

## AGENDA ITEM NO. 7.5

### ORDINANCE NO. 16-2024

#### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE REPEALING AND REPLACING ELK GROVE MUNICIPAL CODE CHAPTER 16.96, DEVELOPMENT IMPACT FEES FOR MEASURE A TRANSPORTATION IMPROVEMENTS FOR CITYWIDE BENEFIT DISTRICT**

**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**, on July 29, 2004, the Sacramento Transportation Authority (STA) Governing Board adopted Ordinance STA No. 04-01, which created the Sacramento County Transportation Expenditure Plan 2009-2039, required each jurisdiction in the county to adopt and implement the Measure A Sacramento Countywide Transportation Mitigation Fee Program (SCTMFP) so that new development paid its fair share of the costs of the transportation improvements included in the Measure A Expenditure Plan, and requested the STA Governing Board to call an election for voter approval for the continued imposition of the existing one-half of one percent Measure A transportation sales tax for thirty (30) years; and

**WHEREAS**, on November 2, 2004, the voters in Sacramento County approved an extension of the one-half of one percent Measure A transportation sales tax (new Measure A), which became effective on April 1, 2009; and

**WHEREAS**, In August 2008, the STA Governing Board adopted Resolution No. STA 2008-01, approving the SCTMFP Agreement on Operating Protocols needed to implement the fee between the STA and each local jurisdiction on the SCTMFP Fee implementation procedures, including required dates of fee remittances to STA and documentation to be submitted by each local jurisdiction; and

**WHEREAS**, on January 14, 2009, the City Council introduced Ordinance No. 1-2009, which added Chapter 16.96 to the City of Elk Grove Municipal Code to establish Development Impact Fees for Measure A Transportation Improvements for Citywide Benefit District (Measure A Ordinance), which provides for the local implementation of the SCTMFP, and executed the Agreement on Operating Protocols; and

**WHEREAS**, on June 13, 2024, the STA Governing Board adopted Resolution No. STA 24-0005 adopting the 2024 Sacramento Countywide Transportation Mitigation Fee Program Nexus Study Update Report (“2024 SCTMFP Nexus Study”), which incorporates new land use forecasts for Sacramento County, includes status updates of transportation projects, provides updated project costs and trip generation rates, overall program reallocation, calculates the need for new transportation projects based on new development using updated models, updates the Local Arterial Program, and includes the updated SCTMFP fee rates, which is in compliance with the requirements of Assembly Bill 602 (2021); and

**WHEREAS**, on August 8, 2024, the STA Governing Board adopted Resolution No. STA 24-006 amending the Agreement on Operating Protocols between the STA and local jurisdictions, which also includes the updated SCTMFP fee rates, provides fee exemptions for accessory dwelling units less than 750 square feet and for development projects intended for public uses by the County or a City, and has fee reductions for developments in infill areas or with reduced parking availability or housing developments; and

**WHEREAS**, the City shall incorporate the updated Agreement on Operating Protocols and the Sacramento Transportation Authority Development Impact Fee Study of the SCTMFP into Elk Grove Municipal Code Chapter 16.96.

**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 incorporate provisions of the amended Agreement on Operating Protocols and the Sacramento Transportation Authority Development Impact Fee Study of the SCTMFP into Elk Grove Municipal Code Chapter 16.96

Section 2: Findings

**California Environmental Quality Act (CEQA)**

Finding: Repeal and replacement of Elk Grove Municipal Code Chapter 16.96 as set forth herein is not a Project under CEQA pursuant to State CEQA Guidelines Section 15378(b)(4).

Evidence: State CEQA Guidelines Section 15378(b)(4) states that the term Project does not include activities involving the creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment. The update to the SCTMFP is not a binding commitment requiring the City to construct any project listed in the nexus study. Further, any proposed projects identified in the nexus study would be subject to separate environmental review prior to any construction. The fee is merely a funding mechanism for proposed projects that may be modified or not implemented depending upon a number of factors, including CEQA environmental review. Therefore, the proposed action is not a Project under CEQA and no further environmental review is required..

**General Plan**

Finding: The Sacramento Countywide Transportation Mitigation Fee Program (SCTMFP) is consistent with the goals and policies of the Elk Grove General Plan.

Evidence: The Measure A Sacramento Countywide Transportation Mitigation Fee Program (SCTMFP) is imposed on new development to ensure that it pays its fair share of roadway improvements, the need for which is attributed in whole or in part to new development. This is consistent with the General Plan as it provides for the financing of public infrastructure necessary to mitigate the impacts of new development. Specifically, General Plan Policy MOB-7-4 provides that new development shall provide funding or to construct roadway/intersection improvements to implement the City's Transportation Network Diagram. The payment of adopted roadway development or similar fees. The payment of the SCTMFP is one of several fees that implements this policy.

The projects to be funded through the SCTMFP, which are listed in Table 19 of the Nexus Study, were selected because they performed a regional function and the need for the fee was at least partially attributable to new development. This was determined by analyzing the forecast traffic demand with the expected degree of new development and comparing that with the demand without new development. This demonstrates that a reasonable and rational relationship exists between the new development, the need for roadway and transportation improvements, and the funding for those improvements. As such, the SCTMFP implements General Plan Policy RC-3-3, which provides for coordination with local and regional agencies on roadway improvements that are shared by the jurisdictions in order to improve operations, including joint transportation planning efforts, roadway construction, and funding.

