

## ORDINANCE NO. 22-2017

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE ESTABLISHING VOLUNTARY DEVELOPMENT IMPACT FEES FOR I-5 SUBREGIONAL CORRIDOR TRANSPORTATION IMPROVEMENTS

**WHEREAS**, the California Environmental Quality Act (CEQA) requires transportation impacts be identified and significant impacts be mitigated, to the extent feasible, including impacts to the State Highway System;

**WHEREAS**, the Cities of Elk Grove, Sacramento, and West Sacramento (individually "City" and collectively "Cities") along with the State Department of Transportation (Caltrans) and the Sacramento Area Council of Governments (SACOG) formed a working group to analyze and develop feasible measures to mitigate mainline freeway traffic impacts caused by new development within the "I-5 Subregional Corridor," which is generally located between the Interstate 5 freeway and State Route 99 from Downtown Sacramento and West Sacramento to Elk Grove. The I-5 Subregional Corridor includes segments of Interstate 5, Interstate 80, State Route 99, Business 80, and U.S. 50 freeways; and

**WHEREAS**, under the terms of a Memorandum of Understanding (MOU) dated June 25, 2014 between the Cities, Caltrans, and SACOG, the I-5 Subregional Corridor Improvement Plan was developed which included freeway, local roadway, and transit improvement projects that were included in SACOG's 2035 Metropolitan Transportation Plan/Sustainable Communities Strategy. Because many segments of the freeways within the I-5 Subregional Corridor are already at their maximum right-of-way width and further expansion may not be feasible or would have significant impacts, expansion of local roadways and improvements to alternative transportation modes were included in the I-5 Subregional Corridor Improvement Plan; and

**WHEREAS**, under a Cost Sharing Agreement dated January 22, 2015, the Cities jointly funded the Nexus Study and the Supplemental Environmental Impact Report to allow for the adoption of the I-5 Subregional Corridor Mitigation Fee Program; and

**WHEREAS**, the I-5 Subregional Corridor Mitigation Fees would fund a portion of the costs of the transportation projects in the I-5 Subregional Corridor Improvement Plan. The I-5 Subregional Corridor Mitigation Fees were established based on congested vehicle miles travelled (VMT) resulting in residential developments farther from employment centers, and commercial, office and industrial developments farther from residential areas, paying a higher fee than infill projects; and

**WHEREAS**, The Draft Supplemental Environmental Impact Report was prepared, noticed, published, circulated, reviewed, and completed in full compliance with the California Environmental Quality Act (Public Resources Code §21000 et seq. ("CEQA") and the CEQA Guidelines (14 California Code of Regulations §15000 et seq.), collectively "CEQA." The Final Supplemental Environmental Impact Report dated July 2015 included responses to the comments received on the Draft Supplemental Environmental Impact Report. On August 20, 2015, SACOG adopted and certified the Final Supplemental Environmental Impact Report. The Draft and Final Supplemental Environmental Impact Reports are collectively referred to as the "SEIR;"

**WHEREAS**, on August 20, 2015, SACOG approved the I-5 Subregional Corridor Mitigation Fee Program to be implemented by the Cities as an implementation measure for the MTP/SCS. Each City as a responsible agency is to consider the SEIR before approving the I-5 Subregional Corridor Mitigation Fee Program. Each transportation project included in the I-5 Subregional Corridor Improvement Plan will be subject to project-level environmental review by the applicable sponsoring agency before commitments are made to implement such project; and

**WHEREAS**, the City desires to establish the Voluntary I-5 Subregional Corridor Mitigation Fee Program as a way to establish a fair-share funding source for the I-5 Subregional Corridor Improvement Plan and eliminate the need to run a computer model traffic study to identify potential traffic impacts on the freeway system and therefore save an applicant tens of thousands of dollars, reduce the entitlement processing time, and the costs ability to mitigate freeway impacts for an individual project at an amount that could be without having to individually negotiate with Caltrans or build partial infrastructure at a much higher cost than the amount of the I-5 Subregional Corridor Mitigation Fee .

**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 development impact fees for I-5 Subregional Corridor transportation improvements.

Section 2: (Findings)

**California Environmental Quality Act (CEQA)**

Finding: The Subsequent Environmental Impact Report has been prepared in accordance with the California Environmental Quality Act (CEQA) and the City has reviewed and considered the information contained in the document and has determined it to be adequate.

