



September 22, 2020

Community & Economic Development Committee
Oakland City Council
One Frank H Ogawa Plaza
Oakland, CA 94612

RE: Impact Fees Audit Report (CED Agenda Item #4, September 22, 2020)

Dear Chairperson Reid and Councilmembers Bas, Gallo, and Taylor:

On behalf of East Bay Housing Organizations, I am offering the following comments on the Impact Fees Audit Report appearing on the CED Committee agenda for September 22, 2020.

EBHO is a member-driven organization working to preserve, protect, and create affordable housing opportunities for low-income communities in the East Bay by educating, advocating, organizing, and building coalitions. We were a principal advocate for the creation of the Affordable Housing Impact Fee, and as you know we have called for a detailed accounting of fee assessments and revenues compared to residential building permit activity, which first prompted this audit.

Our full comments follow below, but in brief we think the report as it stands does not adequately answer the critical accounting questions that we have raised for the past two years. Accordingly, we urge you to hold this report in committee pending a supplemental report that will provide the additional information needed to address the outstanding issues.

We are grateful that the audit report, which was first promised for delivery over a year ago, is finally seeing the light of day. We appreciate the tremendous work that has gone into this, attested to by the 1,800 pages of tables that are contained in the report's appendices. And we acknowledge and thank staff for meeting with us on several occasions to keep us informed about the progress of this work. However, in many respects this information falls short of providing the necessary insight into the implementation of the City's impact fees, particularly the Affordable Housing Impact Fee adopted in 2016.

The following comments are offered to provide suggestions about how this report can be improved before it is forwarded to the full City Council, and we are confident that the final result will address these issues.

1. The report doesn't provide sufficient background and context for those who are not already familiar with the details of the impact fee programs. There is no description of the various impact fees (Jobs/Housing, Affordable Housing, Infrastructure, and Transportation), what kind of projects each fee covers, how the fee is calculated, the allowable uses of the fees, etc. For people not familiar with these programs, the absence of this information could lead to incorrect conclusions about the data itself.
2. There is no background regarding the impetus for this audit report and the questions and concerns that prompted it, and as a result critical information has not been presented. A principal reason for preparation of this report was concerns first raised by EBHO about an apparent mismatch between the large volume of housing units that have been permitted in recent years and the much smaller amount of fees that has been assessed and collected. We have repeatedly requested a detailed accounting that will shed light on how many projects were exempted from the fee, the reasons for those exemptions, and the extent to which developers chose to include affordable housing units onsite rather than pay the fee, as provided for in the ordinance. Unfortunately, as presented, the audit doesn't adequately identify or address these concerns.
3. The report doesn't adequately distinguish between activities that are not covered by the fee ordinance at all, because they either don't meet the definition of "development project" or submitted building permit applications prior to September 1, 2016, and projects that are covered but are exempt for one reason or another. It is one thing if a project is outside the scope of the ordinance, and an entirely different matter if the project meets one of several criteria for exemption despite being a covered development project. The audit has apparently involved an examination of 14,490 records of building permits issued by the City over the audit period, including an enormous number of permits that are for activities not covered by the impact fee ordinances. This includes bathroom remodels, window replacements, tenant improvements in commercial facilities, cell towers, etc. Out of all these records, it turns out that 449 records were correctly assessed fees, 23 were incorrectly not assessed, and 48 were incorrectly assessed when fees were not applicable. Of the 13,970 records that were correctly not assessed fees, we do not know how many were not covered by the ordinances at all, and how many were covered but met the requirements for exemption.
4. The report frequently aggregates all fees even though different types of projects are subject to different fees. The Jobs/Housing Fee applies only to office and warehouse/distribution projects, the Affordable Housing Fee applies only to projects that add residential units to the City's housing stock, and the Transportation and Infrastructure fees apply more generally to a wide range of projects that either add new housing units to the supply or create additional

square footage for office, retail, industrial, and other uses. While some financial information is broken out by fee type, much of the data is not. The report should consistently provide data that includes listings of projects by fee type and amount for all projects that were subject to the fee.

