



**CITY OF ELK GROVE  
CITY COUNCIL STAFF REPORT**

**AGENDA TITLE:** Consider 1) an ordinance repealing and replacing Elk Grove Municipal Code Chapter 16.120 Deferral of Certain Impact Fees and amending Section 16.97.050 Timing of Collection of Fee; and 2) consider a resolution establishing the City of Elk Grove Impact Fee Deferral Program and adopting the City of Elk Grove Impact Fee Deferral Program Policies, Guidelines, and Procedures (CEQA Exempt)

**MEETING DATE:** February 9, 2022

**PREPARED BY:** Luis Aguilar, Economic Development Specialist

**DEPARTMENT HEAD:** Darrell A. Doan, Economic Development Director

**RECOMMENDED ACTION:**

Staff recommends that the City Council receive information from staff and take the following actions:

- 1) Introduce and waive the full reading, by substitution of title only, an ordinance repealing and replacing Elk Grove Municipal Code Chapter 16.120 Deferral of Certain Impact Fees and amending Section 16.97.050 Timing of Collection of Fee; and
- 2) Consider a resolution establishing the City of Elk Grove Impact Fee Deferral Program and adopting the City of Elk Grove Impact Fee Deferral Program Policies, Guidelines, and Procedures.

**BACKGROUND INFORMATION:**

On May 14, 2008, the Elk Grove City Council adopted Ordinance No. 13-2008 adding Chapter 16.120 to the Elk Grove Municipal Code and creating the Impact Fee Deferral Program (the "Current Program"). The Current Program allows market-rate residential and commercial development projects to defer certain development impact fees.

The Current Program aligns with the Council's economic development goals and strategies to provide incentives and support for new and expanding businesses. The Current Program has become a valuable incentive tool for the City to facilitate new commercial development, attract and expand businesses to and within the City, create jobs, and grow the City's tax base.

Since the Current Program was enacted, 74 deferral agreements have been completed, resulting in the deferral of approximately \$8.9 million in impact fees. The commercial projects have generated an estimated \$60.1 million in capital investment and approximately 2,300 jobs. These deferrals average \$203,581, with the largest being \$595,000 and \$1.2 million.

At the time of its adoption in 2008, the Current Program was set to expire in 2010, as it was intended to stimulate immediate development during a period of particularly low construction activity due to the nationwide recession. However, given its success and its value as an economic development tool, the Council extended the Current Program in 2010, and again in 2012, 2014, and 2016. In 2018, Council removed the expiration clause, making the Current Program ongoing.

### **ANALYSIS:**

Administering the Current Program pursuant to the provisions set forth in the Elk Grove Municipal Code presents challenges in terms of flexibility to respond to project needs and market conditions or the need to make changes to the Program; therefore, staff is recommending repealing the Current Program set forth in EGMC Chapter 16.120 and re-establishing a similar program by resolution.

The New Program being proposed shall be known as the City of Elk Grove Impact Fee Deferral Program, with Program Policies, Guidelines, and Procedures adopted by resolution of the City Council. This will provide greater flexibility and the ability to make timely changes as conditions arise, thereby increasing administrative efficiency and creating the ability to be more targeted in the use of fee deferrals. In addition, it will require larger deferrals to be considered by Council.

For these reasons, staff is recommending the repeal of Elk Grove Municipal Code Chapter 16.120 Deferral of Certain Impact Fees and replacing the chapter with language authorizing the City Manager to execute and process fee deferrals in accordance with any fee deferral programs that may be adopted by resolution of the City Council. For consistency, staff is also recommending an amendment to EGMC Section

16.97.050 Timing of Collection of Fee to remove reference to the provisions of EGMC Chapter 16.120.

Staff is also recommending adoption of a resolution establishing the City of Elk Grove Impact Fee Deferral Program and adopting Program Policies, Guidelines, and Procedures included as Exhibit A to the Resolution (Attachment 2).

