

ORDINANCE NO. 1-2009

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE ADDING ELK GROVE MUNICIPAL CODE CHAPTER 16.96 TO ESTABLISH DEVELOPMENT IMPACT FEES FOR MEASURE A TRANSPORTATION IMPROVEMENTS FOR CITYWIDE BENEFIT DISTRICT

The City Council of the City of Elk Grove does ordain as follows:

Section 1: Purpose and Authority.

1. This Ordinance adds Chapter 16.96 to the Elk Grove Municipal Code to enact the Measure A Mitigation Fee Program as established by the Sacramento Transportation Authority (STA). Implementation of the Measure A Mitigation Fee Program by each jurisdiction within the County of Sacramento was a condition of STA's approval of the new Measure A sales tax and expenditure plan. Measure A was approved by the voters in Sacramento County in November 2004. STA's Ordinance No. 04-01 provides that no revenues from the new Measure A sales tax shall be provided to those local jurisdictions that have adopted a Measure A Mitigation Fee Program. On September 13, 2006, by Resolution No. 2006-229, the City committed to implement the Measure A Mitigation Fee Program.

2. On June 7, 2006, by Resolution No. 06-0006, STA adopted the Measure A nexus study, which identified the additional public facilities required by new development and determined the amount of revenue needed from development impact fees to be imposed on a countywide basis, so that all new development pays its fair share of the costs of new public facilities needed to serve such development. The Measure A development impact fee is to become effective on April 1, 2009, and extend through March 31, 2039, in order to fund new development's fair share of the costs of the transportation improvements included in the Measure A expenditure plan needed to serve such development in the future.

3. The Measure A development impact fees authorized by this Ordinance shall be assessed upon landowners developing residential and nonresidential projects within the City to meet the needs of, and address the impacts caused by, the additional persons residing or employed on the property as a result of such development activity. It is the intent and purpose of the City to protect and promote the public health, safety and welfare by constructing and installing public facilities necessitated by new development within the City. Furthermore, it is the intent and purpose of the City to allow development on the condition that landowners pay their fair share of costs of the Measure A transportation improvements planned within the City or that will benefit the City, and that such costs shall not be or become the responsibility of the City's general fund or any other City fund not designated in this Ordinance.

4. Under the Protocols Agreement, the City is obligated to remit to STA, on a semi-annual basis, all of the Measure A development impact fee revenues collected by

the City for reallocation by STA in accordance with the Measure A expenditure plan. In order to recover the City's cost to collect the Measure A development impact fee, establish a separate account for said fees, and provide reports to STA and to the City Council regarding the amount of the fees collected and the expenditure of those fees, this Ordinance also authorizes the imposition of the Measure A administration fee.

5. The imposition of development fees is one of the preferred methods of ensuring that development bears a proportionate share of the cost of public facilities necessary to fulfill the purposes of this Ordinance as stated above. This Ordinance is intended to implement the Measure A mitigation fee program in accordance with the Measure A expenditure plan and Measure A nexus study.

6. All new development within the City will result in additional growth that will place burdens on public facilities within the City and will cause the need for new public facilities. Such development will necessitate the need for construction of new and expanded public facilities in order to meet the needs of, and to address the impacts caused by, new development within the City. The development fee impact program implemented by this Ordinance is designed to mitigate some of the transportation impacts caused by new development in the City.

7. The development impact fee program set forth in the Measure A expenditure plan and Measure A nexus study is intended to ensure that all public facilities set forth in said expenditure plan are partially paid for by development causing the need for the same, and in any event, without requiring expenditures from the City's general fund. It is fair and equitable for landowners developing land within the City to pay their fair share of the costs of such public facilities and for the City to assess said share to the landowners while shielding the City's general fund from liability for the same.

8. This Ordinance establishes certain fee categories and provides the structure in which the fees may be imposed, all of which are intended to implement the Measure A mitigation fee program set forth in the Measure A expenditure plan. This Ordinance authorizes the City Council to adopt resolutions imposing initial and subsequent amounts of the established fees, any credits and reimbursements applicable to such fees, and any deferral provisions affecting the time and manner in which the fees are to be paid to the City.

9. The development impact fee established by this Ordinance is based upon the estimated costs of the new public facilities set forth in the Measure A expenditure plan which are not fully funded by the Measure A sales tax proceeds in order to serve and address some of the transportation impacts caused by new development within the City, and shall be subject to adjustment as more precise estimates or actual costs of said public facilities are determined and to account for inflationary construction cost increases.

10. The amount of the fees that may be imposed by resolution based on the authority established under this Ordinance, and as may be adjusted over time as allowed pursuant to this Ordinance, is a reasonable approximation of the fair share of the cost of the public facilities, and roughly proportionate to the need for such facilities caused by new development within the City. The development impact fee established by this Ordinance relates rationally and does not exceed the reasonable cost of providing the public facilities within the City occasioned by new development projects.

11. All new development projects within the City should bear a proportionate, fair and equitable financial burden in providing public facilities to serve such uses. The development impact fee is necessary in order to finance the public facilities required by new development within the City. The imposition of the fee on landowners developing their property will insure that they have an obligation to pay a fair share of the costs of such public facilities.

