

RESOLUTION NO. 17-20

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RICHMOND,
CALIFORNIA, ADOPTING A PUBLIC FACILITIES IMPACT FEE CREDITS POLICY**

WHEREAS, the City of Richmond has determined that an updated processing procedure for Public Facilities Impact Fee Credits is warranted; and

WHEREAS, the Developer Fee Credit Policy was adopted by the City Council in 1992 and amended in 2003; and

WHEREAS, staff recommends updating the Developer Fee Credit policy to now be called Public Facilities Impact Fee Credits Policy, to clarify practices related to the issuance and use of Impact Fee Credits and to reflect the following policy changes:

1. The revised Impact Fee Credit Policy recognizes the City Council's intent when it enacted Chapter 12.65 that Impact Fee Credits issued under Chapter 12.64 may be applied to the citywide fees assessed under Chapter 12.65.
2. Codifies credit for replacing demolished structures as stated in section 12.65.070(b).
3. Codifies the 3 percent annual increase that the City Council approved in 2003; and

WHEREAS, the adoption of the Public Facilities Impact Fee Credits is consistent with "best practices" and the City Council's fiduciary oversight of fiscal policies.

NOW, THEREFORE, BE IT RESOLVED, that the City Council hereby adopts the Public Facilities Impact Fee Credits Policy for the City of Richmond that is attached hereto as Exhibit 2.

I certify that the foregoing resolution was passed and adopted by the Council of the City of Richmond at a regular meeting thereof held March 3, 2020, by the following vote:

AYES: Councilmembers Choi, Johnson, Myrick, Willis, Vice Mayor Bates, and Mayor Butt.
NOES: Councilmember Martinez.
ABSTENTIONS: None.
ABSENT: None.

PAMELA CHRISTIAN
CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:

TOM BUTT
Mayor

Approved as to form:

BRUCE GOODMILLER
City Attorney

State of California }
County of Contra Costa } : ss.
City of Richmond }

I certify that the foregoing is a true copy of **Resolution No. 17-20**, finally passed and adopted by the City Council of the City of Richmond at a regular meeting held on March 3, 2020.



Pamela Christian, Clerk of the City of Richmond

EXHIBIT 2

Public Facilities Impact Fee Credits Policy

I. Statement of City Policy for Issuance of Impact Fee Credits

The City's public facilities impact fee ordinances allow for the granting of Impact Fee Credits. This Impact Fee Credit Policy governs the issuance, transfer, and use of Public Facilities Impact Fee Credits issued under Richmond Municipal Code section 12.64.070 and 12.65.070. The impact fees collected under Chapters 12.64 and 12.65 of the Richmond Municipal Code (referred to collectively as "Impact Fees") support various capital expenditures and infrastructure improvements required as a result of new development within the City. The City collects Impact Fees at the time building permits are issued. It is sometimes desirable or necessary to build and pay for construction of capital projects before the sufficient Impact Fees have been collected to pay for the work. Issuing Impact Fee Credits to a property owner is a way to encourage owners to contribute to capital improvements costs before the property is developed. This policy provides a mechanism to encourage and compensate developers or property owners who advance some or all of the costs associated with infrastructure improvements.

This Impact Fee Credit Policy may apply in several scenarios:

- a. The City creates a financing district and/or issues bonds to pay for capital improvements.
- b. Whether or not a financing district has been formed, a property owner or developer elects to contribute all or a portion of the cost of an improvement included on the list of public improvements to be funded by Impact Fees. This contribution could either be cash or transferring an interest in real estate necessary for the improvement.

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- c. At the time a financing district is formed, the property owner elects to finance the property's portion of the assessment with tax-exempt funds and bonds are issued.
- d. After a financing district assessment has been levied and paid or after bonds have been issued, the property owner obtains building permits and would be liable for Impact Fees.

The common thread in these scenarios is that unless there is a mechanism for issuing Impact Fee Credits, a property owner may be charged twice for the same improvement.

Given these scenarios, this policy is intended to accomplish the following goals:

- a. To encourage the timely construction of improvements to mitigate the impacts of development.
- b. To encourage the timely and appropriate development of property.
- c. To prevent a property owner or developer from paying twice for the same improvement.
- d. To recognize the time value of money in cases where a property owner/developer pays for improvements before Impact Fees would otherwise be due.
- e. To recognize that development may affect infrastructure needs citywide.

II. Policies Governing the Issuance, Use and Transfer of Fee Credits

1. In order to be considered eligible for credits toward future Impact Fees, a public facility or improvement to be constructed or paid for (in whole or part) must be included on the current adopted list of public improvements and facilities for the applicable Impact Fee.

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2. Fee Credits will apply only to the “cost of the improvements,” not the related financing costs. Interest, the cost of forming a financing district (including reserves), and the cost of issuing bonds are not considered part of the “cost of the improvements” and are not eligible for Impact Fee Credits.

3. With respect to offsite road improvements, only land conveyed to the City for offsite improvements (as defined below) or construction and engineering costs will be considered for credit.

4. Costs incurred for work not directly related to improvement of a thoroughfare will not be eligible for credit. Specifically excluded from credit calculations are costs of contaminated soils removal or remediation.

5. Credits shall be awarded only upon receipt of satisfactory documentation that (i) the improvement is completed; or (ii) land has been conveyed to and accepted by the City; or (iii) that funds for the improvement are in escrow; or (iv) that a construction contract for the improvement has been executed; or (v) that a performance bond approved by the City Attorney has been posted to ensure completion.