5. The report should provide essential data elements that are either not present or are not well presented. At a minimum, we think the following information is needed:
 - Results should be reported separately for each of the four fees.
 - The report should distinguish between building permit types not covered by the ordinance versus permits that qualify as “development project” as defined in the ordinances. The universe that needs to be evaluated should be only those permits that are for qualified development projects.
 - The number of projects that were exempted (as opposed to just not covered) should be broken out to distinguish the reasons for exemption. For example, the Affordable Housing Fee provides exemptions for affordable housing projects, secondary units, and projects that obtained vested rights not later than October 31, 2016 (60 days after the ordinance became effective). Currently there is no way to determine how many projects fall under which exemptions except to comb through over 1,800 pages of tables contained in the Appendices.
 - Information regarding any fee waivers, reductions, or appeals requested and the outcome of such requests.
 - Information regarding the fee calculation for each project – particularly for the Affordable Housing Fee where the per unit fee amount varies based on which of three geographic zones a project falls into and the type of project (single family home, townhome, or multifamily development). For the other fees, the number of square feet subject to the fee, the fee rate, and the total fee.
 - Information should be provided for each project that provided affordable housing units rather than pay the fee (this option exists for both the Affordable Housing Fee and the Jobs/Housing Fee). For each project, the report should list the total units, the number of affordable units, and the affordability level that such units are restricted to. This should include an identification of the maximum allowable rents for those units, which vary by both affordability level and the number of bedrooms in each unit. The report should also indicate where the required regulatory restrictions were properly recorded against the property.
 - For projects where onsite units were provided in lieu of fees, an identification of which projects utilized the State Density Bonus or any City of Oakland density bonus, and the extent to which the units provided in lieu of fees were already required to be provided as a condition of the density bonus.

- Similar information should be provided for any project that provided off-site affordable housing units, including the location and timing of the off-site projects.
- For projects that have been assessed fees, but have not yet paid the fees in full, the report should indicate whether the project (a) failed to go forward (and thus was no longer subject to the fee), (b) has not yet had its building permit issued (in which case the fee is not yet payable), or (c) in the case of the Affordable Housing and Jobs/Housing Fees, the project has paid the initial installment upon issuance of a building permit but has not yet reached the point at which subsequent installments are due.
- For projects subject to fees paid in installments, the date the permit was issued and the date the certificate of occupancy was issued or the estimated date for that to occur. This would provide information that could allow the City to better determine the amount of revenue that is receivable but not yet payable, and when that revenue can be anticipated.

These are not new questions – we have been asking that this information be provided for nearly three years. Over a year ago we provided staff with a sample of how that information could be presented; we are happy to make that available once again.

6. With respect to the review of the process for assessing and collecting fees, the audit notes that even though the City had over six months following adoption to prepare for implementation, the City's systems and procedures were wholly inadequate. Among the report's findings:
 - Calculation of fees was an entirely manual process
 - Critical data elements were not required to be entered in order to proceed with permit processing.
 - Staff were not adequately trained
 - There were no procedures manuals
 - There were no alerts or triggers to remind staff to assess impact fees, particularly the portion of the fees that is due when construction is completed.
 - There were no fields to indicate supervisory review of fee assessments.
 - The City's permit system and financial system could not always be reconciled.

The report notes that several software and procedural changes have recently been implemented, and we hope these will successfully address the many deficiencies that were noted.

7. Finally, we note that Table 3 (page 4 of the Appendices), which provides info on assessments, collections, and expenditures, indicates that there have been no expenditures of housing fees to date. That is not necessarily a failing of the

program. The fee program is designed to provide the City with a source of funds that can be committed to projects early in the process, the same as other City affordable housing funds, so that developers can leverage those commitments and successfully compete for low income housing tax credits, State housing funds, and other sources. Expenditures will generally not occur until projects start construction, which may take several years after the City's initial funding award. It is for this reason that we have repeatedly urged the City to create a process where revenues that are receivable but not yet due can be committed to development projects

What is needed in addition to an expenditure report is a list of the projects that were awarded impact fee funding, broken out by fee type, since the eligible uses and income targeting depend on the fee type. This information would show that the City is actively committing these funds and could assure the public – and the developers who are paying these fees - that these funds are in fact being used for their intended purpose.

We believe these issues can be addressed with further work by the consultants and staff, and the information that needs to be made available to the City Council and the public can be produced. **We therefore urge you to hold this report in committee and direct staff to return with the data and information noted above.**

As we have offered in the past, we are happy to work with staff to clarify any of the issues we have raised in this letter, and we look forward to a more complete report that will enable the City Council to properly assess the fee programs and assure the public that these programs are being fully implemented in accordance with the requirements in the ordinances.

Sincerely,



Jeffrey Levin
Policy Director

cc: Edward D. Reiskin, City Administrator
William Gilchrist, Director of Planning & Building
Shola Oyatole, Director of Housing & Community Development