

ORDINANCE NO. 03-2019

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
AMENDING ELK GROVE MUNICIPAL CODE CHAPTER 16.95, DEVELOPMENT
IMPACT FEES**

WHEREAS, California Government Code Section 66000, et seq., (hereinafter Mitigation Fee Act) provides for the establishment of development impact fees to mitigate the impacts of new development; and

WHEREAS, the City Council has adopted Elk Grove Municipal Code Chapter 16.95, which provides for the local implementation of the Mitigation Fee Act; and

WHEREAS, the City desires to update or establish impact fees as necessary to mitigate the impact that development projects have upon the City's ability to provide specified public facilities.

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

Section 1: Purpose

The purpose of this Ordinance is to amend Chapter 16.95 of the Elk Grove Municipal Code (EGMC) to address other development impact fees adopted and administered by the City.

Section 2: Findings

California Environmental Quality Act (CEQA)

Finding: No further environmental review is required under the California Environmental Quality Act pursuant to State CEQA Guidelines Section 15162 (Subsequent EIRs and Negative Declarations).

Evidence: State CEQA Guidelines Section 15162 provides that where an EIR has been certified for a project no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence, in light of the whole record, one or more of the following applies:

1. Substantial changes are proposed in the project which require major revisions of the previous EIR due to new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
2. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or substantial increase in the severity of previously identified significant effects; or
3. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified, showing any of the following:
 - a. The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
 - b. Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - c. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

- d. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

The proposed revisions to EGMC Chapter 16.95 would encompass the proposed Southeast Policy Area Cost Recovery Fee, the Southeast Policy Area and Laguna Ridge Phase 3 Drainage Impact Fee, and the Southeast Policy Area Park and Trails Fee. These fees provide fair-share financing for infrastructure identified in the respective Laguna Ridge Specific Plan Phase 3 Area and the Southeast Policy Area Strategic Plan. The Laguna Ridge Specific Plan was analyzed in an EIR certified on June 16, 2004 (SCH# 2000082139) and the Southeast Policy Area Strategic Plan was analyzed in an EIR certified on July 9, 2014 (SCH# 2013042054). No revisions to the infrastructure identified in these respective documents are planned as a result of these fee programs; the programs implement the respective plans as adopted. No new information has been identified and there has not been a substantial change in the respective projects or circumstances under which the projects were undertaken since the respective EIRs were certified. Therefore, pursuant to CEQA Guidelines Section 15162 no subsequent environmental review is required.

General Plan

Finding: The proposed project is consistent with General Plan.

Evidence: The proposed amendments are consistent with the General Plan as they provide for the financing of public infrastructure necessary to mitigate the impacts of new development. General Plan Goal IFP-1 provides for infrastructure improvement costs to be secured prior to development. Policy IFP-1-4 calls for the use of fee programs as a mechanism to ensure financing for major infrastructure. Policy IFP-1-7 states that new development shall fund its fair share portion of impacts to all public facilities and infrastructure. These fee programs implement this General Plan goal and policies.

Section 3: Action

Chapter 16.95 of the Elk Grove Municipal Code is hereby amended to read as provided in Exhibit A, incorporated herein by this reference.

Section 4: Action

Section 16.120.030 of the Elk Grove Municipal Code is hereby amended to read as provided in Exhibit B, incorporated herein by this reference.

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: Savings Clause

The provisions of this ordinance shall not affect or impair an act done or right vested or approved or any proceeding, suit or prosecution had or commenced in any cause before such repeal shall take affect; but every such act done, or right vested or accrued, or proceeding, suit or prosecution shall remain in full force and affect to all intents and purposes as if such ordinance or part thereof so repealed had remained in force. No offense committed and no liability, penalty or forfeiture, either civilly or criminally incurred prior to the time when any such ordinance or part thereof shall be repealed or altered by said Code shall be discharged or affected by such repeal or alteration; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures shall be instituted and proceeded with in all respects as if such prior ordinance or part thereof had not been repealed or altered.