Evidence: A programmatic-level Draft Supplemental Environmental Impact Report dated May 2015 was prepared for the I-5 Subregional Corridor Mitigation Fee Program. The Draft Supplemental Environmental Impact Report (Draft SEIR) tiered from SACOG's 2035 Metropolitan Transportation Plan/Sustainable Communities Strategy (MTP/SCS) Environmental Impact Report certified in 2012 (the "2012 MTP/SCS EIR"). The Draft Supplemental Environmental Impact Report determined that the proposed Subregional Freeway Mitigation Fee Program would benefit the environment and not create any new significant adverse impacts beyond those addressed in the 2012 MTP/SCS EIR.

The Draft SEIR was prepared, noticed, published, circulated, reviewed, and completed in full compliance with the California Environmental Quality Act (Public Resources Code §21000 et seq. ("CEQA")) and the CEQA Guidelines (14 California Code of Regulations §15000 et seq.), collectively "CEQA." The Final SEIR dated July 2015 included

responses to the comments received on the Draft Supplemental Environmental Impact Report. On August 20, 2015, SACOG adopted and certified the Final SEIR.

The SEIR did not identify any potentially significant adverse environmental effects of the I-5 Subregional Corridor Mitigation Fee Program, so no mitigation measures, further environmental findings, or statement of overriding consideration is required.

For purposes of the project, the City is a Responsible Agency under CEQA and has reviewed the contents of the SEIR. Pursuant to State CEQA Guidelines Sections 15050(b) and 15096, the City has considered the SEIR as prepared by SACOG and determined that none of the conditions contained in CEQA Guidelines Section 15162 or 15163 has occurred for which additional analysis is required.

### **General Plan**

Finding: The proposed action is consistent with the goals and policies of the Elk Grove General Plan.

Evidence: The proposed I-5 Subregional Corridor Mitigation Fee Program is consistent with the General Plan. Specifically, the Program will create a fare-share funding source for projects that promote transit, bicycle, and pedestrian modes, as called for in Policy CI-5 and accompanying Action CI-5-Action 1. Additionally, the program furthers Policy CI-11, which directed the City to assist Caltrans with implementing improvements to I-5 and State Route 99. As a fee program, the Program implements policy CI-15, which calls for the payment of impact fees by development projects in order to construct the necessary facilities to support development. Finally, as an interagency program, the Program implements policy CI-2, which directs the City to work with the City of Sacramento, Caltrans, and other agencies on roadway improvements shared by the jurisdictions in order to improve operations, including development funding programs.

### Section 3: Action, EGMC Chapter 16.97

Chapter 16.97, Development Impact Fees for I-5 Subregional Transportation Improvements, as provided in Exhibit A, is hereby added to the Municipal Code.

### Section 4: Action, EGMC Section 16.120.030

EGMC Section 16.120.030 is hereby amended to read as follows:

16.120.030 Applicable fee programs.

Notwithstanding any other provision of this Code, upon application and approval pursuant to EGMC Section 16.120.050, an approved development project shall pay and the following impact fees shall be collected 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); and

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.

#### 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.

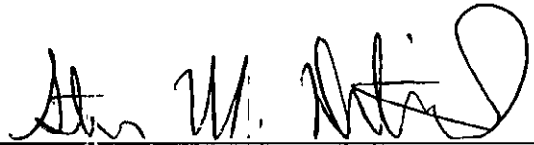
#### Section 7: Savings Clause

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 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:** 22-2017  
**INTRODUCED:** September 13, 2017  
**ADOPTED:** September 27, 2017  
**EFFECTIVE:** October 27, 2017

  
STEVEN M. DETRICK, VICE MAYOR  
of the CITY OF ELK GROVE

ATTEST:

  
JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:

  
JONATHAN P. HOBBS,  
CITY ATTORNEY

Date signed: October 4, 2017

## EXHIBIT A

### CHAPTER 16.97 DEVELOPMENT IMPACT FEES FOR THE VOLUNTARY I-5 SUBREGIONAL CORRIDOR TRANSPORTATION IMPROVEMENTS

#### Sections:

16.97.010	Authority and Purpose
16.97.020	Definitions
16.97.030	Establishment, Basis, and Use of Fee
16.97.040	Amount of Fee
16.97.050	Timing of Collection of Fee
16.97.060	Exemptions to Fee
16.97.070	Credit/reimbursement for construction of public facilities
16.97.080	Use of Mitigation Fees
16.97.090	Allocation of Fees
16.97.100	Fund Transfer
16.97.110	Notice of protest rights

#### **16.97.010 Authority and Purpose**

A. This chapter is adopted pursuant to Section 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.

B. The purpose of this chapter is to establish an impact fee on new development projects for purpose of mitigating the impact that the development project has upon the I-5 Subregional Corridor.

