

ORDINANCE NO. 20-2016

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
REENACTING CHAPTER 16.120 OF 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 impact fees to help address the impacts of new development; and

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

WHEREAS, the City recognizes that in some cases deferring the payment of certain impact fees to a later date may assist in the development of projects; and

WHEREAS, the deferral of payment of certain impact fees has become an important tool in the City's efforts to facilitate new residential and commercial development, attract and expand businesses to and within the City, and to create jobs and grow the City's tax base; and

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

WHEREAS, Elk Grove Municipal Code, Chapter 16.120, expired by its own terms on August 22, 2016; and

WHEREAS, the City desires to reenact Chapter 16.120 of the Municipal Code for a term of two years from its effective date.

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

Section 1: Purpose and Authority

The purpose of this Ordinance is to reenact Chapter 16.120 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 reenact Chapter 16.120 of 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 reenactment of Chapter 16.120 does not constitute the approval of a project and it does not propose nor authorize any action that would have potential to cause a significant adverse effect on the environment. Thus, the reenactment of Chapter 16.120 will not have a significant adverse effect on the environment and is therefore not subject to CEQA.

Finding: The proposed reenactment of Municipal Code Chapter 16.120 is in the public interest.

Evidence: The City has reviewed the proposed reenactment of Chapter 16.120, has reviewed the staff report, and has considered this matter at a duly noticed public meeting. The deferral of payment of certain impact fees is intended to further the City's efforts facilitate new residential and commercial development, attract and expand businesses to and within the City, and to create jobs and grow the City's tax base.

Section 3: Addition

The City Council hereby repeals, replaces, and reenacts in its entirety 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 Administration charge.
- 16.120.110 Recordation costs.
- 16.120.120 Expiration.

16.120.010 Title.

This chapter shall be known and cited as the “City of Elk Grove Impact Fee Deferral Program.”

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 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 impact fees.

16.120.030 Applicable fee programs.

Notwithstanding any other provision of this Code, upon application and approval pursuant to EGMC Section 16.120.050, an approved development project shall pay and the following impact fees shall be collected pursuant to the provisions of this chapter:

- A. Capital facilities fee;
- B. Affordable housing fee;
- C. Citywide roadway fee; and
- D. Citywide fire development fee. Notwithstanding any other provision of this chapter, a deferral of fire development impact fees shall be subject to the approval of the Cosumnes Community Services District.

16.120.040 Definitions.

- A. "Applicant" means the owner or owners of record of the real property with an approved development project for which the deferral of certain impact fees 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 prior to issuance of a building permit.
- C. "Fee deferral" means the deferral of payment of certain impact fees pursuant to this chapter.
- D. "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 applicant may file an application with the City to request a fee deferral of those impact fees enumerated in EGMC Section 16.120.030. The application may be granted or denied in the discretion of the City Manager, and this chapter shall not vest any right in any applicant to the granting of the application.

B. A fee deferral 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 completed fee deferral application; 2) payment of the administration charge and recordation cost pursuant to EGMC Sections 16.120.100 and 16.120.110; 3) provision of adequate security securing the payment of those impact fees to be deferred pursuant to EGMC Section 16.120.070; and 4) execution of an agreement pursuant to subsection (B) of this section.

D. A fee 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) the close of escrow on a sale of the individual lot, if the security provided pursuant to EGMC Section 16.120.070 is the senior lien on the property; or 2) the expiration of the maximum fee deferral period stipulated in subsection (F) of this section.

E. A fee deferral for a market-rate multifamily residential project pursuant to this chapter shall be due and payable for each building within the project upon the earlier of: 1) the close of escrow on a sale of the property, if the security provided pursuant to EGMC Section 16.120.070 is the senior lien on the property; or 2) the expiration of the maximum fee deferral period stipulated in subsection (F) of this section.

F. Fee Deferral Periods shall be defined as follows:

1) The maximum initial fee deferral period for any market-rate residential development project is twenty-four (24) months from the date of building permit for the project subject to the fee deferral, with no interest to accrue or be payable during the initial twenty-four (24) month period. The fee deferral period may be extended for up to an additional twelve (12) months for up to a total of thirty-six (36) months at the discretion of the City Manager. Any additional extension beyond thirty-six (36) months shall be at the discretion of the City Council. If the fees to be deferred are not paid within the initial twenty-four (24) months of the fee deferral period, interest shall accrue annually from the first day of the twenty-fifth (25th) month of the fee deferral period on any unpaid balance at a rate equal to the Local Agency Investment Fund (LAIF) rate as determined by the State Treasurer's Office as of the final day of the quarter preceding the repayment period.

2. The maximum fee deferral period for any nonresidential development project is five (5) years from the date of issuance of an executed fee deferral agreement for the project subject to the fee deferral. Fees for any nonresidential development shall be deferred for a period of thirty-six (36) months with no interest to be accrued or payable and no payments to be due or payable during the initial thirty-six (36) month period, after which, equal payments shall be made quarterly, beginning no later than the end of the first (1st) quarter after the end of the thirty-six (36th) month fee deferral period. Interest shall accrue annually from the first day of the thirty-seventh (37th) month of the fee deferral period on any unpaid balance at a rate equal to the Local Agency Investment Fund (LAIF) rate as determined by the State Treasurer's Office as of the final day of the quarter preceding the repayment period, plus two (2) percent. Once the

interest rate is initially established pursuant to this section, that interest rate shall remain fixed and constant for the remaining life of the fee deferral agreement.

G. 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 a 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 EGMC Section 16.120.050(B).

16.120.070 Security.

Prior to execution of the agreement pursuant to EGMC 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 (1) 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.

For all projects which have been approved for a deferral of fees pursuant to this chapter, interest shall accrue and be paid as provided by EGMC Section 16.120.050(F). However, in the event fees are not paid at the time required by the fee deferral agreement, a default rate shall be paid by the applicant equal to the Local Agency Investment Fund (LAIF) rate as determined by the State Treasurer's Office as of the final day of the quarter preceding the default, plus two (2) percent, accruing as of the date of execution of the deferral agreement, which default rate may be recalculated each quarter, in the City's discretion. The default rate shall be paid, as applicable, in lieu of the interest rate provided by EGMC section 16.120.050(F).

16.120.090 Fee adjustments.

For nonresidential development projects the amount of the fees to be deferred pursuant to EGMC Section 16.120.030 shall be fixed as of the date of the fee deferral agreement, and the fees shall not thereafter be subject to change, either upward or downward, for the life of the agreement. For all other development projects, deferred fees shall be paid at the rate or rates applicable at the time of payment. Notwithstanding the foregoing, in the event of applicant’s default of the fee deferral agreement, deferred fees shall be paid at the greater of the rate or rates applicable at the time of default or the amount set forth in the agreement required pursuant to EGMC Section 16.120.050.

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 a fee deferral agreement pursuant to EGMC Section 16.120.050(B).

16.120.120 Expiration.

This chapter shall remain in effect for two years from its effective date, and as of that date is automatically repealed, unless extended or earlier repealed by ordinance of the City Council.

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: **20-2016**
INTRODUCED: September 14, 2016
ADOPTED:
EFFECTIVE:

GARY DAVIS, MAYOR of the
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:

JASON LINDGREN, CITY CLERK

JONATHAN P. HOBBS
CITY ATTORNEY

Signed