

ORDINANCE NO. 19-07

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OAKLEY AMENDING THE OAKLEY MUNICIPAL CODE TO ADD ARTICLE 7 OF CHAPTER 2 OF TITLE 9 TITLED "EAST CONTRA COSTA COUNTY HABITAT CONSERVATION PLAN/ NATURAL COMMUNITY CONSERVATION PLAN IMPLEMENTING PROGRAM"

SECTION 1. FINDINGS

A. On December 2002, the Oakley City Council approved the Oakley 2020 General Plan ("General Plan") which adopted policies and goals for all forms of development in the City. The General Plan includes an Open Space and Conservation Element containing goals, policies, and implementation programs to protect environmental resources, open space, and scenic resources, including but not limited to the following:

Goal 6.3 Encourage preservation of important ecological and biological resources

Goal 6.7 Seek to preserve the scenic qualities of the Delta Waterway, Marsh Creek, and views of Mount Diablo.

B. There is a need to establish a comprehensive framework to protect and conserve species, wetlands, natural communities and ecosystems in East Contra Costa County, while improving and streamlining the environmental permitting process for impacts of future development on rare, threatened and endangered species.

C. To meet the need identified in Section 1.B of this Ordinance and further the goals and policies set forth in the General Plan, the City of Oakley participated as a member of the East Contra Costa County Habitat Conservation Plan Association, a joint exercise of powers authority, to develop the HCP/NCCP and the Implementing Agreement. The Council finds that the HCP/NCCP, implemented in accordance with the Implementing Agreement, will provide comprehensive species, wetlands, and ecosystem conservation and contribute to the recovery of endangered species within East Contra Costa County; balance open space, habitat, and urban development; reduce the cost and increase the clarity and consistency of federal and state permitting; consolidate and streamline these processes into one, locally controlled plan; encourage, where appropriate, multiple uses of protected areas; share the costs and benefits of the HCP/NCCP as widely and equitably as possible; and protect the rights of private property owners.

D. On June 1, 2006, the City also entered into the East Cypress HCP/NCCP Memorandum of Agreement ("MOA") with the project proponents in the East Cypress Corridor Specific Plan area and the California Department of Fish and Game and the United State Fish and Wildlife Service to provide a mechanism for permitting potential impacts to rare, threatened and endangered species through mitigation measures that involve the HCP/NCCP, as further described in Section 9.8 of the Implementing Agreement for the HCP/NCCP.

E. Adoption and implementation of this Ordinance and the MOA will enable the City to promote the health, safety and welfare of all of its residents by helping to achieve the conservation goals set forth in the HCP/NCCP, to implement the associated Implementing

Agreement, and to preserve the ability of affected property owners to make reasonable use of their land consistent with the requirements of the National Environmental Policy Act, the California Environmental Quality Act, the Federal Endangered Species Act, the California Endangered Species Act, the California Natural Community Conservation Planning Act and other applicable laws.

F. Based on the HCP/NCCP and the data and analyses referenced therein, there is a reasonable relationship between the use of the HCP/NCCP Implementing fees and the type of development projects subject to the fees. The Development Fee will be used to implement the HCP/NCCP by funding the acquisition of land, the enhancement and management of habitat and the other public facilities identified in Section 2 of this Ordinance in order to mitigate for impacts to open space, habitat and covered species caused by Affected Development Projects. The Wetland Mitigation Fee will be used to implement the HCP/NCCP by funding the restoration, creation and management of Jurisdictional Wetlands and Waters and riparian woodland/scrub and the other public facilities identified in Section 2 in order to mitigate for impacts to Jurisdictional Wetlands and Waters and riparian areas caused by Affected Development Projects. The HCP/NCCP Implementing fees will not apply to all types of development projects, but only those that impact open space, habitat suitable for one or more covered species, Jurisdictional Wetlands and Waters or riparian areas. In this way, the HCP/NCCP Implementing fees will be used only for purposes reasonably related to the types of development projects that will be subject to the fees.

G. Based on the HCP/NCCP and the data and analyses referenced therein, there is a reasonable relationship between the need for the public facilities to be funded by the HCP/NCCP Implementing fees and the type of development projects on which the fees are imposed because the need for these facilities, which include the acquisition of land and the management, enhancement, restoration and creation of habitat, arises from the very development projects to which the fees will apply, i.e., development projects of all types that disturb open space, habitat, Jurisdictional Wetlands and Waters or riparian areas.