The key provisions of the New Program are as follows:

- Interest on any fee deferral will accrue beginning with the commencement of the deferral agreement. The Current Program has an initial interest-free period.
- Authorizes the City Manager to execute all fee deferral agreements up to \$500,000.
- Requires City Council approval of all fee deferral agreements in excess of \$500,000.
- Prioritizes the use of fee deferrals for high-impact economic development projects.
- Gives the City Manager discretion to substitute impact fees in cases where City Council eliminates or updates a fee program.

**ALTERNATIVE ACTIONS:**

The Council could decline to amend the Municipal Code to establish the New Program as a policy, which would result in no change to the Current Program. The City Council could provide alternative direction concerning the Current or New Programs. Staff recommends against these alternative actions because staff believes that the Program has been a valuable economic development tool and should be continued, but as a policy allowing greater flexibility.

**ENVIRONMENTAL REVIEW:**

The adoption of the proposed ordinance and the associated resolution are exempt from the provisions of the California Environmental Quality Act (CEQA). The ordinance and resolution continue the existing fee deferral program in the form of a policy adopted by resolution. The proposed activity does not approve any physical development project. Any development project that might be eligible for a fee deferral under the fee deferral program would be subject to its own review under CEQA. The adoption of the

ordinance and associated resolution will not have a direct physical change or a reasonably foreseeable indirect physical change in the environment. Therefore, the adoption of the ordinance, and the associated resolution, do not constitute the approval of a project under the California Environmental Quality Act (“CEQA”), and they are also exempt from CEQA under the commonsense exemption. (Pub. Res. Code § 21065, CEQA Guidelines §§ 15060(c)(2)(3); 15061(b)(3); 15064(d)(3); 15378(a).)

**FISCAL IMPACT:**

The New Program, like the Current Program, will result in the deferral of impact fee revenue of an unknown amount for up to five years. The New Program presents some unknown financial impacts due to delayed payment and the risk of non-collection. The use of the New Program to induce new development and new business growth in the City should result in increased tax revenues of an unknown amount. As a matter of practice, prior to approval of a fee deferral in any amount, the Finance Director will provide guidance on the financial impacts of the particular fee deferral agreement; That guidance shall be a key factor when considering an application for a fee deferral.

**ATTACHMENTS:**

1. Ordinance
2. Resolution
  - a. Exhibit A: City of Elk Grove Impact Fee Deferral Program Policies, Guidelines, and Procedures

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE  
REPEALING AND REPLACING ELK GROVE MUNICIPAL CODE CHAPTER 16.120  
DEFERRAL OF CERTAIN IMPACT FEES AND AMENDING SECTION 16.97.050  
TIMING OF COLLECTION OF FEE (CEQA EXEMPT)**

**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 (EGMC) Chapter 16.120 has provided for the deferral of payment of certain impact fees under specified circumstances; and

**WHEREAS**, staff recommends repealing and replacing EGMC Chapter 16.120 to authorize the City Manager to execute fee deferral agreements pursuant to the City of Elk Grove Impact Fee Deferral Program Policies, Guidelines, and Procedures for the City of Elk Grove Impact Fee Deferral Program adopted by resolution; and

**WHEREAS**, the repeal and replacement of EGMC Chapter 16.120 necessitates an amendment to EGMC Section 16.97.050, which references the fee deferral program set forth in EGMC Chapter 16.120.

**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 repeal and replace Elk Grove Municipal Code Chapter 16.120 Deferral of Certain Impact Fees to authorize the City Manager to execute fee deferral agreements pursuant to the City of Elk Grove Impact Fee Deferral Program and Section 16.97.050 Timing of Collection of Fee to remove reference to the provisions of EGMC Chapter 16.120.

Section 2: CEQA Findings:

Finding: The adoption of this ordinance and the adoption of the associated resolution are exempt from the provisions of the California Environmental Quality Act (CEQA).

Evidence: The ordinance and the associated resolution continue the existing fee deferral program in the form of a policy adopted by resolution. The proposed activity does not approve any physical development project. Any development project that might be eligible for a fee deferral under the fee deferral program would be subject to its own review under

CEQA. The adoption of the ordinance and associated resolution will not have a direct physical change or a reasonably foreseeable indirect physical change in the environment. Therefore, the adoption of the ordinance, and the associated resolution, do not constitute the approval of a project under the CEQA, and they are also exempt from CEQA under the commonsense exemption. (Pub. Res. Code § 21065, CEQA Guidelines §§ 15060(c),(2)(3); 15061(b)(3); 15064(d)(3); 15378(a).)