### Section 3: Action

Elk Grove Municipal Code Chapter 16.96, Development Impact Fees for Measure A Transportation Improvements for Citywide Benefit District, is hereby repealed and replaced in its entirety as shown in the attached 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 on January 1, 2025. 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:**       **16-2024**  
**INTRODUCED:**      October 9, 2024  
**ADOPTED:**  
**EFFECTIVE:**

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

ATTEST:

APPROVED AS TO FORM:

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

\_\_\_\_\_  
SUZANNE E. KENNEDY,  
ACTING CITY ATTORNEY

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

## EXHIBIT A

### Elk Grove Municipal Code Chapter 16.96 Development Impact Fees for Measure A Transportation Improvements for Citywide Benefit District

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*Chapter 16.96 is repealed and replaced in full as follows:*

#### **Chapter 16.96 DEVELOPMENT IMPACT FEES FOR MEASURE A TRANSPORTATION IMPROVEMENTS FOR CITYWIDE BENEFIT DISTRICT**

Sections:

##### Article I. General

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- 16.96.020 Definitions.

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- 16.96.040 Establishment of development impact fees.
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- 16.96.080 Exemptions.

##### Article IV. Computation and Time of Payment of Fees

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- 16.96.110 Deferral of fees.
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##### Article V. Adjustment of Fees

- 16.96.130 Automatic annual adjustment.
- 16.96.140 Adjustment of fee by resolution.
- 16.96.150 Calculation of Fee for ADUs
- 16.96.160 Calculation of Fee for Mixed Use Projects
- 16.96.170 Reduced Fees for Areas with Reduced Parking Availability.
- 16.96.180 Fees for Housing Developments
- 16.96.190 Re-purposing/Reuse of Existing Buildings

##### Article VI. Protest

- 16.96.200 Protest of fees.

##### Article VII. Creation and Use of Fund

- 16.96.210 Creation of funds.
- 16.96.220 Use of funds.
- 16.96.230 Refund of fees paid.
- 16.96.240 Other fee and dedication requirements.

## Article I. General

### 16.96.010 Purpose.

This chapter is adopted pursuant to the general powers reserved to the City under Section 66000, et seq., of the Government Code and as allowed by Measure A for the purpose of authorizing certain development impact fees, as described in public facility financing plans, expenditure plans and the nexus studies as referenced herein, to be assessed upon the owners of certain residential and nonresidential property as described in this chapter and which is located within the City. The fees herein adopted shall be assessed upon landowners developing property for any residential or nonresidential use in order to provide all or a portion of the funds which will be necessary to design, construct, install or acquire public facilities required to meet the needs of, and address the transportation impacts caused by, such development activity. It is the intent and purpose of the City to protect and promote the public health, safety and welfare by constructing, installing and acquiring public facilities necessitated by development in the City. Furthermore, it is the intent and purpose of the City to allow the development within its corporate limits on the condition that landowners pay the applicable costs of such public facilities and that such costs shall not be or become a responsibility of any other City fund, including, without limitation, the City's general fund.

### 16.96.020 Definitions.

A. Unless the contrary is stated or clearly appears from the context in which a term is used, the following definitions shall govern construction of the words and phrases used in this chapter:

1. "Accessory Dwelling Unit" (ADU) means an attached or detached permanent dwelling unit that provides complete independent living facilities (permanent provisions for living, sleeping, eating, cooking, and sanitation) for one or more persons and which is located on a lot with a proposed or existing primary dwelling.
2. "Assessment district policy manual" means the document entitled, "Reimbursement Policies and Procedures for Privately Constructed Public Facilities" on file with the City of Elk Grove Public Works, as such document or its title may be amended from time to time.
3. "Automatic annual adjustment" means the automatic annual adjustment of development impact fees based on the inflation factors described in EGMC Section 16.96.130.
4. "City code" means the City of Elk Grove Municipal Code.
5. "Citywide benefit district area" means the real property located within the corporate limits of the City, and as said limits may be adjusted from time to time.
6. "Development" means the uses to which property will be put, the buildings and improvements to be constructed on it, and the construction activities incident thereto, together with the process of obtaining all required land use entitlements.
7. "Development project" shall have the same meaning as defined by subsection (a) of Section 66000 of the Government Code, as such section may be amended from time to time.
8. "Dwelling unit" means any room or group of rooms located within a dwelling and forming a single unit with the facilities which are used or intended to be used for living, sleeping, cooking, or eating excepting therefrom any unit rented or leased for temporary residency,

such as a motel and hotel room.

9. “Fee,” “impact fee” and “development impact fee” means the monetary exaction as defined by subsection (b) of Section 66000 of the Government Code, as such section may be amended from time to time, and shall include, but not be limited to, the fees established pursuant to this chapter.

10. “Fee resolution” means any resolution adopted by the City Council which implements the provisions of this chapter, including, without limitation, the setting of the amounts of the various fees established hereby and the adoption of provisions for credits, reimbursements and deferral relating to such fees.

11. “Government Code” means the Government Code of the State of California and any provision thereof cited in this chapter, as such provision exists as of the date of the enactment of this chapter, or as may thereafter be amended or renumbered from time to time.

