any reimbursement be made in excess of the amount of fees deposited in the relevant fee fund.

(d) 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.

9-5.1916. Notice of protest rights.

(a) Each applicant is hereby notified that, in order to protest the imposition of any impact fee required by this article, the protest must be filed in accordance with the requirements of this article and the Mitigation Fee Act. Failure of any person to comply with the protest requirements of this article or the Mitigation Fee Act shall bar that person from any action or proceeding or any defense of invalidity or unreasonableness of the imposition. Notwithstanding language to the contrary, the provisions of Article 14 of Chapter 7 of Title 9 of these Planning Regulations and Chapter 4 of Title 1 of the Emeryville Municipal Code shall not apply to a protest of the imposition of any impact fee required by this article.

(b) On or before the date on which payment of the fee is due, the applicant shall pay the full amount required by the City and serve a written notice to the Director with all of the following information: (1) a statement that the required payment is tendered, or will be tendered when due, under protest; and (2) a statement informing the City of the factual elements of the dispute and the legal theory forming the basis for the protest.

(c) After receipt of the notice from the applicant, and prior to the informal hearing to be scheduled in accordance with Section 9-5.1917, the Director shall investigate the factual and legal adequacy of the applicant's protest. At the request of the Director, the applicant shall provide additional information or documentation in substantiation of the protest.

(d) The applicant shall bear the burden of proving, to the satisfaction of the Director, entitlement to a fee adjustment. The evidence (information and documentation) to be submitted by the applicant in support of the protest shall include, but not be limited to, an identification of the amount of the fee which the applicant alleges should be imposed upon the project, and all factual and legal bases for the allegation. The applicant shall identify each portion of this impact fee ordinance and any implementing resolution which the applicant claims supports the allegation. The applicant shall identify each portion of this impact fee ordinance (in particular the elements summarized in Section 9-5.1904) and each portion of any implementing resolution (in particular the technical reports incorporated therein) which the applicant claims fails to support the City's imposition of the fee upon the project.

9-5.1917. Informal hearing.

(a) The Director shall schedule an informal hearing regarding the protest, to be held no later than 60 days after the imposition of the impact fees upon the project, and with at least 10 days' prior notice to the applicant (unless either dates are otherwise agreed by the Director and the applicant).

(b) During the informal hearing, the Director shall consider the applicant's protest, relevant evidence assembled as a result of the protest, and any additional relevant evidence provided during the informal hearing by the applicant and the City. The Director shall provide an opportunity for the applicant to present additional evidence at the hearing in support of the protest. However, in weighing relevant evidence, the Director may consider the extent to which the applicant provided requested substantiating evidence prior to the hearing.

9-5.1918. Director's determination.

When the Director determines that sufficient evidence has been submitted to decide the protest, the Director shall close the informal hearing and issue a written determination regarding the protest. The Director may continue the informal hearing in order to assemble additional relevant evidence. The Director's determination shall support the fee imposed upon the project unless the applicant establishes, to the satisfaction of the Director, entitlement to an adjustment to the fee.

9-5.1919. Appeal of Director's determination.

Any applicant who desires to appeal a determination issued by the Director pursuant to Section 9-5.1918 shall submit a written appeal to the Director and the City Manager. A complete written appeal shall include a complete description of the factual elements of the dispute and the legal theory forming the basis for the appeal of the Director's determination. An appeal received by the City Manager more than 10 calendar days after the Director's determination may be rejected as late. Upon receipt of a complete and timely appeal, the City Manager shall appoint an independent hearing officer to consider and rule on the appeal.

9-5.1920. Appeal hearing.

The independent hearing officer shall, in coordination with the applicant and the Director, set the time and place for the appeal hearing, and provide written notice thereof. The independent hearing officer may issue directives related to the conduct of the hearing in an effort to facilitate resolution of the dispute or narrow the issues in dispute, including prehearing or post-hearing briefs pursuant to a briefing schedule, and scheduling presentation of evidence during the hearing. The independent hearing officer shall consider relevant evidence, provide an opportunity for the applicant and the City to present additional noncumulative evidence at the hearing, and preserve the complete administrative record of the proceeding.

9-5.1921. Decision of independent hearing officer; Judicial review.

(a) Within 30 days after the independent hearing officer closes the hearing and receives post-hearing briefs (if any), the independent hearing officer shall issue a written decision on the appeal hearing which shall include a statement of findings of fact in support of the decision and notice that the time within which judicial review must be

sought is governed by this section. The written decision shall be mailed by first-class mail, postage prepaid, including a copy of the affidavit or certificate of mailing, to the applicant. The independent hearing officer's discretion shall be limited to a determination that either supports the Director's determination or orders the City to refund all or a portion of the impact fees to the applicant. The applicant shall bear the burden of proving entitlement to a fee adjustment. The decision of the hearing officer is final and conclusive, and is subject to judicial review only in accordance with subsection (b) herein.

(b) Judicial review of any decision of the hearing officer may be had pursuant to Cal. Civ. Proc. Code § 1094.5 only if the petition for writ of mandate is filed no later than the ninetieth (90th) calendar day following the date the decision of the hearing office is provided to the applicant as provided in subsection (a) above.

(c) If the applicant files a request for the record, as specified in subsection (d) herein, within ten (10) calendar days after the date the decision of the hearing officer is provided to the applicant as provided in subsection (a) above, the time within which a petition pursuant to Cal. Civ. Proc. Code § 1094.5 may be filed shall be extended to not later than the thirtieth (30^{th}) calendar day following the date on which the record is either personally delivered or mailed to the applicant or his or her designee.