Section 3: Repeal and Replace Elk Grove Municipal Code Chapter 16.120 titled Deferral of Certain Impact Fees.

Elk Grove Municipal Code Chapter 16.120 is hereby repealed in its entirety and replaced with the following:

**Chapter 16.120  
DEFERRAL OF CERTAIN IMPACT FEES**

**Sections:**

**16.120.010 Authorization of the City Manager to Defer Impact Fees**

**16.120.010 Authorization of the City Manager to Defer Impact Fees.**

**The City Manager shall be authorized to execute development impact fee deferral agreements consistent with any programs, policies, guidelines, and/or procedures adopted by resolution of the City Council.**

Section 4: Amend Elk Grove Municipal Code Section 16.97.050 titled Timing of collection of fee.

*(All additions are shown as **bold text**, deletions in ~~strikethrough~~)*

Elk Grove Municipal Code Section 16.97.050 is hereby amended to read:

16.97.050 Timing of collection of fee.

A. Except as otherwise provided in ~~EGMC Chapter 16.120~~ **the City of Elk Grove Impact Fee Deferral Program Policies, Guidelines, and Procedures** ~~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, that exceeds the thresholds of significance for cumulative mainline freeway impacts at the time of the issuance of any required building permit relating to such development. Should the project applicant decline to pay the voluntary I-5 Subregional Corridor fee it shall provide a traffic model analysis of cumulative mainline freeway impacts for the project and address mitigation for impacts to Caltrans's mainline facilities and provide alternative mitigation by payment of a different fee, provision of infrastructure, or other mitigation agreeable to the City and Caltrans.

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 effect; but every such act done, or right vested or accrued, or proceeding, suit or prosecution shall remain in full force and effect 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).

INTRODUCED:

ADOPTED:

EFFECTIVE:

\_\_\_\_\_  
BOBBIE-SINGH ALLEN, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
JASON LINDGREN, CITY CLERK

\_\_\_\_\_  
JONATHAN P. HOBBS,  
CITY ATTORNEY

Date signed: \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE  
ESTABLISHING THE CITY OF ELK GROVE IMPACT FEE DEFERRAL PROGRAM  
AND ADOPTING THE CITY OF ELK GROVE IMPACT FEE DEFERRAL PROGRAM  
POLICIES, GUIDELINES, AND PROCEDURES (CEQA EXEMPT)**

**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 approved projects; and

**WHEREAS**, the deferral of payment of certain impact fees has become an important economic development tool; and

**WHEREAS**, for the reasons stated in the accompanying staff report and in Ordinance No. \_\_\_\_\_, the adoption of this resolution does not constitute the approval of a project under the California Environmental Quality act ("CEQA"), and it is also exempt from CEQA. (Pub. Res. Code § 21065, CEQA Guidelines §§ 15060(c),(2)(3); 15061(b)(3); 15064(d)(3); 15378(a).)

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Elk Grove hereby establishes the City of Elk Grove Impact Fee Deferral Program and adopts the Impact Fee Deferral Program Policies, Guidelines, and Procedures attached hereto as Exhibit A and incorporated herein by reference and authorizes the City Manager to administer the program pursuant to the Program Policies, Guidelines, and Procedures.

**AND BE IT FURTHER RESOLVED** that this resolution shall become effective on the effective date of the accompanying Ordinance No. \_\_\_\_\_, repealing and replacing Elk Grove Municipal Code Chapter 16.120 and amending Elk Grove Municipal Code Section 16.97.050.

**PASSED AND ADOPTED** by the City Council of the City of Elk Grove this 9<sup>th</sup> day of February 2022

\_\_\_\_\_  
BOBBIE SINGH-ALLEN, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
JASON LINDGREN, CITY CLERK

\_\_\_\_\_  
JONATHAN P. HOBBS,  
CITY ATTORNEY



# EXHIBIT A

## CITY OF ELK GROVE IMPACT FEE DEFERRAL PROGRAM POLICIES, GUIDELINES, AND PROCEDURES

### Program Overview

The Impact Fee Deferral Program (“Program”) is designed to encourage the construction of residential and commercial development projects within the City of Elk Grove (the “City”) that further the City’s economic development and housing goals and strategies. The Program allows for the deferral of certain development impact fees that would otherwise be due and payable at the time of obtaining a building permit for an approved development project for up to five years with interest.

