

ORDINANCE NO. 10-2009

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
REPEALING ELK GROVE MUNICIPAL CODE CHAPTER 16.84 AND AMENDING
CHAPTER 16.95 IMPLEMENTING DEVELOPMENT IMPACT FEES**

The City Council of the City of Elk Grove does ordain as follows:

Section 1: Purpose and Authority

The purpose of this Ordinance is to combine Chapters 16.84 and 16.95 of the Elk Grove Municipal Code into a single Chapter for the purpose of implementing Development Impact Fees. The City has authority to adopt an ordinance imposing development impact fees pursuant to the Mitigation Fee Act, California Government Code section 66000 et seq.

Section 2: Repeal

Chapter 16.84 of the Elk Grove Municipal Code is hereby repealed.

Section 3: Amendment

Chapter 16.95 of the Elk Grove Municipal Code is amended to read as follows:

Chapter 16.95

Development Impact Fees

Sections:

- 16.95.010 Authority and Reference to Chapter.
- 16.95.020 Purpose of fees.
- 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.

16.95.025 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 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 -- 66498.9 of the Government Code), development agreement statutes (Sections 65864 -- 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 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.

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 EGMC Section 16.95.070. 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. Adjustments in the amount of the estimated construction costs of providing the specified road fee program facilities will be based upon adjustments in the Caltrans Cost Index. The adjustment will be based on a three (3) year moving average of the annual index beginning with year 2008 (2008 annual index is 252.7). Any such automatic adjustment shall be effective as of the date reported at a regular meeting of the City Council. All other public facilities will be based upon the ENR Construction Cost Index.

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 Road 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 will 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 Road Fee Program facility. Developers may only seek fee credits or reimbursements for such projects from the Road 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 non-residential 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 non-residential project. Large lot maps may be used for

credit allocation in multi-family or non-residential 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 Road 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 Road 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 Road Fee, excluding any administration costs.

d. The City will reimburse the developer for acquisition or installation of the Road 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 determined by the City, or, ii) the total of allowable costs, based on the cost schedules set forth in the Road 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), 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.

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 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: 10-2009
INTRODUCED: May 13, 2009
ADOPTED: May 27, 2009
EFFECTIVE: June 26, 2009



PATRICK HUME, MAYOR of the
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:



SUSAN J. BLACKSTON, CITY CLERK



SUSAN COCHRAN, CITY ATTORNEY

Date signed: June 5, 2009

**CERTIFICATION
ELK GROVE CITY COUNCIL ORDINANCE NO. 10-2009**

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

I, Susan J. Blackston, 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 May 13, 2009 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on May 27, 2009 by the following vote:

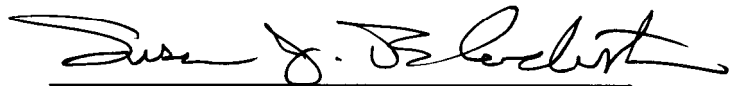
AYES : COUNCILMEMBERS: Hume, Scherman, Cooper, Davis, Detrick

NOES: COUNCILMEMBERS: None

ABSTAIN: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None

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



**Susan J. Blackston, City Clerk
City of Elk Grove, California**