East Bay Housing Organizations

February 22, 2021

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

RE: Impact Fees Annual Report (CED Agenda Item #5, February 23, 2021)

Dear Chairperson Kalb and Councilmembers Fife, Gallo, and Taylor

On behalf of East Bay Housing Organizations, I am offering the following comments on the Impact Fees Annual Report appearing as item 5 on the CED Committee agenda for February 23, 2021.

After 18 months of waiting for the audit of the impact fee program, and the several months of discussions that followed its initial release, we are deeply disappointed that this year's report is essentially the same as previous years and contains none of the detailed information that we have consistently urged the City to report on an ongoing basis. While the report may meet the basic requirements of state law regarding annual reporting on impact fee programs, it falls far short of providing the public and the City Council with the transparency needed to assess the program's effectiveness and make policy changes that would improve the program. We urge the Committee to direct staff to provide a supplemental report with information on each of the development projects that applied for building permits during the fiscal year and how they met the requirements of the impact fee ordinance.

We also urge the Committee to recommend several changes to the program itself to better meet the original intent and objectives, as outlined at the end of this letter.

1. **As we have noted in the past, the Affordable Housing Impact Fee is generating substantial revenue without negatively impacting housing production.**

   At the time of adoption, revenue was estimated to be $60 - $70 million over ten years – an average of roughly $6 to $7 million per year with lesser amounts in the early years and greater amounts in later years. In fact, in the first four years of operation, fee assessments have exceeded $35 million. The fee has not been a barrier to housing development in Oakland – productions levels have been at record highs since the fee was adopted in 2016. <u>Had the fee been enacted</u>

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earlier and phased in more quickly, as we urged at the time, far more would have been assessed and collected.

2. **After many years with little activity, the Jobs/Housing Fee is now also generating significant revenue**.

   In the past three years alone, more than $18.5 million has been assessed, of which nearly $6.5 million has been collected. Even more funding could be generated if the City were to expand the fee to cover hotel, retail and entertainment uses, which are currently exempt, particularly within the Downtown Oakland Specific Plan area.

3. **The lag between fee assessment and fee collection, and the refusal to award assessed but as-yet uncollected fees, is preventing the City from leveraging tens of millions of dollars in outside funding for affordable housing.**

   Both the Affordable Housing Impact Fee and the Jobs/Housing Impact Fee allow the fees to be paid in installments, unlike the transportation and capital improvements fees, which are collected in a single payment at the time a building permit is issued. Particularly when regional, State and Federal funds become available on a short-term basis, as is the case with housing bond measures and one-time increases in tax credit allocations, there is a limited window in which affordable housing projects can apply for these funds. Because local funding is the key to successfully leveraging these other funding sources, if the City does not award fees as they are assessed, we miss out on the opportunity to secure funding for substantially more affordable housing. This contributes to the City's tremendous imbalance in housing production, where they City is over-producing market-rate housing while falling far short of its Housing Element targets for affordable housing. During the current Housing Element cycle, less than 7 percent of the housing permitted has been affordable to lower income households who continue to experience severe cost burden and ongoing threats to displacement - far less than the 28% specified in the City's RHNA numbers for very low and low income and the additional 19.1% specified for moderate income households. (See attached table for details). Since these impacts fall most heavily on Black and Brown communities, this only exacerbates the already severe and ongoing racial disparities in housing conditions and outcomes in Oakland.

   We have repeatedly urged the City to find ways to award assessed fees earlier, even if such awards are mad conditional on future receipts. If this is not possible, then the City Council should consider modifying the program to require full payment at the time the building permit is issued, as is the case for the transportation and capital improvement impact fees.

4. **The data presented in this report continues to be inadequate for fully assessing how the fee is being implemented, including critical issues that were raised when the fee was first adopted**.

   Even following the completion of the long-awaited audit of the impact fee program, the City has not produced a clear and complete listing and accounting of projects and housing units subject to the fee and the disposition of those development projects. Once again, we urge the City to generate annual reports that provide a single unified listing showing the disposition of each project that qualified as a "development project" as defined in the ordinance and applied for a building permit during the reporting year. This would include every residential and mixed-use project that generates new residential units, excluding home remodels and rehabilitation, secondary units, and units built as replacement for housing that has been demolished. For each such development project, the report should provide the following information

   a. Name and location of project
   b. The impact fee zone in which the project is located.
   c. Number of housing units
   d. Whether the project was exempt from paying the fee and the reason for such exemption (affordable housing projects and secondary units)
   e. Amount of fee assessed.
   f. Date building permit application was submitted.
   g. Date building permit was issued.
   h. Expected completion date of project.
   i. For development projects normally subject to the fee, the number and affordability level of units provided in lieu of paying the fee.