H. Based on the HCP/NCCP and the data and analyses referenced therein, there is a reasonable relationship between the amount of the HCP/NCCP Implementing fees and the cost of the public facilities or portion of the public facilities attributable to the development projects on which the fees will be imposed. The costs of the public facilities needed to mitigate cumulative impacts from development projects subject to the fees were estimated by projecting the extent of future development impacts, calculating the open space or habitat acreage to be acquired, managed, enhanced, restored and created to offset these impacts and estimating the overall costs of acquiring and preserving this acreage for the 30-year term of the state and federal permits. The fees were then calculated based on these costs as follows:

1. The method of calculating the Development Fee amount for individual Affected Development Projects reflects the cost of the public facilities attributable to individual Affected Development Projects based on:

- a. Area of the Affected Development Project, as the cost of acquiring sufficient open space or habitat land to mitigate for the impacts of a particular

development project is directly proportional to the acreage of that development project; and

b. Location of the Affected Development Project, as the mitigation needed varies in proportion to the intrinsic habitat or open space value of the land impacted by the project. Thus, fees are tiered so that the highest fee amounts are imposed in Development Fee Zone II, deemed to have the highest intrinsic value per acre. A fee equal to 50 percent of the highest fee amount is imposed in Development Fee Zone I, deemed to have substantial but lower intrinsic value per acre, and a fee equal to 25 percent of the highest fee amount is required in Development Fee Zone III, deemed to have the lowest intrinsic value per acre.

2. The method of calculating the Wetland Mitigation Fee amount for individual Affected Development Projects reflects the cost of the public facilities attributable to individual Affected Development Projects based on:

a. Type of Jurisdictional Wetlands and Waters and riparian woodland/scrub to be impacted by the Affected Development Project, as the type of Jurisdictional Wetlands and Waters and riparian woodland/scrub to be restored or created must effectively replace the type being impacted by the particular project and the cost of restoring or creating Jurisdictional Wetlands and Waters and riparian woodland/scrub depends on (1) the specific construction tasks necessary to restore or create the particular feature and (2) the different mitigation ratios required to mitigate impacts to various types of Jurisdictional Wetlands and Waters and riparian woodland/scrub, such ratios having been established in the HCP/NCCP to require relatively more restoration or creation of those types of Jurisdictional Wetlands and Waters and riparian woodland/scrub that have a higher habitat value and function for covered species and/or are more difficult to restore or create and must be restored or created in larger amounts to offset the anticipated failure of a portion of the acreage restored or created; and

b. Area of Jurisdictional Wetlands and Waters and riparian woodland/scrub to be impacted by the Affected Development Project, as the cost of restoring or creating Jurisdictional Wetlands and Waters and riparian woodland/scrub is directly proportional to the acreage being restored or created, and which in turn is directly proportional to the acreage being impacted by the project.

SECTION 2. AMENDMENT OF CODE. Article 7 of Chapter 2 of Title 9 of the Oakley Municipal Code is hereby added to read as follows:

**Article 7 HABITAT CONSERVATION PLAN / NATURAL COMMUNITY
CONSERVATION PLAN IMPLEMENTING PROGRAM**

9.2.702 Purpose.

The purpose of this Article is to establish a comprehensive framework to protect and conserve species, wetlands, natural communities and ecosystems in East Contra
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Costa County, while improving and streamlining the environmental permitting process for impacts of future development on rare, threatened and endangered species.

This Article provides for the adoption of fees to be used for the acquisition of land to conserve habitat for rare species in mitigation of the impacts of development in eastern Contra Costa County and procedures to support implementation of the East Contra Costa County Habitat Conservation Plan / Natural Community Conservation Plan.

9.2.704 Authority

This Article is enacted pursuant to the Mitigation Fee Act (Gov. Code, § 66000 et seq.) and Article 11, section 7 of the California Constitution.

9.2.706 Definitions.

- a. General. Unless otherwise specifically provided, the following definitions shall govern the interpretation of this Article:
- b. "Affected Development Project" means the development projects to which this Article applies, as set forth in section 9.2.708.
- c. "Covered Species" means those species of plants and animals whose conservation and management are provided for by the HCP/NCCP for which limited take is authorized pursuant to the state and federal permits.
- d. "Development Fee" means the fees described in Chapter 9.3.1 of the HCP/NCCP and imposed on Development Projects pursuant to Section 9.2.712(b) of this Article.
- e. "Development Fee Zones" means the three areas depicted as Zones I, II and III on the map attached hereto as Exhibit A and the detailed map data used to create Exhibit A. The Development Fee imposed on a Development Project is determined based on the Development Fee Zone in which the project is located.
- f. "Development Project" means any project undertaken for the purpose of development, including a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate.
- g. "HCP/NCCP" means the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan, approved by the City of Oakley on January 22, 2007, as may be revised from time to time.
- h. "HCP/NCCP Implementing Fees" means the Development Fee and the Wetland Mitigation Fee.
- i. "Implementing Agreement" means the January 22, 2007 Implementing Agreement for the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan by and between East Contra Costa County Habitat