### Definitions

- “Applicant” means the owner or owners of record of the real property with an approved development project for which the deferral of certain development impact fees is sought pursuant to this Program.
- “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.
- “Eligible project” means an approved development project under this Program for which the City has approved the deferral of certain development impact fees.
- “Fee deferral” means the deferral of payment of certain development impact fees pursuant to this Program.
- “Market-rate residential development” means an approved development project consisting of single-family units sold or rented at prevailing market rates and free of any affordability restrictions. All other projects, including market-rate multi-family projects, are considered “commercial development.”

### Program Components

- Deferral of certain development impact fees for an eligible commercial development project for up to five years with no payments required for the first three years and full payment required by the end of the five-year deferral period.
- Deferral of certain development impact fees for an eligible market-rate residential development project for up to two years with no payment required during those two years and full payment required at the end of the two-year deferral period.

## **PROGRAM GUIDELINES**

### **Approval Authority**

The City Manager has the authority to approve and execute any eligible fee deferral under this Program up to Five Hundred Thousand Dollars (\$500,000); any fee deferral for an amount of more than \$500,000 must be approved by the City Council.

### **Eligible Projects**

Subject to City Manager or City Council approval as applicable, dependent on the amount deferred, all market-rate residential development and commercial development projects in the City are eligible for a fee deferral under this Program; however, priority for a fee deferral will be given to eligible projects that meet some or all of the following criteria:

- Projects that employ, directly or indirectly, significant numbers of people;
- Projects that result in significant capital investment;
- Projects that generate significant taxes;
- Projects that have elevated and/or innovative architectural design elements; and/or
- Projects that result in a diversification of housing types.

Residential development projects with affordability restrictions are not eligible for a fee deferral under this policy but may be eligible for a fee deferral under state law or other City policies.

### **Eligible Impact Fees**

Subject to City Manager or City Council approval as applicable, dependent on the dollar amount deferred, an approved development project may defer payment of the following development impact fees:

- Capital Facilities Fee;
- Affordable Housing Fee;
- Citywide Roadway Fee;
- I-5 Subregional Corridor Fee;
- Southeast Policy Area and Laguna Ridge Specific Plan Phase 3 Drainage Fee;
- Southeast Policy Area Park and Trail Fee; and
- Citywide Fire Development Fee, subject to the approval of the Cosumnes Community Services District.

Additional existing or newly established impact fees may also be made subject to this Program as determined by the City Manager from time to time.

The City Manager may substitute new or different impact fees for those identified in the fee deferral agreement after the execution of a fee deferral agreement, if the fee deferral agreement provides for a substitution option (if, for example, a current impact fee program is eliminated or modified shortly after the fee deferral agreement is executed, resulting in lower fees).

## **Repayment Terms**

### *Market Rate Residential Development Projects*

- The maximum fee deferral period for any market-rate residential development project is two years from the date of issuance of the building permit for the project, with no payments required during the two-year deferral period. Prior to or at the end of the deferral period, the impact fees must be repaid in full in a single payment.
- Impact fees deferred for market-rate residential development projects shall be paid at the rates applicable at the time of repayment and are, therefore, subject to any rate increases/decreases during the deferral period, plus interest.

### *Commercial Development*

- The maximum fee deferral period for any commercial development project is five years from the date of issuance of the building permit for the project, with no payments required during the first three years of the deferral period, after which equal payments shall be made quarterly, beginning with the first quarter of year four.
- Impact fees deferred for commercial development projects shall be paid at the rates applicable at the time the deferral agreement is executed and shall not be subject to any rate increases/decreases during the deferral period, plus interest, so long as the applicant does not default under the fee deferral agreement.
- Should the applicant default under the deferral agreement for a commercial development project, the rates of the impact fees deferred under the fee deferral agreement shall be reset to the rates applicable at the time of default, but shall not be decreased if the rates have decreased.