12. “Health and Safety Code” means the Health and Safety Code of the State of California and any provision thereof cited in this chapter, as such provision exists as of the date of the enactment of this chapter, or as may thereafter be amended or renumbered from time to time.

13. “Housing Development” means a development project with common ownership and financing consisting of residential use or mixed use where not less than 50 percent of the floorspace is for residential use.

14. “Industrial use” means any development project that involves manufacturing, transportation, logistics or similar uses.

15. “Low income” and “very low income” housing is as defined in Sections 50079.5 and 50105, respectively, of the Health and Safety Code.

16. “Measure A” means Ordinance No. 04-01 adopted by the Sacramento Transportation Authority on July 29, 2004, which established the Sacramento Countywide Transportation Mitigation Fee Program to be implemented by the County of Sacramento and each city within the County by April 1, 2009.

17. “Measure A administration fee” means the fee imposed by the City for the cost of collection, deposit, investment, accounting, remittance and reporting of the Measure A development impact fee.

18. “Measure A development impact fee” means a development impact fee established to provide funding for public facilities to benefit new development within the City.

19. “Measure A expenditure plan” means the Sacramento County Transportation Expenditure Plan 2009 – 2039 dated June 10, 2004, as adopted by the Sacramento Transportation Authority under Ordinance No. 04-01, which specifies the allocation of Measure A sales taxes and Measure A development impact fees for specified public facilities.

20. “Measure A mitigation fee program” means the Sacramento Countywide Transportation Mitigation Fee Program as approved by the Sacramento Transportation Authority by Ordinance No. 04-01. It includes a technical amendment approved by STA on December 11, 2008.

21. “Measure A Nexus Study” means the Development Impact Fee Study dated May 24, 2024, as adopted by the Sacramento Transportation Authority by Resolution No. 2024-005.

22. “Multifamily residential use” means any development project that uses a single parcel for two (2) or more dwelling units within one (1) or more building(s) including, without limitation, duplexes, townhouses, condominiums and apartments.
23. “Normalized cost per trip” means the medium-sized single family residential fees listed in Section 2.1 of the Protocols Agreement divided by the average weekday trip generation rate for a single family residence (9.44) per the Institute of Transportation Engineers (ITE) Trip Generation Manual (11th Ed.). The normalized cost per trip is \$167 and will be adjusted annually per EGMC Section 16.96.130.
24. “Office use” means any development project that involves business activities, associated with professional or administrative services, and typically consists of corporate offices, financial institutions, legal and medical offices, personal services, or similar uses, and religious centers. “Office Use” also includes any other commercial use not specifically listed in Section 2.1 of the Protocols Agreement that is not a retail or industrial use.
25. “Participating Agencies” means the County of Sacramento, the City of Citrus Heights, the City of Elk Grove, the City of Folsom, the City of Galt, the City of Isleton, the City of Rancho Cordova, and the City of Sacramento. Each may be referred to individually as “Participating Agency.”
26. “Protocols Agreement” means the Measure A Sacramento Countywide Transportation Mitigation Fee Program Agreement on Operating Protocols Amended dated August 2024 with the Sacramento Transportation Authority, as approved by the Authority on August 8, 2024, by Resolution No. 24-006 and as approved by the City on October 9, 2024, by Resolution No. 2024-\_\_\_\_\_.
27. “Public facilities” means the public improvements, public services and community amenities as defined by subsection (d) of Section 66000 of the Government Code, as such section may be amended from time to time. The term “public facilities” only includes transportation improvements and infrastructure to be designed, constructed, installed and acquired to serve the specified benefit district area, as well as the transportation-related public service and community amenities to serve the specified benefit district area, which improvements and infrastructure are described in the applicable financing plan, expenditure plan, and/or Nexus Study (collectively “plan” or “study”). The costs of the design, construction, installation and acquisition of the specified public facilities, which are to be financed partially by the development impact fee program, is set forth within the plan or study. Where applicable under the plan or study, the term “public facilities” includes the acquisition of land relating to such improvements, infrastructure, public services and community amenities. The term “public facilities” also means a specific public improvement or infrastructure where the context requires a singular meaning.
28. “Reduced Parking Availability” means a development project where State law requires the City to approve the project with reduced parking including, without limitation, projects pursuant to Government Code Sections 65913.4 and 65915.
29. “Retail use” means any development project that involves retailing of merchandise, generally without transformation, retail food services, and rendering services incidental to the sale of merchandise at a fixed point of sale.
30. “Senior residential use” means any development project that qualifies as housing for older persons pursuant to Section 12955.9 of the Government Code.
31. “Single-family residential use” means any development project that uses a single-family parcel for only one (1) residential dwelling unit and includes any development project that involves one (1) primary dwelling unit and one (1) accessory dwelling unit on a single lot.



32. "STA" means the Sacramento Transportation Authority.

33. "Transit Oriented Development" means a housing development that satisfies all the following characteristics: (a) the housing development is located within one-half mile of a transit station and there is direct access between the housing development and the transit station along a barrier-free walkable pathway not exceeding one-half mile in length; (b) convenience retail uses, including a store that sells food, are located within one-half mile of the housing development; and (c) the housing development provides either the minimum number of parking spaces required by the local ordinance, or no more than one onsite parking space for zero to two bedroom units, and two onsite parking spaces for three or more bedroom units, whichever is less.