Section 8: 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 fifteen (15) days after its passage, a summary of the ordinance may be published at least five (5) 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: **03-2019**
INTRODUCED: February 13, 2019
ADOPTED:
EFFECTIVE:

STEVE LY, MAYOR of the
CITY OF ELK GROVE

ATTEST:

JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:

JONATHAN P. HOBBS,
CITY ATTORNEY

Date signed: _____

Exhibit A
Revisions to EGMC Chapter 16.95

Chapter 16.95
DEVELOPMENT IMPACT FEES

Sections:

- 16.95.010 Authority and reference to chapter.
- 16.95.020 Purpose of fees.
- 16.95.022 Fees established by this chapter.
- 16.95.025 Definitions.
- 16.95.030 Use of fees.
- 16.95.040 Setting of fees.
- 16.95.050 Amount to be paid and timing of payment.
- 16.95.060 Fee adjustments.
- 16.95.070 Credit/reimbursement for construction of public facilities.
- 16.95.080 Notice of protest rights.

16.95.010 Authority and reference to chapter.

This chapter of the municipal code may be referred to as the “impact fee ordinance,” and is adopted pursuant to Sections 66000 et seq. of the Government Code (hereinafter Mitigation Fee Act). All words, phrases, and terms used in this chapter shall be interpreted in accordance with the definitions set forth in the Mitigation Fee Act, unless otherwise specifically defined herein.

16.95.020 Purpose of fees.

Pursuant to the Mitigation Fee Act and this chapter, the City has established fees which will be imposed upon development projects for the purpose of mitigating the impact that the development projects have upon the City’s ability to provide specified public facilities.

16.95.022 Fees established by this chapter.

From time-to-time the City Council may, by resolution, adopt new development impact fees, update existing development impact fees, or repeal or replace existing development impact fees. Development impact fees authorized by this chapter include, but are not limited to, the following:

- A. City Roadway Impact Fee
- B. Capital Facilities Fee
- C. Southeast Policy Area Cost Recovery Fee (for projects within the Southeast Policy Area)
- D. Southeast Policy Area and Laguna Ridge Specific Plan Phase 3 Drainage Fee (for projects within the Southeast Policy Area)
- E. Southeast Policy Area Park and Trail Fee (for projects within the Southeast Policy Area)

16.95.025 Definitions.

As used in this chapter:

“Caltrans Cost Index” means the annual Construction Cost Index for Selected Highway Items as published by the California Department of Transportation; or, if the index is no longer published, an index determined by the City Engineer to be a recognized standard of the construction industry.

“City Engineer” means the City Engineer of the City of Elk Grove, or any person designated by the City Manager or City Engineer to perform the functions of the City Engineer specified in this chapter.

“City regulations” means all written laws, rules, and policies established by the City, including those set forth in the Elk Grove Municipal Code, ordinances, resolutions, policies, procedures, and the City’s design documents (including the standard plans, standard specifications, design standards, and relevant public facility master plans).

“Development project” means any project undertaken for the purpose of development, as defined in the Mitigation Fee Act, and shall specifically include any tentative parcel map, tentative subdivision map, final parcel map, final subdivision map, preliminary development plan, final development plan, or building permit.

“ENR” means the Construction Cost Index for San Francisco published in the Engineering News Record (McGraw-Hill, Inc., publisher); or, if the index is no longer published, an index determined by the City Engineer to be a recognized standard of the construction industry.

“Fee” means a monetary exaction, other than a tax or an assessment, imposed in connection with approval of a development project for the purpose of defraying all or a portion of the cost of providing public facilities related to the development project, as more specifically defined in the Mitigation Fee Act.

“Fee fund” means each of the separate and distinct funds into which fees for each public facility category are deposited.

“Implementing resolution” means a resolution of the City Council of the City of Elk Grove that makes the findings specified in the Mitigation Fee Act for each fee category.

“Lot” means an individual undivided parcel of real property described on a final subdivision map or final parcel map approved by the City or the official map recorded by the Sacramento County Office of the Assessor for property not developed after the City’s incorporation.

“Mitigation Fee Act” means Sections 66000 et seq. of the California Government Code.

“Program” means all of the public facilities to be provided in any given public facility category.

“Public facility” means public improvements, public services, and community amenities, as defined by the Mitigation Fee Act, including, but not limited to: roadways (including streets, traffic signals, and other public right-of-way improvements), storm drainage, water (including supply, treatment, and distribution), wastewater (including collection and treatment), parks, public buildings, parking lots, and other improvements or services identified in implementing resolutions adopted pursuant to this chapter.