### *Interest*

- Simple interest will be calculated quarterly at a rate equal to 2.5% or to the Local Agency Investment Fund (LAIF) rate as determined by the State Treasurer's Office as of the final day of the preceding quarter, whichever is greater. Interest shall accrue starting at the commencement of the deferral period for both commercial and market-rate residential development projects.

## **Security**

Prior to execution of a fee deferral agreement the applicant shall provide security for the repayment of deferred fees consisting of one of the following forms found acceptable to the City:

- Assigned passbook or certificate of deposit;
- Irrevocable letter of credit;
- Surety bond;
- Lien against a property; or
- Reservation of funds within the escrow account of the senior lender.

The security amount is to be determined by and at the sole discretion of the City Manager or City Council as applicable, depending on the dollar amount deferred, but must be equal to or greater than 110% of the deferred amount.

### **Administration and Recordation Costs**

All costs of recordation of documents or other administrative or filing costs required pursuant to this Program shall be paid by the applicant at the time of execution of a fee deferral agreement.

## **APPLICATION AND APPROVAL PROCESS**

- An applicant may file an application with the City for a fee deferral. The application may be approved or denied at the sole discretion of the City Manager or City Council as applicable, depending on the dollar amount deferred.
- A fee deferral granted under this Program shall be acknowledged by an agreement or other writing approved as to form and sufficiency by the City Attorney and satisfactory to the City Manager or City Council as applicable, depending on the dollar amount deferred.
- The following requirements must be satisfied prior to the execution of a fee deferral agreement:
  - 1) Submittal to the City of a completed fee deferral application;
  - 2) Approval of the fee deferral application by the City Manager or City Council as applicable, depending on the dollar amount deferred;
  - 3) Provision of adequate security securing the repayment of deferred impact fees; and
  - 4) Payment of the administration or recordation costs.

- In no event shall a building permit for an approved eligible project be issued until either of the following occurs:
  - Payment of all applicable impact fees due; or
  - Execution of a fee deferral agreement pursuant this Program.
- The approval of a fee deferral pursuant to this Program for any development project shall not be transferable to another project regardless of whether the applicant is the same for both projects and whether the other project is also an eligible project.

### **GENERAL CONDITIONS**

Economic Development staff will prepare application forms and materials, identify required submittals, and define necessary processes needed to receive and evaluate deferral requests under this Program. All application materials and processes are subject to change from time to time.

The estimated time from completed application to a deferral decision, evidenced by a deferral agreement, will vary depending on the quality and completeness of the application, the responsiveness of the applicant, and the workload of City staff, among other factors.

All applications for deferral under the Program shall be considered on a case-by-case basis. Approval is not guaranteed, and the City has complete and sole discretion to approve or deny any application for deferral, and to provide full or partial deferral, or none at all. All approval decisions shall be final and the applicant shall have no right of appeal from any decision on any deferral application, nor the decision to accept or not accept a deferral application, nor the decision to process or not process any deferral application. All deferral decisions shall be documented by a written impact fee deferral agreement executed by the applicant and the City setting forth the terms and conditions of any deferral under the Program. Applicant shall have no rights in any funding, or otherwise under the Program, absent a fully executed impact fee deferral agreement.

Applicants shall comply with all laws with respect to the deferral of fees under the Program. The City makes no representation as to whether the applicant's deferral of fees would subject applicant's activities or project to the state prevailing wage laws, as set forth at Labor Code sections 1720, et seq. Applicants shall perform all work in compliance with all applicable laws including, without limitation, and as applicable, state prevailing wage laws pursuant to Labor Code sections 1720, et seq. In the event an applicant fails to comply with any applicable law, including, without limitation, prevailing wage laws, if applicable, the applicant shall be liable for the payment of all penalties, wages and/or damages resulting therefrom, and shall defend, indemnify, and hold the City harmless for any violations or alleged violations of law. These provisions will be included in any impact fee deferral agreement. Applicant is encouraged to seek legal advice through legal counsel of their choosing for further guidance.