

RESOLUTION NO. 2022-037

**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. 06-2022, 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. 06-2022, 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 9th day of February 2022




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

ATTEST:



JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:



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.

CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2022-037

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

I, Jason Lindgren, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution 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 February 9, 2022 by the following vote:

AYES: **COUNCILMEMBERS:** *Singh-Allen, Suen, Hume, Spease, Nguyen*

NOES: **COUNCILMEMBERS:** *None*

ABSTAIN: **COUNCILMEMBERS:** *None*

ABSENT: **COUNCILMEMBERS:** *None*



Jason Lindgren, City Clerk
City of Elk Grove, California