Conservancy, County of Contra Costa, City of Pittsburg, City of Clayton, City of Oakley, City of Brentwood, Contra Costa County Flood Control and Water

Conservation District, East Bay Regional Park District, United States Fish and Wildlife Service, and California Department of Fish and Game.

- j. "Implementing Entity" means the East Contra Costa County Habitat Conservancy, a joint exercise of powers agency formed by the County and the cities of Brentwood, Clayton, Oakley and Pittsburg to oversee the implementation of the HCP/NCCP.
- k. "Jurisdictional Wetlands and Waters" means State and federally regulated wetlands and other water bodies that cannot be filled or altered without permits from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. § 1251 et seq.), from the State Water Resources Control Board under either section 401 of the Clean Water Act or the Porter-Cologne Water Quality Act (California Water Code, § 13000 et seq.), or from the California Department of Fish and Game under section 1602 of the California Fish and Game Code, as further explained in Chapter 1.3.5 of the HCP/NCCP.
- l. "Project applicant" means a property owner, or duly designated agent of the property owner, who has submitted to the City a request for approval of a Development Project on the property.
- m. "Public facilities" includes public improvements, public services and community amenities.
- n. "State and federal permits" means the permit issued by the California Department of Fish and Game to the City and other local agencies on August 6, 2007 authorizing take of covered species pursuant to the HCP/NCCP and the Natural Community Conservation Planning Act (permit number 2835-2007-01-03) and the permit issued by the United States Fish and Wildlife Service to the City and other local agencies on July 25, 2007 authorizing incidental take of covered species pursuant to the HCP/NCCP and the federal Endangered Species Act (permit number TE160958-0), as those documents may be amended from time to time.
- o. "Take" has the same meaning provided by the federal Endangered Species Act of 1973, as amended (16 U.S.C. § 1531 et seq.) ("FESA") and its implementing regulations with regard to activities subject to that Act, and also has the same meaning provided in the California Fish and Game Code with regard to activities subject to the California Endangered Species Act (Fish & Game Code, § 2050 et seq.) and the Natural Community Conservation Planning Act (Fish & Game Code, § 2800 et seq.). Specifically, take is defined in FESA to mean "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" (16 U.S.C. § 1532(18)) and in Fish and Game Code section 86 as "to hunt, pursue, catch, capture, or kill or attempt to hunt, pursue, capture, or kill."
- p. "Urban Development Area" means the areas designated for urban development

that are either (1) within the area designated as the "Initial Urban Development Area" as generally depicted on Figure 2.3 of the HCP/NCCP, incorporated herein by reference, or (2) areas added to or removed from the Initial Urban Development

Area according to the procedures set forth in Section 3.50 of the Implementing Agreement.

- q. "Wetland Mitigation Fee" means the fee described in Chapter 9.3.1 of the HCP/NCCP and imposed on development projects pursuant to Section 9.2.712(c) of this Article.

9.2.708 Applicability.

- a. General. This Article shall apply to all development projects in within the City of Oakley that are within the Urban Development Area except for the following:
 - 1) Any development project that will permanently disturb less than one acre. The "acreage of land permanently disturbed" by a project, as that term is defined in Chapter 9.3.1 of the HCP/NCCP, shall be determined by the Community Development Director.
 - 2) Any development project that the Community Development Director determines is contained entirely within an area mapped as urban, turf, landfill and/or aqueduct land cover types in the HCP/NCCP, as generally depicted on Exhibit B and in the map data used to create Exhibit B, both of which are incorporated here by reference.
 - 3) Any development project of a type not covered by the HCP/NCCP within the Urban Development Area, as set forth in Chapter 2.3.1 of the HCP/NCCP.
 - 4) Development projects with vested rights pursuant to a written agreement by and between the project applicant and the City or applicable state law.
 - 5) Development projects exempt under any provision of law.
 - 6) Development projects where the City determines based on written evidence submitted by the project applicant that application of the ordinance would deprive the project applicant of all reasonable economic use of the property in violation of federal or state constitutional prohibitions against the taking of property without just compensation.
- b. The development projects to which this Article applies, as set forth above, may hereafter be referred to as the "Affected Development Projects."