12. The public facilities that are to be financed by the development impact fee established by this Ordinance are based on an analysis of the land uses set forth in the City's General Plan and such improvements are consistent with the City's General Plan, including all elements thereof.

13. For the purpose of establishing the fees set forth in this Ordinance, the record before the City Council and the findings herein stated:

- (a) reasonably identify the purpose of each fee established;
- (b) reasonably identify the use to which the fee is to be put;
- (c) establish a reasonable relationship between the use of each fee and the type of development project on which the fee is imposed;
- (d) establish a reasonable relationship between the need for the public facilities to be financed by the fee established and the type of development project on which the fee is to be imposed;
- (e) establish that there is a reasonable relationship between the amount of the fee and the cost of the public facilities, or portion of such public facilities, attributable to the development project on which the fees are imposed; and
- (f) form the basis for the further finding that the imposition of the development impact fee on development projects to finance public facilities is necessary in order for the City to protect and promote the public health, safety and welfare.

14. The development impact fee program is an integral part of the Measure A expenditure plan. The success of the City General Plan is dependent on the collection

of such fees from landowners within the City in the total sums anticipated by the Measure A expenditure plan and Measure A nexus study. In the event that development impact fee program fails to generate the fee revenue necessary to construct the public facilities set out in the Measure A expenditure plan necessitated by new development within the City in a timely manner, the City Council, in its sole discretion, reserves the right to curtail or cease development within the City unless other sources of funding are available for the timely construction of such needed public facilities.

Section 2: Adoption.

Chapter 16.96 of the Elk Grove Municipal Code is hereby adopted to read as follows:

Chapter 16.96 Development Impact Fees for Measure A Transportation Improvements For Citywide Benefit District

Article 1. General

16.96.010 Purpose.

16.96.020 Definitions.

Article 2. Establishment of Fees

16.96.030 Adoption of new or amended reports.

16.96.040 Establishment of development impact fees.

16.96.050 Additional findings to be made when establishing the amount of development impact fees.

16.96.060 Proceedings to establish the amount of development impact fees.

Article 3. Fee Imposition

16.96.070 Imposition of development impact fees.

16.96.080 Exemptions.

Article 4. Computation and Time of Payment of Fees

16.96.090 Computation of fees.

16.96.100 Time of payment of fees.

16.96.110 Deferral of fees.

16.96.120 Credits and reimbursements.

Article 5. Adjustment of Fees

16.96.130 Automatic annual adjustment.

16.96.140 Adjustment of fee by resolution.

Article 6. Protest

16.96.150 Protest of fees.

Article 7. Creation and Use of Funds

16.96.160 Creation of funds.

16.96.170 Use of Funds.

16.96.180 Refund of fees paid.

16.96.190 Other fee and dedication requirements.

Article 1. General

16.96.010 Purpose.

This chapter is adopted pursuant to the general powers reserved to the City under Government Code Section 66000 et seq. and as allowed by Measure A for the purpose of authorizing certain development impact fees, as described in public facility financing plans, expenditure plans and the nexus studies as referenced herein, to be assessed upon the owners of certain residential and nonresidential property as described in this chapter and which is located within the City. The fees herein adopted shall be assessed upon landowners developing property for any residential or nonresidential use in order to provide all or a portion of the funds which will be necessary to design, construct, install or acquire public facilities required to meet the needs of, and address the transportation impacts caused by, such development activity. It is the intent and purpose of the City to protect and promote the public health, safety and welfare by constructing, installing and acquiring public facilities necessitated by development in the City. Furthermore, it is the intent and purpose of the City to allow the development within its corporate limits on the condition that landowners pay the applicable costs of such public facilities and that such costs shall not be or become a responsibility of any other City fund, including, without limitation, the City's general fund.

16.96.020 Definitions.

A. Unless the contrary is stated or clearly appears from the context in which a term is used, the following definitions shall govern construction of the words and phrases used in this chapter:

1. "Assessment district policy manual" means the document entitled, "Reimbursement Policies and Procedures for Privately Constructed Public Facilities" on file with the City of Elk Grove Public Works, as such document or its title may be amended from time to time.

2. "Automatic annual adjustment" means the automatic annual adjustment of development impact fees based on the inflation factors described in Section 16.96.130 of this chapter.

3. "City Code" means the Municipal Code of the City of Elk Grove

4. "Citywide benefit district area" means the real property located within the corporate limits of the City, and as said limits may be adjusted from time to time.

5. "Development" means the uses to which property will be put, the buildings and improvements to be constructed on it, and the construction activities incident thereto, together with the process of obtaining all required land use entitlements.

6. "Development project" shall have the same meaning as defined by subsection (a) of Government Code Section 66000, as such section may be amended from time to time.

7. "Dwelling unit" means any room or group of rooms located within a dwelling and forming a single unit with the facilities which are used or intended to be used for living, sleeping, cooking, or eating excepting therefrom any unit rented or leased for temporary residency, such as a motel and hotel room.