#### **16.97.020 Definitions**

The following terms as uses in this chapter shall have the definitions assigned to them.

A. "CEQA" shall mean the California Environmental Quality Act, Public Resources Code Section 21000 et seq., and shall include the State CEQA Guidelines as provided in California Code of Regulations, Title 14, Division 6, Chapter 3.

B. "Development Project" shall mean any project for which a discretionary planning permit is approved by the designated approving authority, including, but not limited to, a Tentative Subdivision Map, Tentative Parcel Map, and Major and Minor Design Review, as those terms are used in Titles 22 and 23 of this Municipal Code.

C. "I-5 Subregional Corridor" shall mean that area of the Sacramento region that is generally located between the Interstate 5 freeway and State Route 99 from Downtown Sacramento and West Sacramento to and including Elk Grove, as well as those areas of Elk Grove east of State Route 99. The I-5 Subregional Corridor includes segments of Interstate 5, Interstate 80, State Route 99, Business 80, and U.S. 50 freeways.

**16.97.030 Establishment, Basis, and Use of Fee**

A. There is hereby established a voluntary I-5 Subregional Corridor fee (sometimes hereinafter referred to as the "fee"). The fee shall be based upon the projects identified in the I-5 Subregional Corridor Improvement Plan, which includes the approximate location and cost estimate for the transportation improvements based on the 2035 Metropolitan Transportation Plan/Sustainable Communities Strategy, and as may be updated from time to time.

B. The I-5 Subregional Corridor Mitigation fees collected shall only be used for payment of the actual costs of designing and constructing transportation improvement projects included in the I-5 Subregional Corridor Improvement Plan, as well as the City's program administration costs and updating the Nexus Study as may be needed to comply with the Mitigation Fee Act.

**16.97.040 Amount of Fee**

The amount of the voluntary I-5 Subregional Corridor fee shall be established by resolution of the City Council and accompanied by a nexus study that documents program expenses. The fee shall be automatically updated annually as established by the resolution.

**16.97.050 Timing of Collection of Fee**

A. Except as otherwise provided in EGMC Chapter 16.120 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' mainline facilities and provide alternative mitigation by payment of a different fee, provision of infrastructure, or other mitigation agreeable to the City and Caltrans.

B. In the event that a partial fee payment is made, the full fee to be paid 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.

**16.97.060 Applicability**

A. Except as otherwise provided, new Development Projects subject to payment of the I-5 Subregional Corridor Mitigation fee shall only include projects with traffic impacts that exceed the threshold of significance of one hundred (100) peak hour trip ends and which are not exempt from environmental review or exempt from mitigating traffic impacts under CEQA. Development Projects which may meet the threshold of significance but are exempt from environmental review under CEQA would not be subject to either an analysis of the project's freeway traffic impacts or payment of the I-5 Subregional Corridor Mitigation Fee.

B. Any Development Project for which the CEQA process has been completed through the filing of a Notice of Exemption (NOE) or Notice of Determination (NOD), or passage of the applicable CEQA statute of limitations if no NOE or NOD was filed, and which Development Project has received approval by the designated approving authority prior to the effective date of this chapter, shall be exempt from this chapter and the I-5 Subregional Corridor Mitigation fee. In the event a revision or change to the Development Project is undertaken and approved by the designated approving authority, the Development Project shall be subject to the I-5 Subregional Corridor Mitigation fee only if the revision or change to the Development Project increases the peak hour trip ends by more than 10% of the approved Development Project's peak hour trip ends. The adoption of this fee does not constitute a change in the environmental laws that would cause the need to reevaluate the project pursuant to CEQA.