9.2.710 Purpose of Fees/Use of Revenue.

- a. The purpose of the Development Fee is to mitigate for impacts to open space, habitat and species covered by the HCP/NCCP. The Development Fee revenues will be used to fund the acquisition of land that does or could provide habitat for covered species, the management and enhancement such land and habitat and the administrative actions necessary to accomplish these tasks, as more particularly set forth in the HCP/NCCP, incorporated herein by reference.
- b. The purpose of the Wetland Mitigation Fee is to mitigate for impacts to Jurisdictional Wetlands and Waters, riparian woodland/scrub or stream buffers. The Wetland Mitigation Fee revenues will be used to fund the restoration, creation and management of Jurisdictional Wetlands and Waters and riparian woodland/scrub and the administrative actions necessary to perform these tasks, as more particularly set forth in the HCP/NCCP.

9.2.712 HCP/NCCP Implementing Fees.

- a. General. HCP/NCCP Implementing fees are hereby adopted to fund the public facilities identified in Section 9.2.710, as follows:
 - b. Development Fee
 - 1. Except as otherwise provided in Sections 9.2.712 (e) and (g), a Development Fee shall be imposed upon and collected from any and all Affected Development Projects for each acre of land, or portion thereof, permanently disturbed.
 - 2. The Community Development Director, or her designee, shall determine in which of the three Development Fee Zones the Affected Development Project is located, pursuant to Exhibit A of the corresponding Fee Resolution adopted by the City Council and the map data used to create Exhibit A.
 - 3. The Development Fee for each Affected Development Project shall be calculated by multiplying the fee for the applicable Development Fee Zone by the acreage of land permanently disturbed by the Project, as determined by the Community Development Director or his or her designee pursuant to Chapter 9.3.1 of the HCP/NCCP. The Development Fee amount shall be based on the fee as established from time to time by resolution of the City Council ("Fee Resolution").
 - 4. Upon or before the issuance of a grading permit or, if no grading permit is issued, upon or before issuance of a building permit, the project applicant shall either (1) pay the entire Development Fee or, (2) with the prior written approval of the City, pay at least 67 percent of the Development Fee and execute an agreement with the City, in a form approved by the City Attorney, to provide additional funding payments through assessments on the subject parcels or other mechanisms, provided that assessments or other funding mechanisms are legally authorized for this purpose, pursuant to the requirements of Chapter

9.3.1 of the HCP/NCCP.

5. The Development Fee amount applicable to an Affected Development Project shall be the Development Fee amount in effect at the time a grading permit is issued or, if no grading permit is issued, at the time the first building permit is issued for the project. Notwithstanding the foregoing, a project applicant may request to pay the Development Fee in a calendar year prior to the calendar year in which the grading permit or first building permit is issued. Such request may be granted by the Community Development Director or his or her designee only in accordance with Section 13.2.2.1 of the Implementing Agreement and Chapter 9.3.1 of the HCP/NCCP. If such request is granted, the applicable Development Fee shall be the Development Fee in effect during the calendar year in which the fee is to be paid, including any adjustments made pursuant to Section 9.2.714(b) of this ordinance.

c. Wetland Mitigation Fee

- 1) Except as otherwise provided in Sections 9.2.712 (f) and (g), in addition to a Development Fee, a Wetland Mitigation Fee shall be imposed upon and collected from any and all Affected Development Projects that will fill, dredge, or remove Jurisdictional Wetlands and Waters or riparian woodland or scrub, and from any and all Affected Development Projects that have been granted an exception to the stream setback established pursuant to Conservation Measure 1.7 of the HCP/NCCP.
- 2) The Wetland Mitigation Fees applicable to Affected Development Projects that will fill, dredge, or remove Jurisdictional Wetlands and Waters or riparian woodland or scrub varies by the land cover type impacted by those projects. The Community Development Director, or his or her designee, shall determine which of the land cover types will be impacted by an Affected Development Project and the corresponding fee amounts in accordance in accordance with Chapter 9.3.1 of the HCP/NCCP and the Wetland Mitigation Fee established by the Fee Resolution. The Wetland Mitigation Fee applicable to an Affected Development Project that has been granted an exception to the stream setback shall be determined by the Community Development Director, or his or her designee, based on the acreage of setback encroachment, in accordance with Chapter 9.3.1 of the HCP/NCCP and the Wetland Mitigation Fee amount established by the Fee Resolution.
- 3) Upon or before the issuance of a grading permit or, if no grading permit is issued, upon or before issuance of a building permit, the project applicant shall pay the Wetland Mitigation Fee determined for the Affected Development Project.
- 4) The Wetland Mitigation Fee amount applicable to an Affected Development Project shall be the Wetland Mitigation Fee amount in effect at the time a grading permit is issued or, if no grading permit is issued, at the time the first building permit is issued for the project. Notwithstanding the foregoing, a project