8. "Fee" and "impact fee" and "development impact fee" means the monetary exaction as defined by subsection (b) of Government Code Section 66000, as such section may be amended from time to time, and shall include, but not be limited to, the fees established pursuant to this chapter.

9. "Fee resolution" means any resolution adopted by the City Council which implements the provisions of this chapter, including, without limitation, the setting of the amounts of the various fees established hereby and the adoption of provisions for credits, reimbursements and deferral relating to such fees.

10. "Government Code" means the Government Code of the state of California and any provision thereof cited in this chapter, as such provision exists as of

the date of the enactment of this chapter, or as may thereafter be amended or renumbered from time to time.

11. "Health and Safety Code" means the Health and Safety Code of the state of California and any provision thereof cited in this chapter, as such provision exists as of the date of the enactment of this chapter, or as may thereafter be amended or renumbered from time to time.

12. "Industrial use" means any Development Project that involves manufacturing, transportation, logistics or similar uses.

13. "Low income" and "very low income" housing is as defined in Health and Safety Code Sections 50079.5 and 50105, respectively.

14. "Measure A" means Ordinance No. 04-01 adopted by the Sacramento Transportation Authority on July 29, 2004, which established the Sacramento Countywide Transportation Mitigation Fee Program to be implemented by the County of Sacramento and each city within the county by April 1, 2009.

15. "Measure A administration fee" means the fee imposed by the City for the cost of collection, deposit, investment, accounting, remittance and reporting of the Measure A development impact fee.

16. "Measure A development impact fee" means a development impact fee established to provide funding for public facilities to benefit new development within the City.

17. "Measure A expenditure plan" means the Sacramento County Transportation Expenditure Plan 2009-2039 dated June 10, 2004, as adopted by the Sacramento Transportation Authority under Ordinance No. 04-01, which specifies the allocation of Measure A sales taxes and Measure A development impact fees for specified public facilities.

18. "Measure A mitigation fee program" means the Sacramento Countywide Transportation Mitigation Fee Program as approved by the Sacramento Transportation Authority by Ordinance No. 04-01. It includes a technical amendment approved by STA on December 11, 2008.

19. "Measure A nexus study" means the Development Impact Fee Study dated June 2, 2006, as adopted by the Sacramento Transportation Authority by Resolution No. 06-0006.

20. "Multi-family residential use" means any Development Project that uses a single parcel for two or more dwelling units within one or more building(s) including, without limitation, duplexes, townhouses, condominiums and apartments.

21. "Office use" means any Development Project that involves business activities, associated with professional or administrative services, and typically consists of corporate offices, financial institutions, legal and medical offices, personal services, or similar uses, and religious centers. "Office Use" also includes any other commercial use not specifically listed in Section 2.1 of the Protocols Agreement that is not a retail or industrial use.

22. "Protocols Agreement" means the New Measure A Sacramento Countywide Transportation Mitigation Fee Program Agreement on Operating Protocols dated August 2008 with the Sacramento Transportation Authority, as approved by the Authority on August 28, 2008, by Resolution No. 08-0001 and as approved by the City on January 14, 2009, by Resolution No. 2009-15.

23. "Public facilities" means the public improvements, public services and community amenities as defined by subsection (d) of Government Code Section 66000, as such section may be amended from time to time. The term "public facilities" only includes transportation improvements and infrastructure to be designed, constructed, installed and acquired to serve the specified benefit district area, as well as the transportation-related public service and community amenities to serve the specified benefit district area, which improvements and infrastructure are described in the applicable financing plan, expenditure plan, and/or nexus study (collectively "plan" or "study"). The costs of the design, construction, installation and acquisition of the specified public facilities, which are to be financed partially by the development impact fee program, is set forth within the plan or study. Where applicable under the plan or study, the term "public facilities" includes the acquisition of land relating to such improvements, infrastructure, public services and community amenities. The term "public facilities" also means a specific public improvement or infrastructure where the context requires a singular meaning.

24. "Retail use" means any Development Project that involves retailing of merchandise, generally without transformation, retail food services, and rendering services incidental to the sale of merchandise at a fixed point of sale.

25. "Senior residential use" means any Development Project that qualifies as housing for older persons pursuant to Government Code Section 12955.9

26. "Single family residential use" means any Development Project that uses a single family parcel for only one residential dwelling unit and includes any Development Project that involves one primary dwelling unit and one accessory dwelling unit on a single lot.

27. "STA" means the Sacramento Transportation Authority.

Article 2. Establishment of Fees

16.96.030 Adoption of new or amended reports.

To implement the development impact fees established pursuant to the provisions of this chapter, the City Council may, by resolution, adopt new or amended versions of any of the studies, reports, plans, or projections on which the development impact fees are based, except in such cases where amendments to such studies reports, plans, or projections must be made by ordinance.

