

ORDINANCE NO. 36-2003

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE ADDING CHAPTER 16.89 TO THE ELK GROVE MUNICIPAL CODE RELATING TO DEVELOPMENT IMPACT FEES FOR ROADWAY FACILITIES

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 add Chapter 16.89 to the Municipal Code relating to the establishment of development impact fees in the City of Elk Grove (hereinafter "City") for roadway facilities. The City Council enacts this ordinance pursuant to the authority granted cities by Article XI, Section 7 of the California Constitution.

Section 2. Findings. The City Council finds and determines as follows:

a. Upon its incorporation, the City of Elk Grove adopted the Sacramento County General Plan (hereinafter "General Plan") as the City's General Plan. The General Plan includes a description of the general location, capacity, and types of public facilities planned to accommodate development anticipated to occur in the City.

b. As stated in the General Plan, the City shall ensure that adequate public facilities are provided to serve new growth and maintain or improve existing levels of service within the City. To finance needed public facilities in the City, the City needs to establish an appropriate schedule of development impact fees pursuant to Government Code section 66000, et seq., so that new development in the City pays no more nor less than its fair share of the cost of providing these public facilities.

c. The basis for establishment of the facilities fees authorized by this Ordinance is identified in the General Plan, and the need for and cost of the new public facilities and improvements required by new development in the City to be funded by those fees has been analyzed by the staff of the City of Elk Grove.

d. New development in the City places increasing demands on existing City roadways. By 2020, the City's population is projected to increase by more than 115% from its July 2000 level.

e. The City's current roadway capacity will need to be expanded as the City's population increases. In addition, a lack of adequate roadway capacity represents a major traffic concern and safety issue. As the City continues to grow, demand on roads will increase. Based on this expected increase, the City will need to construct new and expand existing roads to ease traffic congestion and improve public safety.

f. Based upon the following together with the above findings, and, in order to protect the public's health, welfare, and safety, the City Council finds there is an urgent need that this Ordinance be effective immediately upon its enactment and to declare any fee resolution effective immediately upon adoption.

- g. The City Council additionally finds:
- (1) There exists a need to change the way the City does business, to fulfill the promise of incorporation that development would pay its way as it goes.
 - (2) As the Council contemplates fees for development impacts, the number of additional applications for permits increases at an extreme rate. One day recently 90 applications for permits were submitted. This rush to submit applications creates an urgent need to impose an interim fee.
 - (3) New development without adequate funding for public infrastructure causes a drain on City services.
 - (4) The City Council has a responsibility to the current citizens of Elk Grove and future citizens to maintain and improve the kind of services the City provides.
 - (5) Roads in the City are impacted by development and this fee merely makes new development pay for its fair share.
 - (6) The City inherited a road system that is very underfunded which puts the City behind in its quest to obtain the transportation model desired by the City to meet the needs of its citizens and future development. This mechanism is needed to restructure and raise those fees to obtain the funding for public infrastructure.
 - (7) Development occurring and anticipated to occur within the City will result in an increased demand for public infrastructure and facilities which over-extend the City's ability to adequately protect the public peace, health, welfare, and safety within the City.
 - (8) This fee protects the public peace, health, welfare, and safety of the persons residing, working, or visiting the City.
 - (9) This fee protects the public peace, health, welfare, and safety of the businesses within the City.
 - (10) The City Council finds that the imposition of interim fees under this Ordinance as an urgency measure is required for the immediate preservation of the public peace, health, safety, and welfare.
 - (11) It is necessary for and in the interests of the public peace, health, safety, and welfare that this Ordinance be effective immediately upon its adoption in order to provide the public infrastructure needed by new development, as well as to achieve a degree of certainty to allow for the orderly development in the City. Such

certainty should also allow for greater efficiency on the part of City staff processing and evaluating development applications, thereby making best use of the limited resources of the City government in addressing the needs of the City.

- (12) Funding for the public infrastructure necessitated by new development must come from new development in order for it to bear its fair share of such facilities. Aside from funding generated by the imposition of development impact fees, financing of public infrastructure is not available from other sources or is severely restricted. Development impact fees are appropriate sources of required funding.
- (13) Past, existing, and anticipated building permit applications, tract map activity, inquiries by developers and development in the City indicate an immediate need to assure increased public infrastructure in the City. The activities and inquiries of members of the public holding interests in the City or investigating opportunities in the City demonstrates an additional and immediate need for certainty in the amount and implementation of the development impact fees which will impact property within the City.
- (14) In the event this Ordinance and any fee resolution are not effective immediately upon adoption, developers desiring to develop their property and the City may have to resort to voluntary agreements requiring the payment of fees at such time as this Ordinance and any such fee resolution become effective, which agreements would be inefficient to administer, cause complications with lenders and title companies, and raise enforcement and other problems detrimental to the public interest and the conduct of City business.
- (15) Any delay in securing adequate funding will result in a deterioration of the City's level of services and will threaten the City's ability to keep pace with development demand and creates an immediate harm.

h. Pursuant to the California Public Resources Code Section 21080 b(8), the establishment of these development impact fees is statutorily exempt from the application of the California Environmental Quality Act, because these fees are for the purpose of obtaining funds for capital projects necessary to maintain and improve roadway service within City boundaries.