C. The following development projects shall be exempt from the I-5 Subregional Corridor Mitigation fee:

1. A transit priority project consistent with the sustainable communities strategy pursuant to Public Resources Code (PRC) § 21155 et seq.;
2. Qualified housing projects pursuant to PRC §§ 21159.21 and 21159.24;
3. Affordable low-income housing projects pursuant to PRC § 21159.23;
4. Infill developments pursuant to PRC § 21094.5 and CEQA Guidelines § 15332; and
5. Projects that are not required to address traffic impacts which qualify for residential streamlining pursuant to PRC § 21159.28

D. In lieu of payment of the I-5 Subregional Corridor Mitigation fee, a Development Project to which the fee would otherwise apply may choose to prepare its own analysis to determine its fair share mitigation, provided the identified improvements further the outcomes identified in the I-5 Subregional Corridor Improvement Plan. If the alternative mitigation fee proposed by the Development Project applicant following the applicant's analysis is acceptable to the City and Caltrans, the payment of such alternative mitigation fee, provision of infrastructure, or other mitigation shall constitute mitigation for the project in lieu of the I-5 Subregional Corridor Mitigation fee.

**16.97.070 Credit/reimbursement for construction of public facilities**

A. Fee credits and reimbursements shall be available as part of the 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.



## B. Timing and Amount of Fee Credits/Reimbursements.

1. Fee credits and reimbursements shall 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 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.

2. 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 shall only be paid after the City has accepted the developer-funded facility. All reimbursements will be an obligation of the fee program and not an obligation of the general fund.

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

4. 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 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).

### **16.97.080 Use of Mitigation Fees**

The I-5 Subregional Corridor Mitigation fees collected shall only be used for payment of the actual costs of designing and constructing transportation improvement projects included in the I-5 Subregional Corridor Improvement Plan, as well as the City's program administration costs and updating the Nexus Study as may be needed to comply with the Mitigation Fee Act.

### **16.97.090 Allocation of Fees**

It is the intent of the City of Elk Grove to work collaboratively with SACOG, Caltrans, and the Cities of Sacramento, and West Sacramento to prioritize and allocate the I-5 Subregional Corridor Mitigation fees for projects in the I-5 Subregional Corridor Improvement Plan that, together with the funding allocated from other sources, are ready to commence design and construction in order to mitigate the impacts of new development on the freeway segments within the I-5 Subregional Corridor.

**19.97.100 Fund Transfer**

The City Council, by motion or resolution, may authorize the City Manager to transfer funds, including any accrued interest, to: (i) another public entity with the authority to manage the I-5 Subregional Corridor Mitigation Fee Fund pursuant to Government Code § 66006, and/or (ii) another public entity with the authority to undertake construction of the transportation improvement project included within the I-5 Subregional Corridor Improvement Plan.

**16.97.110 Notice of protest rights**

All Developers are hereby notified, pursuant to Government Code § 66020, including subsections (d)(1), that the ninety (90) day approval period (in which a Developer or other person may protest the imposition of any fees, dedications, reservations, or other exactions imposed on a development project pursuant to this chapter) shall begin on the date that the Development Project is approved or conditionally approved. If the Developer fails to file a protest within the ninety (90) day period, complying with all of the requirements of Government Code Government Code § 66020, the Developer shall be legally barred from later challenging any such fees, dedications, reservations, or other exactions.

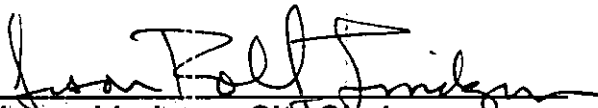
**CERTIFICATION  
ELK GROVE CITY COUNCIL ORDINANCE NO. 22-2017**

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 September 13, 2017 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on September 27, 2017 by the following vote:*

<b>AYES :</b>	<b>COUNCILMEMBERS:</b>	<i>Detrick, Hume, Nguyen, Suen</i>
<b>NOES:</b>	<b>COUNCILMEMBERS:</b>	<i>None</i>
<b>ABSTAIN:</b>	<b>COUNCILMEMBERS:</b>	<i>None</i>
<b>ABSENT:</b>	<b>COUNCILMEMBERS:</b>	<i>Ly</i>

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

  
**Jason Lindgren, City Clerk  
City of Elk Grove, California**