34. "Transit station" has the meaning set forth in Section 66005.1(d) of the Government Code.

## Article II. Establishment of Fees

16.96.030 Adoption of new or amended reports.

To implement the development impact fees established pursuant to the provisions of this chapter, the City Council may, by resolution, adopt new or amended versions of any of the studies, reports, plans, or projections on which the development impact fees are based, except in such cases where amendments to such studies reports, plans, or projections must be made by ordinance.

16.96.040 Establishment of development impact fees.

A. The following development impact fees are established pursuant to the provisions of this chapter to finance the cost of the following categories of public facilities required by development within the following specified benefit district areas:

1. Measure A Benefit District.

a. Measure A Development Impact Fee. A development impact fee is established to provide funding for public facilities to serve the City, which facilities are described in the Measure A expenditure plan and the Measure A Nexus Study. The Measure A benefit district is the jurisdictional boundaries of the City, and as said boundary may be adjusted from time to time.

b. Measure A Administration Fee. An administrative fee is established to fund the City's cost to administer the Measure A development impact fee.

B. The City Council, by resolution, shall establish the specific initial and subsequent amounts of the foregoing fees pursuant to EGMC Section 16.96.060 and make the additional findings required under EGMC Section 16.96.050 in establishing said amounts of each fee. In addition, the City Council, by resolution, may adopt additional provisions, procedures and policies to implement the fees established by this chapter. The amounts of fees, provisions, procedures, and policies adopted by resolution pursuant to this subsection shall be consistent with the applicable financing plan, expenditure plan and/or Nexus Study as referenced in subsection (A) of this section.

C. The City Council, by resolution, may establish new or additional components of the fees identified in subsection (A) of this section as are necessary to accommodate phasing and stages of the development of the specified benefit district areas, or as may be contemplated by future amendments to the financing plan, expenditure plan and/or Nexus Study as referenced in subsection (A) of this section.

16.96.050 Additional findings to be made when establishing the amount of development impact fees.

At the time it considers the amount of the fees established pursuant to EGMC Section 16.96.040 or at the time of amending such fees, other than in making an automatic annual adjustment to the fees as provided in EGMC Section 16.96.130, the City Council shall adopt the amount of such fees if it makes the following findings in support of such fees:

A. A finding that such fees have been determined and calculated in the manner consistent with the financing plan, expenditure plan and/or Nexus Study as referenced in EGMC Section 16.96.040(A); and

B. The following additional findings required by Section 66001 of the Government Code which demonstrate that there is a nexus between the public facilities for which such fees are imposed and the need for such public facilities created by the development of residential and nonresidential property within the specified benefit district areas upon which the fees are imposed:

1. Findings which identify the purpose of the fees;
2. Findings which identify the use to which the fees are to be put;
3. Findings which demonstrate that there is a reasonable relationship between the use of the fees and the type of development project on which the fees are imposed;
4. Findings which demonstrate that there is a reasonable relationship between the need for the public facilities to be financed by the fees and the type of development project on which the fee is to be imposed; and
5. Findings which demonstrate how there is a reasonable relationship between the amount of the fees and the cost of the public facilities, or portion of such public facilities, attributable to the development project on which the fees are imposed.

C. In making the findings pursuant to this section and any other findings, the City Council may consider all matters, whether offered orally or in writing, presented at the hearing or hearings conducted for the purpose of establishing or amending the fee, and any and all oral and written material presented to the City Council and Planning Commission in connection with the adoption, approval or amendment of the financing plan, expenditure plan and/or Nexus Study as referenced in EGMC Section 16.96.040(A).

16.96.060 Proceedings to establish the amount of development impact fees.

A. At the time of setting the amount of the fees established pursuant to this chapter or at the time of amending such fees, other than in making an automatic annual adjustment to the fees as provided in EGMC Section 16.96.130, the City Council shall hold a public hearing on the proposed fees or proposed amendment of fees in the manner required by Section 66018 of the Government Code.

B. The effective date of any resolution adopted by the City Council which establishes or amends, as the case may be, the amount of the fees established pursuant to EGMC Section 16.96.040 shall be no sooner than sixty (60) days following the final action on the adoption or amendment of the fee.

## Article III. Fee Imposition

### 16.96.070 Imposition of development impact fees.

A. The development impact fees established under this chapter shall be imposed on the following types of uses or development of real property located within the benefit district areas as referenced in EGMC Section 16.96.040(A):

1. For nonresidential uses or development:

- a. The construction on the property of a new building or structure;
- b. The construction on the property of additions to an existing building or structure which results in the expansion in the size or use of such existing building or structure; or
- c. The change in use of an existing building or structure on the property from a previous residential use to a nonresidential use, or from a previous nonresidential use to another nonresidential use; provided, that the landowner shall be entitled to a credit against fees paid pursuant to this chapter in the amount of fees which were actually paid for such previous residential or nonresidential use, which prior fees shall be adjusted for inflation consistent with EGMC Section 16.96.130.

2. For residential uses or development:

- a. The construction on the property of a new building or structure containing one (1) or more dwelling units;
- b. The construction on the property of alterations or additions to an existing building or structure which add one (1) or more dwelling units to such existing building; or
- c. The change in use of an existing building or structure on the property from a previous nonresidential use to a residential use; provided, that the landowner shall be entitled to a credit against fees paid pursuant to this chapter in the amount of fees which were actually paid for such previous nonresidential use, which prior fees shall be adjusted for inflation consistent with EGMC Section 16.96.130.