(d) The complete record of the proceedings shall be prepared by the city clerk and shall be delivered to the applicant within ninety (90) calendar days after a written request therefor has been filed by the applicant with the city clerk. The City may recover from the applicant its actual costs for transcribing or otherwise preparing the record. Such record shall include the transcript of the proceedings, all pleadings, all notices and orders, any proposed or tentative decision by a hearing officer, the final decision, all admitted exhibits, all rejected exhibits in the possession of the City or hearing officer, all written evidence, and any other papers in the case.

9-5.1922. Costs of protest.

The applicant shall pay all City costs related to any protest or appeal pursuant to this article, in accordance with the fee schedule adopted by the City. At the time of the applicant's protest, and at the time of the applicant's appeal, the applicant shall pay a

deposit in an amount established by the City to cover the estimated reasonable cost of processing the protest and appeal. If the deposit is not adequate to cover all City costs, the applicant shall pay the difference within 20 days after receipt of written notice from the Director.

9-5.1923. Applicant's acknowledgment of adjustment or waiver.

As a condition of any adjustment or waiver made for a fee imposed upon a particular project, the applicant may be required by the Director or the independent hearing officer to provide an acknowledgment and waiver, in a form acceptable to the Director, of any further right to protest or appeal the City's imposition of fees for that project.

9-5.1924. Definitions.

As used in this article, all words, phrases, and terms shall be interpreted in accordance with the definitions set forth in the Mitigation Fee Act, unless otherwise defined herein.

(a) "Applicant" means any person, or other legal entity, which applies to the City for approval of a development project.

(b) "Change of use" means any proposed use of an existing structure (or a previously existing structure) on a parcel which: (a) requires a building permit, planning permit, or other permit or City approval, and (b) the proposed use is included in a different property use category (as defined in implementing resolutions) than the last legal use of the existing structure, and (c) the proposed use results in impacts greater than the last legal use of the existing structure.

(c) "Fee" means, for the purpose of this article, a development impact fee imposed by the City in accordance with this article.

(d) "Fee fund" means each of the separate and distinct funds into which fees for each public facility category are deposited.

(e) "Impact Fee Ordinance" means this article.

(f) "Implementing resolution" means a resolution of the City Council of the City of Emeryville, including any technical report incorporated by reference, in which the findings specified in Section 9-5.1904 are made for each public facility category.

(g) "Inflation index" means a recognized standard index (such as the Consumer Price Index), as determined by the City Council to be a reasonable method of calculating the impact of inflation upon cost estimates set forth in implementing resolutions.

(h) "Mitigation Fee Act" means Cal. Gov't Code §§ 66000 et seq.

(i) "Permit" means the City building permit required for a project, or, if the project consists of a change of use for which no building permit is required, a zoning compliance review or any other permit or City approval required for the change of use.

(j) "Project" means any project as defined in Section 9-8.216(qq) of these Planning Regulations, and shall specifically include any building permit, planning permit, or any other permit or City approval required for a change of use. Project shall specifically include any change of use or remodel.

(k) "Public facility" means any public improvements, public services, or community amenities, as defined by the Mitigation Fee Act, including, but not limited to: transportation improvements, park and recreation facility improvements, and any similar public improvement for which the City has adopted an implementing resolution pursuant to this article.

(l) "Public facility category" means a separate and distinct set of public facilities as described in Section 9-5.1903 (b).

(m) "Remodel" means any proposed improvement or reconstruction of an existing structure (or a previously existing structure) on a parcel which: (a) requires a building permit, planning permit, or other permit or City approval, and (b) results in impacts greater than the last legal use of the existing structure.

(n) "Specified public facility" means those public facilities described in each implementing resolution, the total program costs of which are used as the basis for the calculation of a fee, as described in Section 9-5.1904.

(o) "Vested development rights" means an applicant's right to proceed with development of a development project in substantial compliance with the local ordinances, policies, and standards in effect at the time that the rights vest, as the term is defined in the vesting tentative map statutes (Cal. Gov't Code §§ 66498.1 through 66498.9), development agreement statutes (Cal. Gov't Code §§ 65864 through 65869.5), and state law.

SECTION FOUR. Repealing Article 3 of Chapter 2 of Title 3 of the City of Emeryville Municipal Code titled "Traffic Facilities Impact Fee Fund". Article 3 of Chapter 2 of Title 3 of the City of Emeryville Municipal Code titled "Traffic Facilities Impact Fee Fund" is hereby repealed in its entirety.

SECTION FIVE. CEQA DETERMINATION

The City Council finds, pursuant to Title 14 of the California Administrative Code, section 15061(b)(3) and section 15378(a), that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment. This action is further exempt from the definition of a Project in section 15378(b)(3) in that it concerns general policy and procedure making.

SECTION SIX. SEVERABILITY

Every section, paragraph, clause, and phrase of this Ordinance is hereby declared severable. If, for any reason, any section, paragraph, clause, or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining section, paragraphs, clauses, or phrases.

SECTION SEVEN. EFFECTIVE DATE

This Ordinance shall take effect thirty (30) days following its final passage. The City Clerk is directed to cause copies of this Ordinance to be posted or published as required by Government Code section 33693.

SECTION EIGHT. CODIFICATION

Section Three and Four of this Ordinance shall be codified in the Emeryville Municipal Code. Sections One, Two, Five, Six, Seven and Eight shall not be so codified.

This Ordinance was **INTRODUCED AND FIRST READ** by the City Council of the City of Emeryville at a regular meeting held on Tuesday, July 1, 2014, and **PASSED AND ADOPTED** by the City Council at a regular meeting on Tuesday, July 15, 2014.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY