

ORDINANCE NO. 12-2008

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE, CALIFORNIA, ADDING CHAPTER 16.120 TO TITLE 16 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

WHEREAS, the of Elk Grove Municipal Code, Chapter 16.120, provides for the deferral of fees under specified circumstances; and

WHEREAS, the City desires to add Chapter 16.120 to the Municipal Code.

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 add Chapter 16.120 to 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

Urgency Finding: Government Code section 36937 provides that ordinances do not take effect for thirty days after their adoption. However, an ordinance may take effect immediately where the City Council determines, by 4/5 vote, that the ordinance must take effect immediately in order to preserve the public peace, health or safety. In this instance, the City Council hereby finds and determines that the significant reduction in the number of building permit applications and construction activities in the City will cause significant reductions in revenues to the City and that this loss of revenue to the City may result in the reduction of police services, maintenance of the streets, sidewalks, alleys, trees and other property open to the public as well as other community services vital to the preservation of the public peace, health and safety and that it is therefore necessary to provide immediate relief by deferring development impact fees in order to remove those costs as a barrier to economic development.

Finding: The proposal to add Chapter 16.120 to the Elk Grove Municipal Code is exempt from the provisions of the California Environmental Quality Act (CEQA). A Notice of Exemption has been prepared and completed in accordance with CEQA.

Evidence: CEQA Guidelines Section 15061(b)(3) states that CEQA only applies to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that the proposed project will not have a significant adverse effect on the environment, the project is not subject to CEQA. The proposed Chapter 16.120 would establish a program for allowing the deferral of certain development impact fees and does not propose nor authorize any action that would have a potential to cause a significant adverse effect on the environment. Furthermore, the proposed Chapter 16.120 states that in order to be eligible for a

development fee deferral, a project must have completed all environmental compliance requirements. Thus, it can be seen with certainty that the proposed Chapter 16.120 will not have a significant adverse effect on the environment and is therefore not subject to CEQA.

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

Evidence: The City has reviewed the proposed addition of Chapter 16.120, reviewed the staff report, and has received public testimony at a duly noticed public meeting 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 residential development, retail development, employment opportunities, and sales tax and other revenues. Chapter 16.120 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: Addition

The City Council hereby adds Chapter 16.120 of the Elk Grove Municipal Code to read as follows:

CHAPTER 16.120

DEFERRAL OF CERTAIN IMPACT FEES

Sections:

- 16.120.010 Title.
- 16.120.020 Purpose.
- 16.120.030 Applicable Fee Programs.
- 16.120.040 Definitions.
- 16.120.050 Fee Deferral Program.
- 16.120.060 Program Application.
- 16.120.070 Security.
- 16.120.080 Interest.
- 16.120.090 Fee Adjustments.
- 16.120.100 Administrative Charge.
- 16.120.110 Recordation Costs.
- 16.120.120 Expiration.

16.120.010 TITLE. This Chapter shall be known and cited as the "Deferral of Certain Impact Fees."

16.120.020 PURPOSE. The City Council of the City of Elk Grove desires to encourage the construction of residential and nonresidential development projects within the City. The City Council finds that the early payment of certain impact fees for new development creates a barrier to such development and desires, by the adoption of this Chapter, to ease such barrier by deferring the time for payment of certain fees.

16.120.030 APPLICABLE FEE PROGRAMS. (a) Notwithstanding any other provision of this Code, upon application and approval pursuant to Section 16.120.050 of this Chapter, an approved development project shall pay and the following fees shall be collected pursuant to the provisions of this Chapter:

- (a) Capital Facilities Fee;
- (b) Affordable Housing Fee;
- (c) Very Low-Income Housing Trust Fund Fee; and
- (d) Citywide Roadway Fee.

16.120.040 DEFINITIONS. (a) "APPLICANT" means the owner or owners of record of the real property with an approved development project for which a fee deferral is sought pursuant to this Chapter.

(b) "APPROVED DEVELOPMENT PROJECT" means a project that has received final discretionary action by the City and which is in compliance with all environmental requirements due prior to issuance of a building permit.

(c) "MARKET-RATE RESIDENTIAL DEVELOPMENT" means a development project consisting of single-family or multifamily residential units sold or rented at prevailing market-rates and free of any affordability restrictions.

16.120.050 FEE DEFERRAL PROGRAM.

(a) An approved development project may file an application with the City to request deferral of any of those fees enumerated in Section 16.120.030 of this Chapter.

(b) Deferral of fees pursuant to this Chapter shall be acknowledged by an agreement or other writing satisfactory to the City and approved by the City Attorney. Said agreement may be executed by the City Manager.

(c) All of the following requirements must be satisfied prior to approval of a fee deferral: (1) submittal to the City of a complete application; (2) deposit of all fees pursuant to Sections 16.120.100 and 16.120.110; (3) provide security for the payment of those fees to be deferred pursuant to Section 16.120.070; and (4) execution of an agreement pursuant to subsection (b).

(d) Fees that are approved for deferral for a market-rate single-family residential development project pursuant to this Chapter shall be due and payable for each individual lot within the project upon the earlier of (1) a request for final inspection under a building permit; (2) the close of escrow, if the security provided pursuant to Section 16.120.070 is the senior lien on the property, or (3) the close of the Maximum Deferral Period in subsection (f) and/or (g).

(e) Fees that are approved for deferral for a market-rate multifamily residential project or a nonresidential development project pursuant to this Chapter shall be due and payable for each building within the project upon request for final inspection under a building permit.

(f) The Maximum Fee Deferral period for any market-rate residential development project is twenty-four (24) months from the date of issuance of permits subject to fee deferral. The maximum fee deferral period may be extended by twelve (12) months at the discretion of the City Manager. Any additional extensions shall be at the discretion of the City Council. If not paid within the initial twenty-four (24) months of the fee deferral period, interest shall accrue on any unpaid balance pursuant to Section 16.120.080 and payment of the fees deferred shall be undertaken pursuant to the

provisions set forth in the executed memorandum agreement entered into for the subject property pursuant to subsection (b).

(g) The Maximum Fee Deferral period for any nonresidential development projects is five (5) years from the effective date of any agreement for a fee deferral pursuant to subsection (b). Payment under this subsection shall be made quarterly, beginning no later than the end of the first quarter of the fourth year of the fee deferral period. If not fully paid within the initial thirty-six (36) months of the fee deferral period, interest shall accrue on any unpaid balance pursuant to Section 16.120.080 and payment of the fees deferred shall be undertaken pursuant to the provisions set forth in the executed memorandum agreement entered into for the subject property pursuant to subsection (b). Upon commencement of quarterly payments, any remaining unpaid balance shall be set equal to the rates in effect at such time and shall not be subject to any further fee increases.

(h) The approval of a fee deferral pursuant to this Chapter for any development project shall not be transferable to another project regardless of whether the applicant is the same for both projects or whether the other project is also a qualified project.

16.120.060 PROGRAM APPLICATION. The application for fee deferral may be submitted concurrently with or in advance of any application for building permits for the subject property, and shall be accompanied by any security and application fees required by this Chapter. In no event, however, shall a building permit be issued until either of the following occurs:

- (a) Payment of all applicable fees due; or
- (b) Execution of a Fee Deferral agreement pursuant to Section 16.120.050(b).

16.120.070 SECURITY. Prior to execution of the agreement pursuant to Section 16.120.050(b), the applicant shall provide security for the payment of those fees to be deferred. Such security shall be subject to the approval of the City and shall consist of one or more of the following:

- (a) Assigned passbook or certificate of deposit;
- (b) Irrevocable letter of credit;
- (c) Surety bond;
- (d) Lien against the property;
- (e) Negotiable securities if approved by the City Council; or
- (f) Reservation of funds within the escrow account of the senior lender.

16.120.080 INTEREST. (a) For all projects which have been approved for a deferral of fees pursuant to this Chapter, no interest shall accrue during the period of deferral. However, in the event fees are not paid at the time required by this Chapter, a penalty equal to the annual rate of interest earned by the City of Elk Grove on the investment of pooled funds, computed on the unpaid amount from the date of execution of the deferral agreement to time of payment, shall be due and payable.

(b) For nonresidential projects opting to defer eligible fees for more than thirty-six (36) months pursuant to Section 16.120.050 (g), interest shall be charged annually, beginning in the fourth year of the deferral period, on any unpaid balance equal to the rate of interest earned by the City of Elk Grove on the investment of pooled funds.

(c) 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 either:

- (i) Retain or bring to the City of Elk Grove either fifty (50) or more full-time jobs each paying over \$30,000 per year;
- (ii) Retain or bring to the City of Elk Grove either twenty (20) or more full-time jobs each paying \$55,000 or more;
- (iii) Be physically located within the Old Town Specific Plan Area.

The City Manager, or his or her designee, is hereby vested with the authority to determine whether an applicant is a targeted company or is an agent for a targeted company.

16.120.090 FEE ADJUSTMENTS. Deferred fees shall be paid at the rate or rates applicable at the time of payment.

16.120.100 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.

16.120.110 RECORDATION COSTS. All costs of recordation of documents required pursuant to this Chapter shall be paid by the applicant at the time of execution of any Fee Deferral agreement pursuant to Section 16.120.050(b).

16.120.120 EXPIRATION. This Chapter shall remain in effect until June 30, 2010, and as of that date is repealed.

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: 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 6: 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).

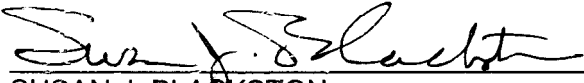
Ordinance 12-2008

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 23rd day of April 2008.



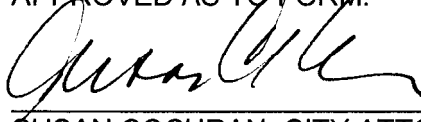
GARY DAVIS, MAYOR of the
CITY OF ELK GROVE

ATTEST:



SUSAN J. BLACKSTON,
ASSISTANT CITY CLERK

APPROVED AS TO FORM:



SUSAN COCHRAN, CITY ATTORNEY

CERTIFICATION
ELK GROVE CITY COUNCIL URGENCY ORDINANCE NO. 12-2008

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

I, Susan J. Blackston, Assistant City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing urgency ordinance, published and posted in compliance with State law, was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on April 23, 2008 by the following vote:

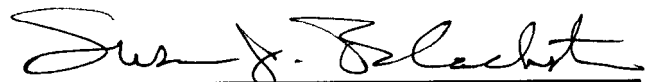
AYES : **COUNCILMEMBERS:** *Davis, Hume, Scherman, Cooper, Leary*

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, Assistant City Clerk
City of Elk Grove, California**