3. For nonresidential and residential uses or development within the same building or structure, the computation of fees as set out in EGMC Section 16.96.090 shall apply.

B. Except as may be expressly provided in this chapter, no building permits or extension of permits relating to the activities described in subsections (A)(1) and (A)(2) of this section shall be granted unless and until the appropriate development impact fee or fees have been paid to the City in accordance with the provisions of this chapter, except that for residential developments under a fee payment contract as specified in Section 66007 of the Government Code, building permits may be issued but no final inspection or certificate of occupancy shall be granted unless and until the appropriate development impact fee or fees have been paid to the City. As provided in subsection (a) of Section 66007 of the Government Code, for a residential development that contains more than one (1) dwelling unit, the fees may be paid on a pro rata basis for each dwelling unit at the time of the building permit.

C. Notwithstanding anything to the contrary set forth in subsection (A) of this section or in any other provision in this chapter, the development impact fees established pursuant to this chapter shall apply to any development project that has heretofore either received a tentative map approval or other approval or permit, whether discretionary or nondiscretionary, or is subject to a development agreement or other agreement between the landowner and City that provides for payment of one (1) or more fees established under this chapter.

#### 16.96.080 Exemptions.

A. The following shall be exempted from payment of the fees established by this chapter:

1. Accessory Dwelling Units less than 750 square feet.
2. The rehabilitation or reconstruction of any residential or nonresidential structure where there is no net increase in square footage. Any increase in square footage shall pay the established applicable fee rate for that portion of square footage that is new.
3. New low income housing as defined in Health and Safety Code Section 50079.5 and very low income housing as defined in Health and Safety Code Section 50105.
4. Projects intended for public use where the applicant is one of the Participating Agencies.
5. Any development project that is the subject of a valid development agreement entered into pursuant to Government Code Section 65864 prior to April 1, 2009, that includes a provision exempting it from future fees or fee increases; provided, however, that if the term of such development agreement is extended after April 1, 2009, the Measure A mitigation fee shall be imposed.
6. Any development project for which an application for a vesting tentative map authorized by Government Code Section 66498.1 was deemed complete prior to April 1, 2009.

B. Any claim of exemption with respect to the fees established by this chapter shall be made no later than the time for application for fee adjustment pursuant to EGMC Section 16.96.200.

#### Article IV. Computation and Time of Payment of Fees

##### 16.96.090 Computation of fees.

The methodologies set forth in the financing plan, expenditure plan and/or Nexus Study referenced under EGMC Section 16.96.040(A) shall be used as the basis to set the amount of fees pursuant to any resolution referenced under EGMC Section 16.96.040(B). The amount of fees due from any landowner shall be calculated from the actual uses of land proposed by the landowner unless otherwise provided in any resolution referenced under EGMC Section 16.96.040(B). Applicants for building or other development permits shall include plans and calculations prepared by the applicant or applicant's agent, specifying data necessary to calculate development impact fees, including, without limitation, each proposed land use, the square footage of each use, and other relevant data as may be required by the Finance Director, or his or her authorized designee. All fees due under this chapter shall be determined and calculated by the Finance Director, or his or her authorized designee.

##### 16.96.100 Time of payment of fees.

Except as otherwise provided in any resolution adopted by the City Council as provided under EGMC Sections 16.96.070(B) and 16.96.110 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 at the time of the issuance of any required building permit relating to such development. With respect to development projects completed or commenced prior to the effective date of the ordinance codified in this chapter and the effective date of any amendment, the Finance Director, or his or her authorized designee, may enter into agreements with landowners regarding the amount, time, and manner of payment of fees under this chapter with respect to such development projects.

#### 16.96.110 Deferral of fees.

The City Council, by resolution, may establish and modify policies, guidelines and procedures regarding the deferral or other adjustment of the time of payment of the fees established under this chapter.

#### 16.96.120 Credits and reimbursements.

A. The City Council, by resolution, may establish and modify policies, guidelines and procedures regarding credits and reimbursements which may apply to the fees established by this chapter. Said policies, guidelines and procedures shall be subject to the terms of any written agreement entered into by the Finance Director, or his or her authorized designee, and any landowner or landowners within the benefit district area concerning credits against and reimbursement of fees established pursuant to the financing plan, expenditure plan and/or Nexus Study as referenced in EGMC Section 16.96.040(A).

B. All policies, guidelines and procedures regarding credits and reimbursements shall be consistent with the following:

1. The credits and reimbursements shall apply to fees owed a) by landowners that have advanced funds for the planning, engineering, or construction of public facilities which otherwise would be paid from the revenue of the fees established by this chapter, and b) by landowners that planned, engineered or constructed public facilities or dedicated land for said facilities which otherwise would be paid for from the revenue of the fees established by this chapter.

2. The policies, guidelines and procedures shall provide for reimbursement to the City for administrative, planning, and engineering costs and other expenses relating to the implementation of the financing plan, expenditure plan and/or Nexus Study as referenced in EGMC Section 16.96.040(A).

3. The credits and reimbursements may be transferable, in whole or in part, upon notice to the City in the form and in the manner specified by the City.

