

ORDINANCE NO. 32-2022

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, in between 2003 and 2005, following adoption of the City's first General Plan, the City Council established the Elk Grove Roadway Fee Program, which provided a mechanism under the Mitigation Fee Act to spread the cost of various transportation infrastructure across new development; and

WHEREAS, the Roadway Fee Program was updated in 2009 and 2014; and

WHEREAS, the 2014 Roadway Fee Program update expanded the program to include certain major trail facilities around the City; and

WHEREAS, in February 2019, the City Council comprehensively updated the City's General Plan, updating the Transportation Plan, which includes the Roadway Sizing Diagram and the various pedestrian and bicycle facilities; and

WHEREAS, in May 2021, the City Council comprehensively updated the Bicycle, Pedestrian, and Trails Master Plan, which implements the General Plan Transportation Plan for active transportation infrastructure (bicycle and trail facilities) that can reduce demand for traditional roadways; 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; and

WHEREAS, to implement the 2019 General Plan and the 2021 Bicycle, Pedestrian, and Trails Master Plan, the City desires to update the Roadway Fee Program and establish an Active Transportation Fee Program.

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 establish the Active Transportation Fee Program as distinct from the Roadway Fee Program and to update the City's procedures for credit and reimbursement agreements.

Section 2: Findings

California Environmental Quality Act (CEQA)

Finding: No further environmental review is required pursuant to State CEQA Guidelines Sections 15183 and 15162.

Evidence: State CEQA Guidelines Section 15183 provides that no further environmental review is required for project that are consistent with a General Plan for which an Environmental Impact Report (EIR) was prepared. Section 15162 provides that no subsequent or supplemental analysis (e.g., EIR or Negative Declaration) is required unless certain qualifying conditions are met.

An (EIR) was prepared and certified for the General Plan Update in 2019. That EIR (SCH Number 2017062058) considered the potential environmental impacts of the General Plan, inclusive of the Transportation Plan, which includes the Roadway Sizing Diagram and the various pedestrian and bicycle facilities. These facilities are included in the proposed Roadway Fee Program update and Active Transportation Fee Program.

The Section 15162 guidelines provide that when an EIR has been certified for a project no subsequent EIR shall be prepared unless the lead agency (City) determines, on the basis of substantial evidence, that there have been substantial changes to the project, the circumstances under which the project has been undertaken, or new information has become known. None of these thresholds have occurred, as there have not been substantial changes to the project, the circumstances have not changed, and no new information has become known.

Therefore, pursuant to State CEQA Guidelines Sections 15183 and 15162, no further environmental review is required.

General Plan

Finding: The proposed project is consistent with the goals and policies of the Elk Grove 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

Elk Grove Municipal Code Chapter 16.95, Development Impact Fees, is amended as provided in Exhibit A, incorporated herein by reference.

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: 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 7: 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: **32-2022**
INTRODUCED: November 9, 2022
ADOPTED: December 14, 2022
EFFECTIVE: January 13, 2023




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

ATTEST:


JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:


JONATHAN P. HOBBS,
CITY ATTORNEY

Date signed: December 19, 2022

EXHIBIT A
Amendments to Elk Grove Municipal Code Chapter 16.95
Development Impact Fees

Proposed changes are shown in ~~strikeout~~ (for deleted text) and underline (for added text).

Section 16.95.022 (Fees established by this chapter) shall be amended as follows:

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. City active transportation impact fee;

CB. Capital facilities fee;

DC. Southeast Policy Area cost recovery fee (for projects within the Southeast Policy Area);

ED. Southeast Policy Area and Laguna Ridge Specific Plan Phase 3 drainage fee (for projects within the Southeast Policy Area);

EE. Southeast Policy Area park and trail fee (for projects within the Southeast Policy Area);

GF. Southeast Industrial Area cost recovery fee (for projects within the Southeast Industrial Area).

For development projects approved prior to the effective date of this section that are conditioned to pay the roadway impact fee, that condition shall be interpreted to include both the roadway impact fee and the active transportation impact fee, as such active transportation projects were previously included in the roadway impact fee.

Section 16.95.070 (Credit/reimbursement for construction of public facilities) shall be amended as follows:

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 multifamily or nonresidential projects, the developer must enter into a credit agreement with the City. Fee credits will be proportionately allocated to units in a multifamily project or proportionately spread over the leasable square footage in a nonresidential project. Large lot maps may be used for credit allocation in multifamily 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).~~

In the event a development project is conditioned or obligated to construct, or a developer elects to construct a facility (or facilities) that are included in a fee program(s), that developer may apply for and receive credit(s) and reimbursement under the subject fee program(s) for that facility/facilities, pursuant to the provisions of this section.

A. Timing of Agreement. A credit and reimbursement agreement for an eligible facility shall be entered into prior to the commencement of construction of the improvements; provided, however, that a prior credit and reimbursement agreement is not required if the facility for which credit and/or reimbursement is

sought was either: (1) not previously included in a fee program; or (2) the facility's scope and/or cost in the fee program has been substantially updated to reflect an updated design and/or conditions through an amendment to the fee program, in which case a credit and reimbursement agreement would be required within six months of the addition of the facility to the fee program or the fee program update, as applicable. The City Council may authorize alternative timing of any credit and reimbursement agreement, in its sole discretion.

B. Agreement Value. The value of the agreement shall be limited to the construction value of the improvements, being the lesser of the private construction contract value or the value of the improvements in the nexus study, escalated to the date of the private construction contract execution.

C. Form of Agreement. The form of a credit and reimbursement agreement shall be as specified by the City and in conformance with this Chapter, the provisions of the subject fee program, and other applicable rules, regulations, and policies of the City. Each agreement shall be limited to a single fee program; multiple facilities may be included in one agreement.

D. Developer Obligations. 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.

E. Issuance and Application of Credits. Credits shall be issued to the party executing the agreement and developing the improvement(s). The amount of credits shall be specified in the agreement and shall be an amount equal to the lesser of the actual construction costs (inclusive of allowed soft costs) or the value of the improvement as specified in the applicable fee program as escalated to the date of the construction contract execution pursuant to the escalation procedures of the program. Upon issuance of the credits, they may be applied to the fee obligation of a development project. Such application shall be made pursuant to the terms of the agreement and consistent with City policy. Credits may be transferred from one party to another as may be specified in the agreement. Credits may not be transferred between fee programs.

F. Reimbursement of Unused Credits. Any credits remaining in an agreement after application to one or more development projects may be exchanged with the City for their remaining cash value. Such reimbursement shall be pursuant to the terms of the agreement. 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.

CERTIFICATION
ELK GROVE CITY COUNCIL ORDINANCE NO. 32-2022

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 ordinance, published and posted in compliance with State law, was duly introduced on November 9, 2022, and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on December 14, 2022, by the following vote:

AYES: COUNCILMEMBERS: Singh-Allen, Spease, Brewer, Robles, Suen

NOES: COUNCILMEMBERS: None

ABSTAIN: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None

A summary of the ordinance was published pursuant to GC 36933(c) (1).



Jason Lindgren, City Clerk
City of Elk Grove, California