16.96.040 Establishment of development impact fees.

A. The following development impact fees are established pursuant to the provisions of this chapter to finance the cost of the following categories of public facilities required by development within the following specified benefit district areas:

1. Measure A benefit district.

a. Measure A Development Impact Fee. A development impact fee is established to provide funding for public facilities to serve the City, which facilities are described in the Measure A expenditure plan and the Measure A nexus study. The Measure A benefit district is the jurisdictional boundaries of the City, and as said boundary may be adjusted from time to time.

b. Measure A Administration Fee. An administrative fee is established to fund the City's cost to administer the Measure A development impact fee.

B. The City Council, by resolution, shall establish the specific initial and subsequent amounts of the foregoing fees pursuant to Section 16.96.060 of this chapter and make the additional findings required under Section 16.96.050 of this chapter in establishing said amounts of each fee. In addition, the City Council, by resolution, may adopt additional provisions, procedures and policies to implement the fees established by this chapter. The amounts of fees, provisions, procedures, and policies adopted by resolution pursuant to this subsection shall be consistent with the applicable financing plan, expenditure plan and/or nexus study as referenced in subsection A of this Section 16.96.040.

C. The City Council, by resolution, may establish new or additional components of the fees identified in subsection A of this Section 16.96.040 as are necessary to accommodate phasing and stages of the development of the specified benefit district areas, or as may be contemplated by future amendments to the financing plan, expenditure plan and/or nexus study as referenced in subsection A of this Section 16.96.040.

16.96.050 Additional findings to be made when establishing the amount of development impact fees.

At the time it considers the amount of the fees established pursuant to Section 16.96.040 of this chapter or at the time of amending such fees, other than in making an automatic annual adjustment to the fees as provided in Section 16.96.130 of this chapter, the City Council shall adopt the amount of such fees if it makes the following findings in support of such fees:

A. A finding that such fees have been determined and calculated in the manner consistent with the financing plan, expenditure plan and/or nexus study as referenced in subsection A of Section 16.96.040 of this chapter; and

B. The following additional findings required by Section 66001 of the Government Code which demonstrate that there is a nexus between the public facilities for which such fees are imposed and the need for such public facilities created by the development of residential and nonresidential property within the specified benefit district areas upon which the fees are imposed:

1. Findings which identify the purpose of the fees;
2. Findings which identify the use to which the fees are to be put;
3. Findings which demonstrate that there is a reasonable relationship between the use of the fees and the type of development project on which the fees are imposed;
4. Findings which demonstrate that there is a reasonable relationship between the need for the public facilities to be financed by the fees and the type of development project on which the fee is to be imposed; and
5. Findings which demonstrate how there is a reasonable relationship between the amount of the fees and the cost of the public facilities, or portion of such public facilities, attributable to the development project on which the fees are imposed.

C. In making the findings pursuant to this Section 16.96.050 and any other findings, the City Council may consider all matters, whether offered orally or in writing, presented at the hearing or hearings conducted for the purpose of establishing or amending the fee, and any and all oral and written material presented to the City Council and Planning Commission in connection with the adoption, approval or amendment of the financing plan, expenditure plan and/or nexus study as referenced in subsection A of Section 16.96.040 of this chapter.

16.96.060 Proceedings to establish the amount of development impact fees.

A. At the time of setting the amount of the fees established pursuant to this chapter or at the time of amending such fees, other than in making an automatic annual adjustment to the fees as provided in Section 16.96.130 of this chapter, the City Council shall hold a public hearing on the proposed fees or proposed amendment of fees in the manner required by Section 66018 of the Government Code.

B. The effective date of any resolution adopted by the City Council which establishes or amends, as the case may be, the amount of the fees established pursuant to Section 16.96.040 of this chapter, shall be no sooner than 60 days following the final action on the adoption or amendment of the fee.

Article 3. Fee Imposition

16.96.070 Imposition of development impact fees.

A. The development impact fees established under this chapter shall be imposed on the following types of uses or development of real property located within the benefit district areas as referenced in subsection A of Section 16.96.040 of this chapter:

1. For nonresidential uses or development:

a. The construction on the property of a new building or structure;

b. The construction on the property of additions to an existing building or structure which results in the expansion in the size or use of such existing building or structure; or

c. The change in use of an existing building or structure on the property from a previous residential use to a nonresidential use, or from a previous nonresidential use to another nonresidential use, provided that the landowner shall be entitled to a credit against fees paid pursuant to this chapter in the amount of fees which were actually paid for such previous residential or nonresidential use, which prior fees shall be adjusted for inflation consistent with Section 16.96.130 of this chapter.

2. For residential uses or development:

a. The construction on the property of a new building or structure containing one or more dwelling units;

b. The construction on the property of alterations or additions to an existing building or structure which add one or more dwelling units to such existing building; or

c. The change in use of an existing building or structure on the property from a previous nonresidential use to a residential use, provided that the landowner shall be entitled to a credit against fees paid pursuant to this chapter in the amount of fees which were actually paid for such previous nonresidential use, which prior fees shall be adjusted for inflation consistent with Section 16.96.130 of this chapter.

3. For nonresidential and residential uses or development within the same building or structure, the computation of fees as set out in Section 16.96.090 of this chapter shall apply.