4. The amounts of credits and reimbursements shall be subject to adjustments for inflation calculated consistent with the provisions of EGMC Section 16.96.130, but shall not accrue interest.

5. Credit shall be given to the extent that public facilities are financed through the establishment of an assessment district or the use of other alternative financing mechanisms. The cost of assessment district formation, administrative costs thereof, and bonding shall not be considered a reimbursable cost, or a cost eligible for credit.

6. The credits and reimbursements may be subject to annual review and adjustment to ensure that funds are available to construct or acquire public facilities in a timely manner pursuant to the financing plan, expenditure plan and/or Nexus Study and to promote fairness and equity relating to credits and reimbursements.

7. The credits and reimbursements shall be given, consistent with the Elk Grove "Reimbursement Policies and Procedures for Privately Constructed Public Facilities" for the construction of any public facilities (or a portion thereof) for which a fee established by this chapter may be expended and shall apply to the fees otherwise due and payable for the development project giving rise to the need for such public facilities.

8. The credits and reimbursements shall not be given for site-related improvements and dedications of land which are specifically required by the development project in order to

serve it and which do not constitute a public facility for which a fee established by this chapter may be expended.

9. Any claim for credit or reimbursement shall be made no later than at the time of application for a building permit, even if payment of the fee is not due until final inspection or the certificate of occupancy. Any claim not made by or before the time of such application shall be deemed waived.

10. The sole source of the payment of a reimbursement shall be the revenue collected on the specific fee which could be expended on the public facilities to which the reimbursement relates, unless a credit or reimbursement agreement approved by the City Council specifically provides for an alternative source of reimbursement.

11. Credits and reimbursements may cease or be amended if the City Council, by resolution, determines that the same constitute threat(s) to the public health, welfare or safety.

C. The person seeking a credit or reimbursement, or both, shall submit such documentation, including, without limitation, engineering drawings, specifications, and construction cost estimates, and utilize such methods as may be appropriate and acceptable to the Finance Director, or his or her authorized designee, to support the request for a credit or reimbursement. The Director shall determine the credit or reimbursement amount for construction of a specific public facility based upon either the foregoing landowner-provided cost estimates or upon alternative engineering criteria and construction cost estimates if the Director determines that such estimates submitted by the landowner are either unreliable or inaccurate. The Director shall determine whether the specific public facility is eligible for credit or reimbursement. Any decision made by the Director pursuant to this section may be appealed to the City Council by the filing of a notice of appeal with the City Clerk within ten (10) days of the date of the Director's written decision. The City Council shall consider the appeal at a public hearing held within sixty (60) days after the filing of the notice of appeal. The decision of the City Council at said public hearing shall be final.

#### Article V. Adjustment of Fees

##### 16.96.130 Automatic annual adjustment.

The fees established by this chapter shall be adjusted automatically to take into consideration construction cost inflation on July 1st of each fiscal year. The first (1<sup>st</sup>) fiscal year for which an adjustment shall occur shall be the fiscal year that includes July 1, 2010. The adjustment shall be made by a factor equal to the percentage increase, if any, of the Construction Cost Index as published by Engineer News Record/McGraw-Hill Construction Weekly for the Twenty (20) City Construction Cost Index during the twelve (12) months ending on the preceding March 1st. This automatic annual adjustment shall not apply to those fees which are based on variable factors which themselves result in an automatic inflation adjustment, those which specifically indicate otherwise, or those which are governed by provisions of an agreement with the City expressly exempting such fees from the adjustment set forth under this section.

##### 16.96.140 Adjustment of fee by resolution.

In addition to any automatic annual adjustment, the amount of the fees established by this chapter may be revised periodically, including, without limitation, upon the report and review provided for in this code, by resolution of the City Council. Any action by the City Council to increase fees shall comply with the provisions of this chapter and Section 66018 of the Government Code.

#### 16.96.150 Calculation of Fee for ADUs.

ADUs greater than 750 square feet shall be subject to a fee hereunder that is equal to the ratio of the floor area of the ADU compared to the primary unit, multiplied by the fee that would be charged on the primary unit, if the primary unit was being newly built.

#### 16.96.160 Calculation of Fee for Mixed Use Projects.

For Projects that include two or more different types of uses, the amount of the fee imposed on the entire development project shall be proportionally determined based on the relative footprint associated with the various uses, as determined by the Finance Director.

#### 16.96.170 Reduced Fees for Areas with Reduced Parking Availability.

Developments in areas with Reduced Parking Availability may be subject to reduced fees, at the sole discretion of the Finance Director, if the development project results in reduced trip generation. Any such fee reduction must be supported by a Traffic Study submitted by the Applicant and prepared and stamped by a licensed Traffic or Civil Engineer and which has been accepted by the City Engineer.

#### 16.96.180 Fees for Housing Developments.

A. Generally. The fee imposed pursuant to this Chapter for a Transit Oriented Development shall be set at a rate that reflects a lower rate of automobile trip generation associated with that Transit Oriented Development in comparison with non-Transit Oriented Development, unless the City adopts findings after a public hearing establishing that the Transit Oriented Development would not generate fewer automobile trips than a non-Transit Oriented Development. If a housing development does not satisfy the characteristics of a Transit Oriented Development, the City will charge a fee pursuant to this Chapter that is proportional to the estimated rate of automobile trip generation associated with the housing development.