Section 3. Additions. Chapter 16.89 is hereby added to the Municipal Code of the City of Elk Grove, to read in its entirety as follows:

CHAPTER 16.89

ESTABLISHMENT OF DEVELOPMENT IMPACT FEES TO FINANCE THE COST OF ROADWAY FACILITIES

Sections:

16.89.010	Purpose
16.89.020	Definitions
16.89.030	Establishment of City of Elk Grove Roadway Fund
16.89.040	Reserved
16.89.050	Payment of Development Fees
16.89.060	Adoption and Compliance with Schedule of Roadway Fee
16.89.070	Establishment of Development Fees
16.89.080	Calculation of Roadway Fee Component
16.89.090	Credit/Reimbursement for Construction of Public Facilities
16.89.100	Compliance With Other Laws

16.89.010 PURPOSE.

- a. The City of Elk Grove General Plan requires that areas chosen for urban expansion shall be capable of being provided within a reasonable period of time with an adequate level of public facilities.
- b. The General Plan further requires the preparation of a plan that identifies a mechanism for financing and providing for those facilities necessary to serve urban development in areas designated for policies for supporting funding of public facilities.
- c. The purpose of this Chapter is to implement the General Plan requirements set forth in subdivisions (a) and (b) of this section and to use the authority in Article XI, Section 7 of the California Constitution by imposing development fees via a Roadway Fee Program to fund the cost of certain roadway facilities.

16.89.020 DEFINITIONS.

- a. "Administrative Services Director" means the Director of Administrative Services for the City of Elk Grove.
- b. "Building Permit" means the permit issued or required for the construction or improvement of additional square footage for any structure pursuant to and as defined by the City of Elk Grove Building Code.
- c. "City" means the City of Elk Grove.
- d. "City of Elk Grove Roadway Fund" means that special interest-bearing trust fund established pursuant to Section 16.85. 030.

e. "Costs" means amounts spent, or authorized to be spent, in connection with the planning, financing, acquisition and development of a facility including, without limitation, the costs of land, construction, engineering, administration, and consulting fees.

f. "Council" means the City Council of the City of Elk Grove.

g. "Department" means the City of Elk Grove Public Works Department.

h. "Development Fee" or "Roadway Fee" means the City Roadway Fee, the fee levied by this Chapter upon the approval of building permits within City boundaries.

i. "Engineer" means the City Engineer of the City of Elk Grove..

j. "Facilities" means the roadway facilities financed by the Roadway Fee.

k. "Fee Resolution" means any resolution adopted by the City Council that establishes the amount of any Roadway Fee.

l. "Land use category" means a single family, multi-family, or commercial use as further defined in the Fee Resolution.

m. "Non-Residential Development" means a subdivision map, parcel map, or permit for the original construction, grading or installation of construction other than single-family detached homes, single-family attached homes, duplexes, townhomes, condominiums, apartments, manufactured homes and mobilehomes.

n. "Permanent Roadway Fee Effective Date" means the date upon which the Roadway Fee becomes effective other than on an interim basis

o. "Residential Development" means a subdivision map, parcel map, or permit for the original construction, grading or installation of single-family detached homes, single-family attached homes, duplexes, townhomes, condominiums, apartments, manufactured homes and mobilehomes.

16.89.030 ESTABLISHMENT OF CITY OF ELK GROVE ROADWAY FUND.

There is hereby created by the office of the City Treasurer, a special interest-bearing trust fund entitled the City of Elk Grove Roadway Fund. All roadway development fees collected pursuant to this Chapter shall be placed in said fund and shall be expended by the City of Elk Grove solely to pay the costs of roadway facilities and the administration of the Roadway Fee Program.

16.89.040 RESERVED

16.89.050 PAYMENT OF DEVELOPMENT FEES.

The development fees imposed pursuant to this Chapter shall be paid by the property owner to the City, in an amount calculated pursuant to Sections 16.89.80. The fees shall be both calculated and paid upon the issuance of building permits.