B. Except as may be expressly provided in this chapter, no building permits or extension of permits relating to the activities described in subsections (A)(1) and (A)(2) of this Section 16.96.070 shall be granted unless and until the appropriate development impact fee or fees have been paid to the City in accordance with the provisions of this chapter, except that for residential developments under a fee payment contract as specified in Section 66007 of the Government Code, building permits may be issued but no final inspection or certificate of occupancy shall be granted unless and until the appropriate development impact fee or fees have been paid to the City. As provided in subsection (a) of Section 66007 of the Government Code, for a residential development that contains more than one dwelling unit, the fees may be paid on a pro rata basis for each dwelling unit at the time of the building permit.

C. Notwithstanding anything to the contrary set forth in subsection A of this Section 16.96.070 or in any other provision in this chapter, the development impact fees established pursuant to this chapter shall apply to any development project that has heretofore either received a tentative map approval or other approval or permit, whether discretionary or nondiscretionary, or is subject to a development agreement or other agreement between the landowner and City that provides for payment of one or more fees established under this chapter.

16.96.080 Exemptions.

A. The following shall be exempted from payment of the fees established by this chapter:

1. Alterations, renovations or expansion of an existing residential structure where no additional dwelling units are created and the use is not changed;

2. The replacement of a destroyed or partially destroyed or damaged structure with a new structure of the same size and use;

3. Construction, alteration, renovation or expansion of a new or existing residential, or residential/retail mixed use, structure owned by the Capitol Area Development Authority, or its successor(s) in interest;

4. Agreements entered into pursuant to Section 65865 of the Government Code (“development agreement”) unless the development agreement expressly provides for the payment of one of more fees established under this chapter. For fees established pursuant to subsection A(1) of Section 16.96.040 of this chapter, the development agreement must have been approved prior to April 1, 2009 and the exemption is invalid if the term of that development agreement is extended after April 1, 2009.

5. For fees established pursuant to subsection A(1) of Section 16.96.040 of this chapter, a vesting tentative map authorized under Section 66498.1 of the Government Code if the map application was deemed complete prior to April 1, 2009; and

6. For fees established pursuant to subsection A(1) of Section 16.96.040 of this chapter, low and very low income housing as defined in Health and Safety Code Sections 50079.5 and 50105, respectively.

B. Any claim of exemption with respect to the fees established by this chapter shall be made no later than the time for application for fee adjustment pursuant to Section 16.96.150 of this chapter.

Article 4. Computation and Time of Payment of Fees

16.96.090 Computation of fees.

The methodologies set forth in the financing plan, expenditure plan and/or nexus study referenced under subsection A of Section 16.96.040 of this chapter shall be used as the basis to set the amount of fees pursuant to any resolution referenced under subsection B of Section 16.96.040 of this chapter. The amount of fees due from any landowner shall be calculated from the actual uses of land proposed by the landowner unless otherwise provided in any resolution referenced under subsection B of Section 16.96.040 of this chapter. Applicants for building or other development permits shall include plans and calculations prepared by the applicant or applicant’s agent, specifying data necessary to calculate development impact fees, including, without limitation, each proposed land use, the square footage of each use, and other relevant data as may be required by the City Director of Finance, or his or her authorized designee. All fees due under this chapter shall be determined and calculated by the City Director of Finance, or his or her authorized designee.

16.96.100 Time of payment of fees.

Except as otherwise provided in any resolution adopted by the City Council as provided under Section 16.96.110 and subsection B of Section 16.96.070 of this chapter relating to deferral of payment of fees, the fees established by this chapter shall be paid for the property on which a development project is proposed at the time of the issuance

of any required building permit relating to such development. With respect to development projects completed or commenced prior to the effective date of this chapter and the effective date of any amendment, the City Director of Finance, or his or her authorized designee, may enter into agreements with landowners regarding the amount, time, and manner of payment of fees under this chapter with respect to such development projects.

16.96.110 Deferral of fees.

The City Council, by resolution, may establish and modify policies, guidelines and procedures regarding the deferral or other adjustment of the time of payment of the fees established under this chapter.

16.96.120 Credits and reimbursements.

A. The City Council, by resolution, may establish and modify policies, guidelines and procedures regarding credits and reimbursements which may apply to the fees established by this chapter. Said policies, guidelines and procedures shall be subject to the terms of any written agreement entered into by the City Director of Finance, or his or her authorized designee, and any landowner or landowners within the benefit district area concerning credits against and reimbursement of fees established pursuant to the financing plan, expenditure plan and/or nexus study as referenced in subsection A of Section 16.96.040 of this chapter.

B. All policies, guidelines and procedures regarding credits and reimbursements shall be consistent with the following:

1. The credits and reimbursements shall apply to fees owed (i) by landowners that have advanced funds for the planning, engineering, or construction of public facilities which otherwise would be paid from the revenue of the fees established by this chapter, and (ii) by landowners that planned, engineered or constructed public facilities or dedicated land for said facilities which otherwise would be paid for from the revenue of the fees established by this chapter.