#### B. Traffic Study.

1. Project-Specific Traffic Study. Housing developments seeking a fee adjustment pursuant to this section shall submit a traffic study, stamped by a licensed Traffic or Civil Engineer (and which has been accepted by the City Engineer), which demonstrates the lower rate of automobile trip generation associated with the applicable housing development compared to the Nexus Study.

2. Alternative Traffic Study. A Transit Oriented Development may submit to City a traffic study, stamped by a licensed Traffic or Civil Engineer (and which has been accepted by the City Engineer), which demonstrates the lower rate of automobile trip generation associated with Transit Oriented Developments and other similar types of development compared to non-Transit Oriented Developments. In the event a Transit Oriented Development submits the Alternative Study pursuant to this section, the Finance Director, in consultation with STA, may apply a standard Transit Oriented Development fee reduction based on studies related to Transit Oriented Developments unless the applicable Transit Oriented Development elects to provide City with a Project-Specific Traffic Study, as described in EGMC Section 16.96.180(B)(1), for the Finance Director to use in calculating the appropriate fee hereunder.

16.96.190 Re-purposing/Reuse of Existing Buildings.

A. The fee imposed pursuant to this Chapter for any re-purposing or change in use of existing buildings shall only apply to the net increase in average daily trips attributable to the new purpose or use, as compared to the prior established use.

B. Fees shall be calculated hereunder by comparing the rates applicable to the prior and new uses as designated in the City’s Fee Schedule and calculating the resulting offset. In the alternative, where a proposed land use is not clearly listed in the Fee Schedule, the fee shall be calculated as follows:

1. Calculate the difference between previous average daily trips and new average daily trips at the property. The determination of average daily trips for the purpose of comparing previous and proposed uses shall be by reference to trip generation rates obtained from the Institute of Traffic Engineers.

2. Multiply the result by the normalized cost per trip.

C. Requests for a fee adjustment pursuant to this provision shall be made to the City in writing. The Finance Director shall determine whether a development project has made the required showing for a fee adjustment.

Article VI. Protest

16.96.200 Protest of fees.

A. A landowner subject to a fee established by this chapter may apply to the Finance Director, or his or her designee (for purposes of this section, the “Director”), for a reduction, adjustment, or waiver of any one (1) or more of the fees, or any portion thereof, based upon the absence of a reasonable relationship or nexus between the impacts of the landowner’s development project and either the amount of the fee charged or the type of public facilities to be financed, or both. The application shall state in detail the factual basis for the claim of reduction, adjustment, or waiver, and shall include any and all written materials which the landowner deems appropriate in support of the application.

B. The application shall be made in writing and filed with the Director at or before the time required for the filing of protests under Sections 66020 and 66021 of the Government Code. For purposes of determining the applicable limitations period set forth in Section 66020 of the Government Code, the date of the imposition of the fees under this chapter shall be the date of the earliest discretionary approval by the City of the subject development project. In the case of a development project where no discretionary approval is granted by the City, the date of the imposition of the fees under this chapter shall be the date of the earliest ministerial approval by the City of the subject development project. The time to file the application shall commence as of the date of City’s written notice of the amount of the fees and the length of the protest period. The application shall be accompanied by the payment of a filing fee in an amount established by the City Council. The applicant shall be liable for the actual cost of the City in processing and ruling upon the application to the extent such cost exceeds the filing fee. Such excess amount may be deducted from any refund found due and owing to the applicant or may be added to the amount of development impact fees found to be due or owing from the applicant, as the case may be.

C. Notwithstanding the filing of an application and the pendency of any hearing or procedure under this section, the landowner shall pay the development impact fees originally determined by the City in a timely manner pursuant to EGMC



Section 16.96.100. Such payment shall be deemed to be a payment under protest pursuant to Sections 66020 and 66021 of the Government Code.

D. It is the intent of this section that:

1. The Director may calculate a revised fee or require additional exactions where the impacts of a particular proposed development exceed the standards otherwise applicable in determining the public facilities necessitated by such development under the financing plan, expenditure plan and/or Nexus Study referenced in EGMC Section 16.96.040(A); and

2. The fee categories shall be considered individually; thus it may occur that a fee adjustment or waiver may be made to one (1) category of fees without affecting another.

E. The Director shall consider the application at an informal hearing held within sixty (60) days after the filing of the fee adjustment application. The decision of the Director shall be final and not appealable, except as provided in subsections (H) and (I) of this section. The Director shall make his or her determination of the fee calculation within fifteen (15) days from the date of the informal hearing or the date on which said Director sets for the submission of additional engineering or other studies, other information, or additional calculations as found necessary by the Director during the course of the informal hearing. Applicant's failure to submit, on a timely basis, additional information requested by the Director may result in a denial of the application. The applicant shall be notified of the Director's decision, in writing, by the mailing of such decision by first class mail, postage prepaid, to the address provided by the applicant.

F. The Director shall consider the following factors in his or her determination whether or not to approve an application:

1. The factors identified in Section 66001 of the Government Code:

a. The purpose and proposed use of the fee;

b. The type of development involved, including factors such as differences in factors relevant to the calculation of the fee;

c. The relationship between the fee's use and the type of development involved;

d. The need or demand for the public facilities to be funded by the fee and the type of development involved; and

e. The amount of the fee and the portion of it attributable to the development involved.

