

## ORDINANCE NO. 46-2002

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE, CALIFORNIA, AMENDING CHAPTER 16.95 OF THE ELK GROVE MUNICIPAL CODE RELATIVE TO DEFERRAL OF CERTAIN IMPACT FEES

**WHEREAS**, the City of Elk Grove ("City") requires the payment of various types of development impact fees to help address the impacts of new development; and

**WHEREAS**, the City recognizes that the payment of fees represents a substantial financial commitment for many projects; and

**WHEREAS**, the City recognizes that in some cases deferring the payment of fees to a later date may assist in the development of projects, and that assisting the development of these projects, and

**WHEREAS**, the of Elk Grove Municipal Code, Chapter 16.95, provides for the deferral of fees under specified circumstances; and

**WHEREAS**, the City desires to revise Chapter 16.95 of the Municipal Code to remove references to the County of Sacramento and add certain classes of fees which can be deferred; and

**NOW, THEREFORE**, the Council of the City of Elk Grove does hereby ordain as follows:

#### Section 1: Purpose and Authority

The purpose of this Ordinance is to amend Chapter 16.95 of the Elk Grove Municipal Code as shown in Section 3, below. This Ordinance is authorized by Article 11, Section 7 of the California Constitution.

#### Section 2: Findings

Finding: The proposal to amend Chapter 16.95 of the Elk Grove Municipal Code will not have a significant adverse impact on the environment and a Notice of Exemption has been prepared and completed in accordance with the California Environmental Quality Act (CEQA).

Evidence: Because the proposed amendment addresses only the timing of fee payment, and provides specifically that such deferral shall not affect the timing of the construction of funded capital projects which may be required to address the traffic, drainage, and other impacts of development, no foreseeable physical impacts would result from the adoption of this Ordinance. On the basis of the whole record, there is no substantial evidence that the project will have a significant adverse impact on the environment.

Finding: The proposed adoption of the revisions to the Municipal Code is in the public interest.

Evidence: The City has reviewed the proposed amendments to Chapter 16.95, reviewed the staff report, and has received public testimony at a duly noticed public hearing regarding the matter. The deferral of the payment of fees is specifically intended to help facilitate the development of projects, which the City expects will result in positive benefits through the creation of new retail development, employment opportunities, and sales tax and other revenues. Chapter 16.95 specifically provides that the deferral of fees shall not negatively affect the ability of the City to proceed with capital improvements funded by development impact fees.

Section 3: Amendments

The City Council hereby amends Chapter 16.95 of the Elk Grove Municipal Code to read as follows:

**CHAPTER 16.95**

**DEFERRAL OF CERTAIN IMPACT FEES**

Sections:

16.95.010 Purpose.

16.95.020 Applicable Fee Programs

16.95.040 Deferral Agreements.

16.95.050 Time of Payment.

16.95.060 Interest.

16.95.070 Administration Charge.

16.95.080 (Repealed)

**16.95.010 PURPOSE.** The City Council of the City of Elk Grove desires to stimulate and encourage all aspects of economic development within the City, particularly such development that will result in long-term commitments to the City of Elk Grove, which will create jobs and provide economic stimuli for the benefit of all of the City's residents. The City Council finds that the early payment of certain impact fees for non-residential development creates a barrier to such development and desires, by the adoption of this ordinance, to ease such barrier by deferring the time for payment of certain fees.

**16.95.020 APPLICABLE FEE PROGRAMS.** (a) Notwithstanding any other provision of this Code, upon application and approval of security pursuant to Section 16.95.030(b) of this Chapter and a determination made by the City Manager or his designee that the deferral of said fee(s) shall not adversely impact any approved or programmed capital facility, the following fees shall be paid and collected pursuant to the provisions of this Chapter:

- (1) Elk Grove/West Vineyard public facilities fees imposed pursuant to Chapter 16.82;
- (2) Roadway and transit fees imposed pursuant to Chapter 16.85;
- (3) Roadway and transit fees imposed pursuant to Chapter 16.87;
- (4) Laguna South Development Impact Fees;
- (5) Development Impact Fees Adopted for the Elk Grove Auto Mall;
- (6) Development Impact Fees Adopted for Police Facilities, Municipal Facilities, and Railroad Over-crossing;
- (7) Low-income housing trust fund fees imposed pursuant to Chapter 16.89.

b) At the time of application, the applicant shall pay twenty percent (20%) of the amount of fees which would otherwise be payable at the time of issuance of building permits. The applicant shall also, at such time, provide security for the payment of those fees to be deferred. Such security shall be subject to the approval of the City Manager or his designee and shall, subject to such approval, consist of one or more of the following:

- (1) Assigned passbook or certificate of deposit;
- (2) Irrevocable letter of credit;
- (3) Surety bond;
- (4) Lien against the property; or
- (5) Negotiable securities if approved by the City Council.

(c) The application shall state the time for which fees are requested to be deferred. Fees may be deferred pursuant to this Chapter to issuance of a certificate of occupancy; to close of escrow; or, for not less than one nor more than five years. If fees are to be deferred to issuance of a certificate of occupancy or to close of escrow, the deferral agreement required by Section 16.90.040 shall include a provision requiring payment at such times or at a time certain, whichever occurs first.

**16.95.040 DEFERRAL AGREEMENTS.** Upon approval of an application, the applicant shall enter into a deferral agreement with the City in a form satisfactory to the City Manager or his designee and approved by the City Attorney. Such agreement shall, at a minimum, be site specific and provide for the enforcement of the provisions of this Chapter. A single agreement shall be entered for each project whether or not the applicant is the same for multiple projects. Authority to execute such agreements on behalf of the City is hereby delegated to the City Manager or his designee.

**16.95.050 TIME OF PAYMENT.** Upon approval of an application for fee deferral, deposit of approved security and execution of a deferral agreement, fees to be deferred pursuant to this Chapter shall be payable and collected in the manner as set forth in the application and deferral agreement. If not paid within the time required, the City shall enforce the security provided pursuant to Section 16.90.030.

**16.95.060 INTEREST.** (a) Unless waived as provided in subdivision (b) of this Section, interest shall be charged on all amounts deferred pursuant to this Chapter in an amount equal to the annual rate of interest earned by the City of Elk Grove on the investment of pooled funds.

(b) If the applicant is a targeted company, or agent for a targeted company, interest on amounts deferred shall be waived. A targeted company is a company, which can demonstrate that it will bring to the City of Elk Grove fifty (50), or more full-time jobs each paying over \$25,000 per year. The City Manager, or his designee, is hereby vested with the authority to determine whether an applicant is a targeted company or is an agent for a targeted company.

**16.95.070 ADMINISTRATION CHARGE.** The City Council may from time to time, by resolution, establish a fee for payment at time of application for the purpose of funding the costs of administering the fee deferral program established by this Chapter.

Section 5: 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 6: Severability.

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

Section 7: Effective Date and Publication

This Ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the ordinance within 15 days after its passage, a summary of the ordinance may be published at least five days prior to and fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the office of the City Clerk, pursuant to GC 36933(c)(1).

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 18<sup>TH</sup> day of December 2002.



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RICK SOARES, MAYOR of the  
CITY OF ELK GROVE

ATTEST:



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PEGGY E. JACKSON, CITY CLERK

APPROVED AS TO FORM:



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ANTHONY B. MANZANETTI,  
CITY ATTORNEY

**EFFECTIVE DATE: January 17, 2003**

**AYES: Soares, Briggs, Cooper  
Scherman, Leary**  
**NOES: None**  
**ABSTAIN: None**  
**ABSENT: None**