

## **ORDINANCE NO. 17-**

### **Ordinance Of The City Council Of The City Of Emeryville Amending Section 9-5.1907(b) Of Article 5 Of The Planning Regulations In Title 9 Of The Emeryville Municipal Code Regarding Development Impact Fees For Changes Of Use (CEQA Status: Exempt Pursuant To State CEQA Guidelines Section 15061(b)(3))**

**WHEREAS**, the Traffic Facilities Impact Fee was established by Ordinance No. 90-08, adopted by the City Council in September 1990, adding Section 3-2.303 to the Emeryville Municipal Code, which stated, in part, “Fees charged on new development to accommodate a change in land use shall receive a credit based on the previous land use”; and

**WHEREAS**, on July 15, 2014, the City Council adopted Ordinance No. 14-008 adding Article 19 of Chapter 5 to the Planning Regulations in Title 9 of the Emeryville Municipal Code, titled “Development Impact Fees”, repealing Article 3 of Chapter 2 of Title 3, and adding Section 9-5.1907(b) to the Municipal Code, which states: “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”; and

**WHEREAS**, in the case of a change in use, it is the intent of the development impact fees to cover only the incremental increase in impact from the new use, and not the impact of any previous uses, whether an impact fee was actually paid or not by the previous use; and

**WHEREAS**, businesses in Emeryville have faced a significant increase in development impact fees in recent years, and the removal of the credit for previous uses has made this increase even greater; and

**WHEREAS**, it is therefore proposed to amend Section 9-5.1907(b) to reinstate the credit for previous uses, whether or not an impact fee was paid by the previous use; and

**WHEREAS**, on March 23, 2017, the Emeryville Planning Commission held a duly and properly noticed public hearing on the proposed ordinance and then voted to recommend that the City Council adopt it; and

**WHEREAS**, on May 2, 2017, the Emeryville City Council held a duly and properly noticed public hearing on the proposed ordinance; and

**WHEREAS**, the City Council has reviewed and considered the staff report and attachments thereto, all public comments, and the proposed amendments to Title 9 of the Emeryville Municipal Code, as set forth below, and the applicable provisions of the Emeryville Municipal Code;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EMERYVILLE DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION ONE. PURPOSE AND INTENT.**

The purpose and intent of this ordinance is to amend the Planning Regulations in Title 9 of the Emeryville Municipal Code to reinstate the development impact fee credit for previous uses, whether or not an impact fee was actually paid by the previous use.

**SECTION TWO. REQUIRED FINDINGS FOR ADOPTING ORDINANCE.**

The City Council makes the following findings, pursuant to Section 9-7.1305 of the Emeryville Municipal Code:

(a) The proposed amendment is consistent with the General Plan.

**The proposed amendment helps to implement General Plan goals LU-G-12, “Successful businesses – retain and foster the growth of Emeryville businesses” and LU-G-13, “Local employment opportunities – encourage establishment of businesses that will employ and serve Emeryville residents.”**

(b) The proposed amendment is necessary for public health, safety and welfare or will be of benefit to the public.

**The proposed amendment will be of benefit to the public because it will help to encourage businesses to locate in Emeryville.**

(c) The proposed amendment has been reviewed in compliance with the requirements of the California Environmental Quality Act.

**The proposed amendment is exempt from the requirements of the California Environmental Quality Act (CEQA) under the “general rule” at Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the ordinance may have a significant effect on the environment.**

**SECTION THREE. AMENDING SECTION 9-5.1907(b) OF ARTICLE 5 OF TITLE 9 OF THE EMERYVILLE MUNICIPAL CODE.**

Section 9-5.1907(b) of Article 19 of Chapter 5 of Title 9 of the Emeryville Municipal Code is hereby amended read as follows, with deletions shown in ~~strikeout~~ and additions shown in double underline:

## **CHAPTER 5. CITYWIDE USE AND DEVELOPMENT REGULATIONS**

### **ARTICLE 19. DEVELOPMENT IMPACT FEES**

#### **9-5.1907 Amount of Payment.**

- (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 a credit for the amount of the fee paid for the last legal use of the existing structure pursuant to subsection (a) of this Section, whether or not such fee was actually paid. This credit shall not apply to the Affordable Housing Impact Fee required by Article 4 of this Chapter.

### **SECTION FOUR. CEQA DETERMINATION.**

This ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) under the “general rule” at Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the ordinance may have a significant effect on the environment.

### **SECTION FIVE. SEVERABILITY.**

The City Council hereby declares that every section, paragraph, clause and phrase of this Ordinance is 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 sections, paragraphs, clauses or phrases.

### **SECTION SIX. CODIFICATION.**

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

### **SECTION SEVEN. EFFECTIVE DATE AND POSTING.**

This Ordinance shall take effect 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.

This Ordinance was introduced and first read by the City Council of the City of Emeryville at a regular meeting held on Tuesday, May 2, 2017, and passed and adopted by the City Council at a regular meeting held on Tuesday, May 16, 2017 by the following vote:

AYES:

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NOES:

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ABSTAIN:

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ABSENT:

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MAYOR

ATTEST:

APPROVED AS TO FORM:



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CITY CLERK

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CITY ATTORNEY