6. For the purposes of the Offsite Road Improvements component of an Impact Fee, “Offsite Improvement” and “Onsite Improvement” shall be defined as follows:

a. Offsite Improvement: Any improvement or right-of-way dedication which does not otherwise constitute an “onsite” improvement.

b. Onsite Improvement: Any improvement within the boundaries of a development including the improvement within the fronting right-of-way of the development (“frontage improvements”). The frontage (onsite) right-of-way to be dedicated is that amount in

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excess of the existing right-of-way required to establish a 30-foot half-width when measured from the centerline of the existing right-of-way.

Frontage improvements would include:

- a. right-of-way dedication as outlined above.
- b. the paving of one traveled lane and a parking lane, if required.
- c. concrete curb and gutter.
- d. any improvements between the curb line and the right-of-way line,

including landscaping.

7. City staff shall determine the amount of credit based on the following:

- a. In the case of a financing district, the “cost of the improvements,” other than financing costs, will be those identified in the Engineer’s Report.
- b. A City-approved engineer’s estimate or other documentation of the cost of the improvements furnished at the Final Map stage or, where applicable, before issuance of a building permit.
- c. Construction contract documents.
- d. When offsite road improvements are involved, the cost estimate shall separate offsite and onsite improvements as defined below.
- e. Engineering fees are eligible for fee credits up to a maximum of 18 percent of the cost of improvements.

8. Pursuant to Richmond Municipal Code section 12.65.070(b), Fee Credits shall be granted for previous on-site buildings demolished to accommodate new development. To qualify for this credit, the building must have been demolished within three years preceding the permit application and must be verified as occupied for the two consecutive years prior to demolition.

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The amount of the credit shall be pro-rated based on the square footage of the demolished structures compared to the square footage of the new structures. If the new structures are the same size or smaller than the demolished structures that they replace, the Fee Credits will equal the amount of Impact Fees due for the new structures and no additional Impact Fees will be assessed.

9. The issuance of any Fee Credits must be approved in advance by the City Council (except for fee credits issued for replacement of demolished structures pursuant to Policy No. 8 above). After approval by the City Council, an “Impact Fee Credit Confirmation Letter” signed by the Public Works Director will be issued to property owners participating in a financing district, making a cash payment toward the construction of improvements eligible for credit, or transferring an interest in real property necessary for construction of improvements. This letter will specify:

- a. The original date of the Credit Confirmation Letter.
- b. The name of the property owner and the address or Assessor’s Parcel Number of the property with which the Impact Fee Credits are associated.
- c. The dollar value of the credits.
- d. The official closing date of the bond sale, if applicable.
- e. The name of the financing district, if applicable.
- f. The expiration date of the Credit Confirmation Letter, as defined below.

The Public Works Department shall maintain a copy of all Impact Fee Credit Confirmation Letters and a register of all outstanding Impact Fee Credits.

10. Only the property owner whose name appears on the Impact Fee Credit Confirmation Letter may use the credits.

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11. Impact Fee Credits may be used toward payment of Impact Fees (under either Chapter 12.64 or Chapter 12.65) for a building permit issued for any property in the City of Richmond.

12. Impact Fee Credits may not be applied against any fees other than those under Chapters 12.64 and 12.65 or against any other liability to the City.

13. No duplicate credit shall be given against other Richmond Municipal Code requirements.

14. The maximum credit applied toward the Impact Fees for specific permit(s) shall be the total of the Impact Fees due and payable for the issuance of the permit. Any excess credits may be either carried over to a subsequent project by the same owner or sold to a third party as specified below.

15. Impact Fee Credits may be transferred or sold to owners of property in the City of Richmond. The holder of an Impact Fee Credit Confirmation Letter must wait at least three years from the issuance of the original Impact Credit Confirmation Letter to transfer all or a portion of the credits to a third party. However, Impact Fee Credits may be transferred at any time to the purchaser of the property associated with Impact Fee Credits.

16. All terms and conditions of the original Impact Fee Credit Confirmation Letter will apply to any transferee.

17. When Impact Fee Credits are transferred, the holder of the Impact Fee Credits shall bring the Impact Fee Credit Confirmation Letter to the Public Works Department so that a revised Impact Credit Confirmation Letter may be issued.

18. Any Impact Fee Credits not used within fifteen years from the original issuance of the Impact Fee Credit Confirmation Letter will expire, will have no value, and may not be used for

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credit. The City Council may extend the expiration date of Impact Fee Credits based on a finding of extenuating circumstances on such terms and conditions as the City Council deems appropriate.

19. If multiple bond series are sold within a single financing district, separate Impact Fee Credit Confirmation Letters will be issued for each series, each having its own expiration date.

20. An owner may only use Impact Fee Credits that have already been issued at the time Impact Fees are due and payable. The payment of Impact Fees cannot be deferred in anticipation of earning future credits without City Council approval

21. In addition to the policies set out above regarding how costs of improvements are determined, the City may not collect or retain Impact Fees in excess of the cost of projects. Therefore, City staff must compare the amount of a request to issue Impact Fee Credits with the estimates of costs of projects for which Impact Fees are earmarked. If the actual or estimated costs of improvements for which Impact Fee Credits are sought are higher or lower than the cost estimate that was used to calculate Impact Fee rates, City staff shall analyze the Impact Fees to determine whether the overall rates should be adjusted at the next annual review of Impact Fees.

22. In recognition of the time value of money, the dollar value of Impact Fee Credits will increase 3 percent on each anniversary of the issuance of the original Impact Fee Credit Confirmation Letter. City staff shall calculate the revised value of Impact Fee Credits based on the annual increases any time some or all of the Impact Fee Credits are used and whenever a new Impact Fee Credits are transferred, resulting in the issuance of a revised Impact Fee Credit Confirmation Letter.

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23. The City Council in its discretion may approve the repurchase of unexpired Impact Fee Credits for no more than the adjusted value of the Impact Fee Credits based on deductions for credits that have been used and the annual increase.