“Public facility category” means a separate and distinct set of public facilities as defined by EGMC Section 16.95.030(B).

“Specified geographical area” means the area within which development projects are subject to a fee, as identified in each implementing resolution.

“Specified public facility” means those public facilities described in each implementing resolution, the total program costs of which are used as the basis for the calculation of a fee.

“Subdivider” means a person, or other legal entity, who applies to the City to divide or cause to be divided real property into a development project, or who applies to the City to develop or improve (into a development project) any existing parcel of real property.

“Total program costs” means those costs described in EGMC Section 16.95.050.

“Vested development rights” means a subdivider’s right to proceed with development of a development project in substantial compliance with the local ordinances, policies, and standards in effect at the time that the rights vest, as the term is defined in the vesting tentative map statutes (Sections 66498.1 through 66498.9 of the Government Code), development agreement statutes (Sections 65864 through 65869.5 of the Government Code), and state law.

16.95.030 Use of fees.

A. The fees imposed by the City pursuant to this chapter shall be used to pay for the cost of providing specified public facilities, as described in implementing resolutions.

B. As described in each implementing resolution, the specified public facilities will be categorized into separate and distinct sets of public facilities based upon the type of public facility to be provided, the geographical area served by the public facility, or other identifying features. Each separate set of specified public facilities described in an implementing resolution shall be referred to in this chapter as a “public facility category.”

C. For each separate public facility category, the City shall calculate and impose a separate fee. The property owner shall pay the fee calculated and imposed by the City. The City shall deposit all fees collected into a separate and distinct fee fund, subject to the accounting requirements of the Mitigation Fee Act.

D. In order to more effectively mitigate the impact of new development, and maximize the use of fee revenues, fee revenues may be used as temporary loans from one (1) fee fund to another fee fund only if the City Engineer finds all of the following, subject to the review and approval of the City Council:

1. Based upon planned phasing of the public facilities, and anticipated timing of fee revenues to be collected, it is in the City's best interests to allow the temporary loan.
2. The development projects which are required to pay fees to the fee fund from which the loan is made will receive a benefit from the use of the loan by the separate fee fund to which the loan is made.
3. All requirements of the Mitigation Fee Act have been satisfied, including a specification of the amount loaned, the date of repayment, and the interest rate to be paid.

16.95.040 Setting of fees.

The City Council shall set any fee authorized by this chapter by resolution conforming with the Mitigation Fee Act.

16.95.050 Amount to be paid and timing of payment.

A. The fee to be paid for each lot within a development project shall be the amount of the fee in effect, pursuant to implementing resolution, at the time that full payment is made to the City. The fee for each lot within a development project shall be paid in full prior to the issuance of any building permit, unless otherwise authorized by the Mitigation Fee Act and/or as provided for in the implementing resolutions.

B. In the event that a partial fee payment is made for any lot, the full fee to be paid for that lot shall be the amount of the fee in effect, pursuant to implementing resolution, at the time that full payment is made to the City, less the amount of the partial payment.

C. The subdivider shall have the burden of proving the amount of any fee previously paid, the date on which payment was made, and the lot for which payment was made.

16.95.060 Fee adjustments.

The City shall update and adjust each fee on an annual basis, as authorized and required by the Mitigation Fee Act. The fee in effect at the time any subdivider has obtained a vested development right shall be subject to adjustment by the City, as incorporated in ~~updated~~ implementing resolutions in effect at the time that full payment of the fee is made, based upon any or all of the criteria set forth in subsections (A) through (C) of this section. For the purpose of this section, the term "specified public facilities," as defined in EGMC Section 16.95.010, is limited to the specified public facilities to be designed and constructed in accordance with the City regulations in effect at the time the relevant subdivider has obtained a vested development right.

A. On January 1st of each calendar year, the fee adjustments described within this section shall automatically occur. Adjustments in the amount of the estimated construction costs of providing the specified fee program facilities will be based upon adjustments in the Caltrans Cost Index, the Engineering News Record (ENR) (the San Francisco Construction Cost Index or Twenty City Construction Cost Index), or other applicable source as identified in the implementing resolutions (in such case the implementing resolution shall supersede the specification of EGMC 16.95.060). In addition, if no listed index is available the Finance Director may use an alternative index

or other source that the Finance Director finds, in his or her discretion, to be most equivalent to estimate changes in construction costs.

