

ORDINANCE NO. N.S.

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RICHMOND
ADOPTING AN ADMINISTRATIVE REMEDIES PROCEDURE FOR
CHALLENGES TO FEES, CHARGES, AND ASSESSMENTS**

The City Council of the City of Richmond do ordain as follows:

SECTION 1. AUTHORITY. This Ordinance is authorized by the City’s authority under California Constitution, article XI, sections 5 (charter cities), 7 (police power), and 9 (utility power) as well as Government Code section 53759.1.

SECTION 2. MUNICIPAL CODE AMENDMENT. Chapter 13.08 of Article XIII of the Richmond Municipal Code is hereby amended to add a new Section 13.08.90 to read as follows:

Section 13.08.090 — Exhaustion of administrative remedies for challenges to fees, charges, and assessments on real property.

- a) Scope. The duty to exhaust administrative remedies imposed by this section extends to:
 - 1) any fee or charge subject to articles XIII C or XIII D of the California Constitution,
 - 2) any assessment on real property levied by the City, and
 - 3) the methodology used to develop and levy such a fee, charge, or assessment.
- b) “Hearing” as used in this section means the hearing referenced in paragraph 4 of subsection D of this section.
- c) Duty to Exhaust Issues. No person may bring a judicial action or proceeding alleging noncompliance with the California Constitution or other applicable law for any new, increased, or extended fee, charge, or assessment levied by the City, unless that person submitted to the City Clerk a timely, written objection to that fee, charge, or assessment specifying the grounds for alleging noncompliance. The issues raised in any such action or proceeding shall be limited to those raised in such an objection unless a court finds the issue could not have been raised in such an objection by those exercising reasonable diligence.

d) Procedures. The City shall:

- (1) Make available to the public any proposed fee, charge, or assessment to which this section is to apply no less than 45 days before the deadline for a ratepayer or assessed property owner to submit an objection pursuant to paragraph 4 of this subsection D.
 - (2) Post on its internet website a written basis for the fee, charge, or assessment, such as a cost of service analysis or an engineer's report, and include a link to the internet website in the written notice of the Hearing, including, but not limited to, a notice pursuant to subdivision (c) of Section 4 or paragraph (1) of subdivision (a) of Section 6 of Article XIII D of the California Constitution.
 - (3) Mail the written basis described in paragraph 2 of this subsection D to a ratepayer or property owner on request.
 - (4) Provide at least 45 days for a ratepayer or assessed property owner to review the proposed fee or assessment and to timely submit to the City Clerk a written objection to that fee, charge, or assessment that specifies the grounds for alleging noncompliance. Any objection shall be submitted before the end of the public comment portion of a Hearing on the rate, charge or assessment.
 - (5) Include in a written notice of the Hearing, a statement in bold-faced type of 12 points or larger that:
 - (A) All written objections must be submitted to the City Clerk by the end of public comment period at the Hearing and that a failure to timely object in writing bars any right to challenge that fee, charge, or assessment in court and that any such action will be limited to issues identified in such objections.
 - (B) All substantive and procedural requirements for submitting an objection to the proposed fee, charge, or assessment such as those specified for a property-related fee under California Constitution, article XIII D, section 6(a) or for an assessment on real property under California Constitution, article XIII D, section 4(e).
- e) Council Consideration; City Responses. Before or during the Hearing, the City Council shall consider and the City shall respond in writing to, any timely written objections. The City Council may adjourn the Hearing to another date if necessary to respond to comments received after the agenda is posted for the meeting at which the Hearing occurs. The City's responses shall explain the substantive basis

for retaining or altering the proposed fee, charge, or assessment in response to written objections, including any reasons to reject requested amendments.

f) City Council Determinations. The City Council, in exercising its legislative discretion, shall determine whether:

- (1) The written objections and the City's response warrant clarifications to the proposed fee, charge, or assessment.
- (2) To reduce the proposed fee, charge or assessment.
- (3) To further review the proposed fee, charge, or assessment before determining whether clarification or reduction is needed.
- (4) To proceed with the Hearing, to continue it, or to abandon the proposal.

SECTION 3. CEQA FINDINGS. The City Council finds that adoption of this Ordinance is exempt from CEQA because: (i) it is not a project within the meaning of Public Resources Code, section 21065 because it has no potential to alter the physical environment; (ii) and pursuant to CEQA Guidelines section 15061(b)(3), the so-called "common sense" exemption, for this same reason.

SECTION 4. SEVERABILITY. If any section, subsection, sentence, clause, phrase or portion of this Ordinance or its application to any person or circumstance is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to other persons and circumstances. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof despite the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional and, to that end, the provisions hereof are hereby declared to be severable.

SECTION 5. EFFECTIVE DATE. This Ordinance shall be in full force and effect 30 days after its adoption under Section 13.08.90, Revenue and Taxation, Article XIII of the City of Richmond's Municipal Code.

SECTION 6. PUBLICATION. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published once in the East Bay Times, a newspaper of general circulation printed, published, and circulated within the City.

SECTION 7. EFFECTIVE DATE. This ordinance shall be effective thirty days after passage and adoption.

(This section to be completed by Clerk's Office)

First introduced at a regular meeting of the City Council of the City of Richmond held on _____ and finally passed and adopted at a regular meeting held on _____ by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

Clerk of the City of Richmond

(SEAL)

Approved:

Mayor

Approved as to form:

City Attorney