2. The policies, guidelines and procedures shall provide for reimbursement to the City for administrative, planning, and engineering costs and other expenses relating to the implementation of the financing plan, expenditure plan and/or nexus study as referenced in subsection A of Section 16.96.040 of this chapter.

3. The credits and reimbursements may be transferable, in whole or in part, upon notice to the City in the form and in the manner specified by the City.

4. The amounts of credits and reimbursements shall be subject to adjustments for inflation calculated consistent with the provisions of Section 16.96.130 of this chapter, but shall not accrue interest.

5. Credit shall be given to the extent that public facilities are financed through the establishment of an assessment district or the use of other alternative financing mechanisms. The cost of assessment district formation, administrative costs thereof, and bonding shall not be considered a reimbursable cost, or a cost eligible for credit.

6. The credits and reimbursements may be subject to annual review and adjustment to insure that funds are available to construct or acquire public facilities in a timely manner pursuant to the financing plan, expenditure plan and/or nexus study and to promote fairness and equity relating to credits and reimbursements.

7. The credits and reimbursements shall be given, consistent with the Elk Grove "Reimbursement Policies and Procedures for Privately Constructed Public Facilities" for the construction of any public facilities (or a portion thereof) for which a fee established by this chapter may be expended and shall apply to the fees otherwise due and payable for the development project giving rise to the need for such public facilities.

8. The credits and reimbursements shall not be given for site-related improvements and dedications of land which are specifically required by the development project in order to serve it and which do not constitute a public facility for which a fee established by this chapter may be expended.

9. Any claim for credit or reimbursement shall be made no later than at the time of application for a building permit, even if payment of the fee is not due until final inspection or the certificate of occupancy. Any claim not made by or before the time of such application shall be deemed waived.

10. The sole source of the payment of a reimbursement shall be the revenue collected on the specific fee which could be expended on the public facilities to which the reimbursement relates, unless a credit or reimbursement agreement approved by the City Council specifically provides for an alternative source of reimbursement.

11. Credits and reimbursements may cease or be amended if the City Council, by resolution, determines that the same constitute threat(s) to the public health, welfare or safety.

C. The person seeking a credit or reimbursement, or both, shall submit such documentation, including, without limitation, engineering drawings, specifications, and construction cost estimates, and utilize such methods as may be appropriate and acceptable to the City Director of Finance, or his or her authorized designee, to support the request for a credit or reimbursement. The Director shall determine the credit or reimbursement amount for construction of a specific public facility based upon either the foregoing landowner-provided cost estimates or upon alternative engineering criteria and construction cost estimates if the Director determines that such estimates submitted by the landowner are either unreliable or inaccurate. The Director shall determine whether the specific public facility is eligible for credit or reimbursement. Any decision made by the Director pursuant to this section may be appealed to the City Council by

the filing of a notice of appeal with the City Clerk within ten (10) days of the date of the Director's written decision. The City Council shall consider the appeal at a public hearing held within sixty (60) days after the filing of the notice of appeal. The decision of the City Council at said public hearing shall be final.

Article 5. Adjustment of Fees

16.96.130 Automatic annual adjustment.

The fees established by this chapter shall be adjusted automatically to take into consideration construction cost inflation on July 1st of each fiscal year. The first fiscal year for which an adjustment shall occur shall be the fiscal year that includes July 1, 2010. The adjustment shall be made by a factor equal to the percentage increase, if any, of the index which the City Council adopts by resolution at time of establishment or amendment of the fees as provided under this chapter, which may include the following: The Construction Cost Index as published by Engineer News Record/McGraw-Hill Construction Weekly for either (i) the San Francisco (based on 1913 U.S. average = 100) during the twelve (12) months ending on the preceding March 1st, or (ii) the 20-City Construction Cost Index during the twelve (12) months ending on the preceding March 1st. This automatic annual adjustment shall not apply to those fees which are based on variable factors which themselves result in an automatic inflation adjustment, those which specifically indicate otherwise, or those which are governed by provisions of an agreement with the City expressly exempting such fees from the adjustment set forth under this Section 16.96.130.

16.96.140 Adjustment of fee by resolution.

In addition to any automatic annual adjustment, the amount of the fees established by this chapter may be revised periodically, including, without limitation, upon the report and review provided for in the Code, by resolution of the City Council. Any action by the City Council to increase fees shall comply with the provisions of this chapter and Government Code Section 66018.

Article 6. Protest

16.96.150 Protest of fees.

A. A landowner subject to a fee established by this chapter may apply to the City Director of Finance, or his or her designee (for purposes of this section, the "Director"), for a reduction, adjustment, or waiver of any one or more of the fees, or any portion thereof, based upon the absence of a reasonable relationship or nexus between the impacts of the landowner's development project and either the amount of the fee charged or the type of public facilities to be financed, or both. The application shall state in detail the factual basis for the claim of reduction, adjustment, or waiver, and shall

include any and all written materials which the landowner deems appropriate in support of the application.