2. The substance and nature of the evidence presented by the applicant.

3. The facts, findings and conclusions stated in the financing plan, expenditure plan and/or Nexus Study as referenced in EGMC Section 16.96.040(A), including technical information, studies, and reports contained within and supporting said plans and study, together with findings supporting the resolution setting the amount of the fee or fees in question. The applicant must present comparable technical information, studies and reports to demonstrate that the fee is inappropriate for the particular development involved.

G. If the application is granted, any change in use within the particular development involved in an application shall invalidate the reduction, adjustment, or waiver of the fee if such change in use would render the same inappropriate.

H. Within thirty (30) days of the date of the mailing of the decision of Director's decision, an applicant may appeal the Director's decision to the City Council, by filing a notice of appeal

with the City Clerk. The provisions of EGMC Chapter 1.11 shall govern the appeal to the City Council. In reaching its decision, the City Council or the appointed hearing examiner, as the case may be, shall consider the information contained in the application and the factors set forth in the subsection (F) of this section. The decision on the appeal shall be mailed within ten (10) days following the hearing held pursuant to this section by first class mail, postage prepaid, to the address provided by the applicant. The written decision shall be final and not appealable, except as provided in subsection (I) of this section.

I. The protest procedures set forth in this section are administrative procedures which must be exhausted prior to the institution of any judicial proceeding concerning the fees protested.

## Article VII. Creation and Use of Fund

### 16.96.210 Creation of funds.

A. The fees established and collected pursuant to this chapter shall be deposited in the following separate special funds and accounts created specifically to hold the revenue generated by such fees. Said collected fees shall be deposited, managed, and maintained pursuant to the provisions of Section 66006 of the Government Code. Monies within such fund may be used solely for the purposes set forth in EGMC Section 16.96.220. In this regard, the following special funds are created and established:

1. Measure A transportation impact fee fund for the deposit and collection of the Measure A transportation impact fee.
2. Measure A administration fee fund for the deposit and collection of the Measure A administration fee.

B. The City Manager, or his or her designee, shall have the authority to rename funds and create new funds, as such funds may become necessary or appropriate through the adoption of any fee resolution or through any amendment to the financing plan, expenditure plan and/or Nexus Study as referenced in EGMC Section 16.96.040(A).

### 16.96.220 Use of funds.

A. Funds collected from the fees established by this chapter and deposited in their respective special funds established under EGMC Section 16.96.210 shall be used by the City, or by the Sacramento Transportation Authority or other entity if funds have been transferred to that entity, for the following purposes:

1. Payment of the actual costs of designing and constructing public facilities for which the fees may be expended, as described in the resolution or resolutions adopted pursuant to EGMC Section 16.96.040(B);
2. Reimbursement for those public facilities already constructed as described in EGMC Section 16.96.120, or for the costs advanced, including, without limitation, design and administrative costs incurred with respect to a specific public facility and the preparation and implementation of the financing plan, expenditure plan and/or Nexus Study as described in EGMC Section 16.96.040;
3. Providing for reimbursements to landowners as described in EGMC Section 16.96.120;
4. Providing refunds;
5. Funding the City's administration of the fee program implemented by the provisions of this chapter; and
6. Using the same as may be permitted under Section 66006 of the Government Code.

B. The City Council, by resolution, may authorize the City Manager to make loans among the different funds and accounts established pursuant to this chapter to assure adequate cash flow for the construction and acquisition of public facilities on a timely basis so long as such inter-fund and/or inter-account loans do not unreasonably delay such construction and acquisition under the lending fund or account.

C. Unless used or refunded as otherwise permitted under this section, monies, including any accrued interest, not assigned in any fiscal year shall be retained in the same fund or account until the next fiscal year.

D. The City Council, by resolution, may authorize the City Manager to transfer funds, including any accrued interest, to: 1) another public entity with the authority to manage the fund pursuant to Section 66006 of the Government Code, or 2) to another public entity with the authority to undertake construction of the public facility funded by the fee.

#### 16.96.230 Refund of fees paid.

If a building permit or, if appropriate, a grading permit, expires without commencement of construction, then the fee payer shall be entitled to a refund, without interest, of the fees paid as a condition for its issuance subject to the approval of the Finance Director; provided, however, that the portion of any fee revenue received by the City as reimbursement of its costs in administering the provisions of this chapter shall not be refunded. Failure to timely submit the required application for refund Code shall constitute an absolute waiver of any right to the refund.

#### 16.96.240 Other fee and dedication requirements.

The provisions of this chapter shall not release any owner of residential or nonresidential property located within the benefit district area from the following obligations:

A. Paying other applicable fees relating to development of property, including, without limitation, the application fees, processing fees, mitigation fees, and other development fees within the control of the City.

B. Complying with any public facility requirements which are imposed pursuant to applicable law, including, without limitation, the provisions of the Elk Grove Municipal Code.

C. Complying with any requirement to dedicate property for public use pursuant to applicable law, including without limitation, the provisions of the Elk Grove Municipal Code and the Government Code, at the time of approval of a tentative subdivision map, tentative master parcel map, certificate of compliance, building permit or other land use entitlement.

D. Complying with any obligation to pay fees or exactions, or to comply with mitigation requirements for identified project-related environmental effects.