B. Adjustments to replace estimated costs with actual costs of providing the specified public facilities.

C. Adjustments to reflect more accurate cost estimates of providing the specified public facilities based upon more detailed analysis or design of the previously identified specified public facilities.

16.95.070 Credit/reimbursement for construction of public facilities.

A. General Provisions.

1. Fee credits and reimbursements will be available as part of the applicable fee program. Facilities must meet City standards for acquisition projects in order to be eligible for fee credits or reimbursements. All construction contracts, construction work, and requests for reimbursement must be performed in conformance with the most current "Reimbursement Policies and Procedures for Privately Constructed Public Facilities." Developers shall be responsible for complying with all applicable laws, codes, and regulations relating to contracting and construction procedures for publicly funded public works projects.

2. Timing and Amount of Fee Credits/Reimbursements.

a. Fee credits and reimbursements will only be given to projects that are identified as a fee program facility. Developers may only seek fee credits or reimbursements for such projects from the applicable fee program. In order to obtain fee credits for a single-family project, a developer must enter into a credit agreement with the City. Fee credits will be proportionately allocated to lots within a final subdivision map, not a large lot map. In order to obtain fee credits for multi-family or nonresidential projects, the developer must enter into a credit agreement with the City. Fee credits will be proportionately allocated to units in a multi-family project or proportionately spread over the leasable square footage in a nonresidential project. Large lot maps may be used for credit allocation in multi-family or nonresidential projects with mutual agreement between the developer and the City. If all criteria for receiving a fee credit are met as outlined in the credit agreement, the developer may take the credit against the fee at the issuance of a building permit.

b. Developers must enter into a reimbursement agreement with the City (prior to construction) if they wish to be reimbursed for a facility. The priority of the reimbursement will be determined by the City Manager, and the reimbursement will only be paid after the City has accepted the developer-funded facility. All reimbursements will be an obligation of the applicable fee program and not an obligation of the general fund.

c. Developers will be eligible for fee credits up to, but not exceeding, one hundred (100%) percent of the fee, excluding any administration costs.

d. The City will reimburse the developer for acquisition or installation of the fee program improvements based on the lesser of: i) the actual construction cost of the eligible facilities, as determined in the sole discretion of the City, through its review of the construction contract, plus an allowance for soft costs associated with the actual construction costs (as provided in the applicable fee program resolution), as determined by the City, or, ii) the total of allowable costs, based on the cost schedules set forth in the fee program (without interest).

16.95.080 Notice of protest rights.

Each subdivider is hereby notified, pursuant to Section 66020 of the Government Code, including Section 66020(d)(1) of the Government Code, that the ninety (90) day approval period (in which the subdivider may protest the imposition of any fees, dedications, reservations, or other exactions imposed on a development project) shall begin on the date that the development project is approved or conditionally approved. If the subdivider fails to file a protest within the ninety (90) day period, complying with all of the requirements of Section 66020 of the Government Code, the subdivider will be legally barred from later challenging any such fees, dedications, reservations, or other exactions. These protest procedures shall only apply to the fees, dedications, reservations, or other exactions which have been determined in accordance with this chapter, and each respective implementing resolution.

Exhibit B
Revisions to EGMC Section 16.120.030

16.120.030 Applicable fee programs.

Notwithstanding any other provision of this code, upon application and approval of a fee deferral agreement pursuant to EGMC Section 16.120.050, an approved development project may defer payment of the following impact fees pursuant to the provisions of this chapter:

- A. Capital facilities fee;
- B. Affordable housing fee;
- C. Citywide roadway fee;
- D. I-5 Subregional Corridor fee (should the applicant choose not to pay this voluntary fee it shall negotiate with Caltrans to pay a different fee or to put in infrastructure to mitigate impacts);
- E. 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;
- F. Southeast Policy Area Cost Recovery Fee (for projects within the Southeast Policy Area);
- G. Southeast Policy Area and Laguna Ridge Specific Plan Phase 3 Drainage Fee (for projects within the Southeast Policy Area); and
- H. Southeast Policy Area Park and Trail Fee (for projects within the Southeast Policy Area).