B. The application shall be made in writing and filed with the Director at or before the time required for the filing of protests under Government Code Sections 66020 and 66021. For purposes of determining the applicable limitations period set forth in Government Code Section 66020, the date of the imposition of the fees under this chapter shall be the date of the earliest discretionary approval by the City of the subject development project. In the case of a development project where no discretionary approval is granted by the City, the date of the imposition of the fees under this chapter shall be the date of the earliest ministerial approval by the City of the subject development project. The time to file the application shall commence as of the date of City's written notice of the amount of the fees and the length of the protest period. The application shall be accompanied by the payment of a filing fee in an amount established by the City Council. The applicant shall be liable for the actual cost of the City in processing and ruling upon the application to the extent such cost exceeds the filing fee. Such excess amount may be deducted from any refund found due and owing to the applicant or may be added to the amount of development impact fees found to be due or owing from the applicant, as the case may be.

C. Notwithstanding the filing of an application and the pendency of any hearing or procedure under this Section 16.96.150, the landowner shall pay the development impact fees originally determined by the City in a timely manner pursuant to Section 16.96.100 of this chapter. Such payment shall be deemed to be a payment under protest pursuant to Government Code Sections 66020 and 66021.

D. It is the intent of this Section 16.96.150 that:

1. The Director may calculate a revised fee or require additional exactions where the impacts of a particular proposed development exceed the standards otherwise applicable in determining the public facilities necessitated by such development under the financing plan, expenditure plan and/or nexus study referenced in subsection A of Section 16.96.040 of this chapter; and

2. The fee categories shall be considered individually; thus it may occur that a fee adjustment or waiver may be made to one category of fees without affecting another.

E. The Director shall consider the application at an informal hearing held within sixty (60) days after the filing of the fee adjustment application. The decision of the Director shall be final and not appealable, except as provided in subsections H and I of this Section 16.96.150. The Director shall make his or her determination of the fee calculation within fifteen (15) days from the date of the informal hearing or the date on which said Director sets for the submission of additional engineering or other studies, other information, or additional calculations as found necessary by the Director during the course of the informal hearing. Applicant's failure to submit, on a timely basis,

additional information requested by the Director may result in a denial of the application. The applicant shall be notified of the Director's decision, in writing, by the mailing of such decision by first-class mail, postage prepaid, to the address provided by the applicant.

F. The Director shall consider the following factors in his or her determination whether or not to approve an application:

1. The factors identified in Government Code Section 66001:
 - a. The purpose and proposed use of the fee;
 - b. The type of development involved, including factors such as differences in factors relevant to the calculation of the fee;
 - c. The relationship between the fee's use and the type of development involved;
 - d. The need or demand for the public facilities to be funded by the fee and the type of development involved; and
 - e. The amount of the fee and the portion of it attributable to the development involved.
2. The substance and nature of the evidence presented by the applicant.
3. The facts, findings and conclusions stated in the financing plan, expenditure plan and/or nexus study as referenced in subsection A of Section 16.96.040 of this chapter, including technical information, studies, and reports contained within and supporting said plans and study, together with findings supporting the resolution setting the amount of the fee or fees in question. The applicant must present comparable technical information, studies and reports to demonstrate that the fee is inappropriate for the particular development involved.

G. If the application is granted, any change in use within the particular development involved in an application shall invalidate the reduction, adjustment, or waiver of the fee if such change in use would render the same inappropriate.

H. Within thirty (30) days of the date of the mailing of the decision of Director's decision, an applicant may appeal the Director's decision to the City Council, by filing a notice of appeal with the City Clerk. The provisions of Chapter 1.11 of the City Code shall govern the appeal to the City Council. In reaching its decision, the City Council or the appointed hearing examiner, as the case may be, shall consider the information contained in the application and the factors set forth in the subsection F of this Section 16.96.150. The decision on the appeal shall be mailed within ten (10) days following the hearing held pursuant to this Section 16.96.150 by first-class mail, postage

prepaid, to the address provided by the applicant. The written decision shall be final and not appealable, except as provided in subsection I of this Section 16.96.150.

I. The protest procedures set forth in this Section 16.96.150 are administrative procedures which must be exhausted prior to the institution of any judicial proceeding concerning the fees protested.

Article 7. Creation and Use of Fund

16.96.160 Creation of funds.

A. The fees established and collected pursuant to this chapter shall be deposited in the following separate special funds and accounts created specifically to hold the revenue generated by such fees. Said collected fees shall be deposited, managed, and maintained pursuant to the provisions of Section 66006 of the Government Code. Monies within such fund may be used solely for the purposes set forth in Section 16.96.170 of this chapter. In this regard, the following special funds are created and established:

1. Measure A transportation impact fee fund for the deposit and collection of the Measure A transportation impact fee.
2. Measure A administration fee fund for the deposit and collection of the Measure A administration fee.

B. The City Manager, or his or her designee, shall have the authority to rename funds and create new funds, as such funds may become necessary or appropriate through the adoption of any fee resolution or through any amendment to the financing plan, expenditure plan and/or nexus study as referenced in subsection A of Section 16.96.040 of this chapter.