   Annual reports should also provide a breakdown of the fees that have been assessed but not yet paid, distinguishing between projects that have not yet been issued a building permit (projects that have not paid any of the assessed fees) and projects that were issued building permit (projects that paid the first installment and therefore are expected to pay the second installment when the project is completed). Doing so will provide information that can guide the City in determining how much of the anticipated revenue to make available for affordable housing development.

   The report this year notes that in some cases the building permits for projects have expired and it is uncertain whether assessed fees will be collected. No further information is provided. How long have the permits been expired? How likely is it that the permit will be reactivated and construction will proceed to completion? At what point can expired permits no longer be re-activated such that a new permit application is required, triggering a new fee assessment based on current rates? Are the fees assessed on projects with expired permits included or not included in the "total fees assessed" column in Table 6?

5. **The information presented in "Attachment B – Projects That Provided Low-Income Housing In Lieu of Impact Fees" mixes up two different categories of projects.**

   Projects that provide 100% of the units as affordable housing are not providing affordable housing units as an alternative to paying the impact fee; mission-driven affordable housing is exempt from the impact fee ordinance altogether and should not be counted here. The other group of projects included in this table are market-rate projects that otherwise would be subject to the fee but have instead opted to use the onsite alternative compliance provision of the impact fee ordinance. It should be noted that in most cases these projects received density bonuses that allowed them to build more units than ordinarily allowed by zoning in return for providing affordable units on site. These projects were already providing affordable units but were also allowed to count those units again in lieu of paying the impact fee. It is not clear to what extent the City is getting any additional benefit here.

6. **The onsite option does not produce the same level of community benefit as payment of the fee into the Affordable Housing Trust Fund**

   The impact fee program allows developers to provide affordable units on site in lieu of paying the fee. In 2016, staff recommended, and Council approved, a schedule of 5% very low, 10% low, or 10% moderate income. While the fee has increased substantially since 2016, the onsite requirement has not been changed. As a result, <u>projects that elect to provide units on site provide far fewer affordable housing units, and at shallower levels of affordability, than would be produced using the fee revenue</u>.

   In Attachment B to the staff report, if we look only at the market-rate projects that provided onsite affordable units in lieu of paying the fee, we find projects with a total of 1,304 units, of which 120, or fewer than 10%, are affordable housing. Almost all those projects are in Impact Fee Zone 1 and at current rates would pay fees totaling $28.7 million.

   The staff report also lists 6 projects that received funding from the impact fee program, with an average impact fee subsidy of $28,000 per unit and total City subsidy of $73,000 per unit. Had the market-rate project paid fees instead of providing onsite units, those fees would have funded at least 390 units, or 3-1/2 times as many units as were provided on site. And unlike units provided onsite, which were affordable to households in the 50% - 80% of median income range, units funded by the City are generally affordable to households in the 30% to 60% of median income range. In other words, payment of the impact fee yields far more units and deeper affordability than including affordable units on site.

The City should not be allowing developers to choose an option that yields substantially less public benefit than paying the fee, particularly given the City's dismal performance in meeting its affordable housing obligations.

We urge the City Council to do the following:

- Direct staff to return with additional information on impact fee implementation as outlined above under item 4, both for the current report and for all future annual reports.
- Amend the Affordable Housing Impact Fee Ordinance to recalibrate the onsite option to provide equivalent public benefit to paying the fee.
- Either adopt policies that will allow for commitment of impact fee revenues already assessed but not yet collected or modify the program to require full payment of the fee upon issuance of a building permit, which will both simplify administration of the program and provide more affordable housing funding sooner and allow the City to take better advantage of opportunities to leverage outside funding for City-funded project.

Thank you for your consideration of these comments. If you have any questions, please feel free to contact me by email at jeff@ebho.org or by phone at (510) 663-3830, ext. 316.

Sincerely,

Jeffrey Levin

Jeffrey Levin
Policy Director

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

Attachment: City of Oakland RHNA Targets and Building Permits Issued, 2015-19