applicant may request to pay the Wetland Mitigation Fee in a calendar year prior to the calendar year in which the grading permit or first building permit is issued. Such request may be granted by the Community Development Director or his or her designee only in accordance with Section 13.2.2.1 of the Implementing Agreement and Chapter 9.3.1 of the HCP/NCCP. If such request is granted, the applicable Wetland Mitigation Fee shall be the Wetland Mitigation Fee in effect during the calendar year in which the fee is to be paid, including any adjustments made pursuant to Section 9.2.714 (c) of this Article.

d. Condition of Approval

Compliance with this Article, including but not limited the payment of fees specified herein, as applicable, shall be a condition of approval of all Affected Development Projects.

e. Dedications

- 1) On a case-by-case basis, and upon a voluntary offer by the project applicant, the City may accept a dedication of land in lieu of some or all of the Development Fee that would otherwise be imposed upon a development project. Any offer of dedication may be considered for acceptance only if the land dedication is considered by the Community Development Director, or his or her designee, to be consistent with the HCP/NCCP and Implementing Agreement. The Community Development Director, or his or her designee, shall determine the amount of the Development Fee for which such dedication would substitute in accordance with Section 13.2.2.2 of the Implementing Agreement (Exhibit F) and Chapters 8.6.7 and 9.3.1 of the HCP/NCCP.
- 2) If required to comply with the Stay Ahead provision set forth at Section 8.6.1 of the HCP/NCCP and Section 9.2 of the Implementing Agreement (Exhibit F), the City may require that some or all Affected Development Projects offer a dedication of land in lieu of some or all of the development Fee that would otherwise be imposed.

f. Creation/Restoration of Habitat

On a case-by-case basis, and upon a voluntary offer by the project applicant, the City may accept the restoration or creation of Jurisdictional Wetlands and Waters or riparian woodland/scrub in lieu of some or all of the Wetland Mitigation Fee that would otherwise be imposed on an Affected Development Project. The offer of restoration or creation of Jurisdictional Wetlands and Waters or riparian woodland/scrub in lieu of some all or a portion of the Wetland Mitigation Fee may be considered for acceptance only if such restoration or creation is determined by the Community Development Director, or his or her designee, to be consistent with the HCP/NCCP and Implementing Agreement. The Community Development Director, or his or her designee, shall determine the amount of the Wetland Mitigation Fee for which such restoration or creation would substitute in accordance with Conservation Measures 2.1 and 2.2 and chapter 9.3.1 of the HCP/NCCP.

g. Separate Take Authorization

On a case-by-case basis, a project applicant that possesses separate and final approval from the United States Fish and Wildlife Service and/or California Department of Fish and Game for incidental take of all federally or state listed species that may be adversely affected by the development project may apply to the City to pay a fee, the amount to be negotiated by the project applicant with the City, to support the conservation of habitat and open space under the HCP/NCCP in lieu of the HCP/NCCP Implementing fees. If the Community Development Director or his or her designee determines that the mitigation and conservation requirements under the separate approval are equivalent to or exceed what would be required under this Article, the City may determine that no further fees are required for purposes of complying with the HCP/NCCP, in which case the HCP/NCCP Implementing fees described herein shall not be required of the project. Pursuant to Section 9.8 of the Implementing Agreement, the development projects covered by the East Cypress MOU will not be subject to this ordinance if such development projects receive independent take authorizations under FESA and the California Endangered Species Act.

h. All HCP/NCCP implementing fees collected shall be transmitted to the County Auditor-Controller and dispersed to the HCP/NCCP Conservancy at least quarterly in accordance with this Chapter and the California Mitigation Fee Act.

9.2.714 Adjustments to Fees.

The Development Fee and Wetland Mitigation Fee shall on March 15 of each year be automatically adjusted automatically for inflation or deflation in accordance with the requirements of the HCP/NCCP and the Fee Resolution.