16.96.170 Use of funds.

A. Funds collected from the fees established by this chapter and deposited in their respective special funds established under Section 16.96.160 of this chapter shall be used by the City, or by the Sacramento Transportation Authority or other entity if funds have been transferred to that entity, for the following purposes:

1. Payment of the actual costs of designing and constructing public facilities for which the fees may be expended, as described in the resolution or resolutions adopted pursuant to subsection B of Section 16.96.040 of this chapter;
2. Reimbursement for those public facilities already constructed as described in Section 16.96.120 of this chapter, or for the costs advanced, including, without

limitation, design and administrative costs incurred with respect to a specific public facility and the preparation and implementation of the financing plan, expenditure plan and/or nexus study as described in Section 16.96.040 of this chapter;

3. Providing for reimbursements to landowners as described in Section 16.96.120 of this chapter;

4. Providing refunds;

5. Funding the City's administration of the fee program implemented by the provisions of this chapter; and

6. Using the same as may be permitted under Section 66006 of the Government Code.

B. The City Council, by resolution, may authorize the City Manager to make loans among the different funds and accounts established pursuant to this chapter to assure adequate cash flow for the construction and acquisition of public facilities on a timely basis so long as such inter-fund and/or inter-account loans do not unreasonably delay such construction and acquisition under the lending fund or account.

C. Unless used or refunded as otherwise permitted under this Section 16.96.170, monies, including any accrued interest, not assigned in any fiscal year shall be retained in the same fund or account until the next fiscal year.

D. The City Council, by resolution, may authorize the City Manager to transfer funds, including any accrued interest, to (1) another public entity with the authority to manage the fund pursuant to Section 66006 of the Government Code, or (2) to another public entity with the authority to undertake construction of the public facility funded by the fee.

16.96.180 Refund of fees paid.

If a building permit or, if appropriate, a grading permit, expires without commencement of construction, then the fee payer shall be entitled to a refund, without interest, of the fees paid as a condition for its issuance pursuant to compliance with Section 16.02.160 of the City Code; provided, however, that the portion of any fee revenue received by the City as reimbursement of its costs in administering the provisions of this chapter shall not be refunded. Failure to timely submit the required application for refund Code shall constitute an absolute waiver of any right to the refund.

16.96.190 Other fee and dedication requirements.

The provisions of this chapter shall not release any owner of residential or nonresidential property located within the benefit district area from the following obligations:

A. Paying other applicable fees relating to development of property, including, without limitation, the application fees, processing fees, mitigation fees, and other development fees within the control of the City.

B. Complying with any public facility requirements which are imposed pursuant to applicable law, including, without limitation, the provisions of the City Code.

C. Complying with any requirement to dedicate property for public use pursuant to applicable law, including without limitation, the provisions of the City Code and the Government Code, at the time of approval of a tentative subdivision map, tentative master parcel map, certificate of compliance, building permit or other land use entitlement.

D. Complying with any obligation to pay fees or exactions, or to comply with mitigation requirements for identified project-related environmental effects.

Section 3: Severability.

1. If any section, phrase, sentence, or other portion of this Ordinance for any reason is held or found to be invalid, void, unenforceable, or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

2. If any fee established by this Ordinance for any reason is held or found to be invalid, void, unenforceable, or unconstitutional by a court of competent jurisdiction, such fee shall be deemed a separate, distinct and independent fee, and such holding shall not affect the validity of the remaining fees established by this Ordinance.

3. If any fee established by this Ordinance is held or found to be invalid, void, unenforceable or unconstitutional by a court of competent jurisdiction based upon an insufficient nexus to a specific public facility or property for which the revenue generated from such fee may be expended pursuant to Chapter 16.96 or any resolution adopted pursuant to said Chapter, said fee as it relates to such specific public facility or property shall be deemed a separate, distinct and independent fee, and such holding shall not affect the validity of the fee as it relates to other public facilities or property.


Section 4: No Mandatory Duty of Care.

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 5: Effective date.

This Ordinance and any fee resolution relating to this Ordinance shall not take effect until sixty (60) days following enactment hereof or April 1, 2009, whichever date is later.

ORDINANCE: 1-2009
INTRODUCED: January 14, 2009
ADOPTED: January 28, 2009
EFFECTIVE: April 1, 2009



PATRICK HUME, MAYOR of the
CITY OF ELK GROVE

ATTEST:



SUSAN J. BLACKSTON, CITY CLERK

APPROVED AS TO FORM:



SUSAN COCHRAN, CITY ATTORNEY

Date Signed: February 2, 2009

**CERTIFICATION
ELK GROVE CITY COUNCIL ORDINANCE NO. 1-2009**

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) **ss**
CITY OF ELK GROVE)

I, Susan J. Blackston, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing ordinance, published and posted in compliance with State law, was duly introduced on January 14, 2009 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on January 28, 2009 by the following vote:

AYES : COUNCILMEMBERS: Hume, Scherman, Cooper, Davis, Detrick

NOES: COUNCILMEMBERS: None

ABSTAIN: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None

A summary of the ordinance was published pursuant to GC 36933(c) (1).



**Susan J. Blackston, City Clerk
City of Elk Grove, California**