9.2.716 Take Authorization Application and Review Procedures.

- a. The City shall require project applicants for any and all Affected Development Projects to submit an application for take authorization to the Community Development Director or his or her at the same time as the request for approval of the project is submitted to the City. The Community Development Director or his or her designee may require that the application be submitted on one or more standard application forms. At a minimum, the application for take authorization must include the following information:
 - 1) Description of the Affected Development Project, including detailed information on the project footprint, extent of construction and extent of any ongoing maintenance activities subject to the HCP/NCCP.
 - 2) One or more reports documenting the methods and results of planning surveys and the methods of applicable preconstruction surveys and construction monitoring, in accordance with Chapter 6 of the HCP/NCCP. The Community Development Director or his or her designee may allow specific components of the required surveys, including some or all of the results of planning surveys and

the methods of applicable preconstruction surveys and construction monitoring, to be provided subsequent to the submittal of the initial application and prior to approval of the development project; however, the application for take authorization is not complete until all items in this Section 9.2.716 are submitted.

- 3) Evidence of compliance or planned compliance with avoidance and minimization measures, in accordance with Chapter 6 of the HCP/NCCP.
 - 4) Quantification of the anticipated acreage of land permanently disturbed, consistent with Chapters 6.2 and 9.3.1 of the HCP/NCCP.
 - 5) Estimate of HCP/NCCP Implementing fees due and/or documentation of proposed land dedication and/or proposed habitat restoration or creation, consistent with Section 9.2.712.
 - 6) Other information as directed by the Community Development Director or his or her designee in accordance with the HCP/NCCP.
- b. The City may grant take authorization to a project applicant only upon satisfaction of all of the following conditions:
- 1) The application for take authorization is deemed complete.
 - 2) The project applicant has been required to comply with all terms and conditions of the Implementing Agreement, the HCP/NCCP, and the state and federal permits that apply to the Development Project. Such terms and conditions include but are not limited to the following:
 - i. Payment of the required HCP/NCCP Implementing fees and/or approval an offer of land dedication and/or habitat restoration or creation by the City, pursuant to the requirements of Section 9.2.712 of this Article.
 - ii. Compliance with all relevant surveys, monitoring, avoidance, minimization, and conservation measures determined by the Community Development Director or his or her designee to apply to the Development Project, pursuant to Chapter 6 of the HCP/NCCP.
- c. The City makes a determination that extension of take authorization is consistent with the HCP/NCCP, Implementing Agreement, the state and federal permits and all applicable federal, state and local laws and regulations.

9.2.718 Enforcement.

- a. The City Attorney shall be authorized to enforce the provisions of this Article by civil action and any other proceeding or method permitted by law.
- b. Failure of any official or agency to fulfill the requirements of this Article shall not excuse any person from compliance with the requirements of this Article."

SECTION 3. JUDICIAL REVIEW. Any judicial action or proceeding to attack, review, set aside, void, or annul the fees established by this ordinance shall be commenced within one hundred twenty (120) days after the effective date of this Ordinance. Any action to attack a fee increase adopted pursuant to the Fee Resolution shall be commenced within one hundred twenty (120) days after the effective date of the increase.

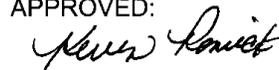
SECTION 4. EFFECTIVE DATE AND POSTING. This Ordinance shall go into effect and be in full force and operation from and after the latter of (1) January 15, 2008; or (2) sixty (60) days after passage; or (3) the date on which the implementing ordinances for all other members of the HCPA have become effective. The City Clerk of the City of Oakley shall cause this Ordinance to be posted in at least three (3) public places in the City of Oakley in accordance with Section §36933 of the Government Code of the State of California.

SECTION 5. SEVERABILITY. If any individual component of the HCP/NCCP Implementing fees or any provision of this Ordinance is held invalid or unenforceable by a court of competent jurisdiction, that holding shall not affect the validity or enforceability of the remaining fee components and/or Ordinance provisions, and the City declares that it would have adopted each part of this ordinance irrespective of the validity of any other part.

The foregoing Ordinance was adopted at a regular meeting of the City Council of the City of Oakley held on the 13th day of November, 2007, by Councilmember Anderson who moved its adoption and passage, which motion being duly seconded by Councilmember Rios was upon voice vote carried and ordered posted by the following vote:

AYES: Anderson, Connelley, Rios, Romick
NOES: Nix
ABSTENTIONS: None
ABSENT: None

APPROVED:



MAYOR

ATTEST:



CITY CLERK