16.89.060 ADOPTION AND COMPLIANCE WITH SCHEDULE OF ROADWAY FACILITIES FEE.

The City Council shall establish the amount of any Roadway Fee by resolution.

16.89.070 ESTABLISHMENT OF DEVELOPMENT FEES.

A development fee is hereby established for the purpose of funding roadway facilities and the costs of administering the Roadway Fee Program.

16.89.080 CALCULATION OF ROADWAY FEE COMPONENT.

a. For residential development, the Roadway Fee shall be calculated by multiplying the number of units per land use category by a dwelling unit equivalent factor as identified in the Roadway Fee Program.

b. For non-residential development, the Roadway Fee shall be calculated by multiplying the number of building square feet per land use category by a dwelling unit equivalent factor as identified in the Roadway Fee Program.

c. For the purpose of calculating the Roadway Fee for land use categories not included in the Roadway Fee Program, the Administrative Services Director is hereby authorized to determine the land use category, which corresponds most directly to the land use. Alternatively, the Administrative Services Director can determine that no land use category corresponds and direct the Engineer to determine the Roadway Fee. Said Roadway Fee will be determined using the applicable trip generation factors as found in the Institute of Transportation Engineers Trip Generation manual.

d. In January of each calendar year, the Roadway Fee shall be automatically adjusted by the change in the average of the San Francisco and 20-city Construction Cost Indexes as reported in the Engineering News Record for the 12 month period ending October 31 of the prior year.

16.89.090 CREDIT/REIMBURSEMENT FOR CONSTRUCTION OF PUBLIC FACILITIES.

I. General Provisions

a. Fee credits and reimbursements shall be available for the Roadway Fee Program. Public facility projects eligible for fee credit or reimbursement must be accepted by the City and must meet City standards for acquisition projects. All construction contracts, construction work, and requests for reimbursement shall be

performed in conformance with the most current "Reimbursement Policies and Procedures for Privately Constructed Public Facilities", which is available from the City Engineer. 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. Developers may request fee credits or reimbursements only against the fee component out of which the facilities for which fee credits or reimbursements are being sought would have been constructed or funded.

c. Fee credits or reimbursements will only be granted for completed and accepted public facilities identified within the Capital Improvement Program (CIP) as an eligible public facility project in the Roadway Fee Program.

II. Timing and Amount of Fee Credits/Reimbursements

a. To obtain fee credits, developers must enter into a credit agreement with the City and, unless otherwise agreed to by the Administrative Services Director, must apply to the City prior to final subdivision map approval. Once all criteria are met, fee credits may be taken against fees when payable at the time the building permit is issued. Fee credits granted shall be prorated over each unit in residential subdivisions or over each gross leasable square foot in non-residential development projects.

b. To obtain reimbursements, developers who have advance funded a facility (or facilities) must enter into a reimbursement agreement with the City.

c. Reimbursement priority shall be determined by the Administrative Services Director or be stated in the reimbursement agreement.

d. Reimbursements shall be paid only after City acceptance of public facility improvements.

e. Reimbursements are an obligation of the Roadway Fee Program and not an obligation of the City General Fund.

f. With exceptions that may be provided by resolution of the City Council, developers shall be eligible for fee credits/reimbursements up to but not exceeding 100 percent of the fee excluding administration costs.

g. The City will reimburse developers for acquisition and/or installation of the Roadway Fee Program improvements based on the lesser of:

(1) The actual construction cost of eligible facilities, as determined by the City, in its sole discretion, through its review of the construction contract, plus an allowance for soft costs of the actual construction costs determined by the City.

(2) The total of allowable costs, based on the cost schedules set forth in the Roadway Fee Program (without any interest).

h. In January of each calendar year, the Cost Schedules set forth in the Roadway Fee Program shall be automatically adjusted by the change in the average of the San Francisco and 20-city Construction Cost Indexes as reported in the Engineering News Record for the 12 month period ending October of the prior year.

16.89.100 COMPLIANCE WITH OTHER LAWS.

This Chapter is intended to establish a method for funding the cost of certain facilities the need for which will be generated by the level and type of development proposed in the City of Elk Grove. The provisions of this Chapter shall not be construed to limit the power of the City Council to impose any other fees or exactions or to continue to impose existing ones, on development within the City area, but shall be in addition to any other requirements that the City Council is authorized to impose, or has previously imposed, as a condition of approving plans, rezonings or other entitlements within the City area pursuant to state and local laws. In particular, individual property owners shall remain obligated to fund, construct, and/or dedicate the improvements, public facilities and other exactions required by, but not limited to: The City of Elk Grove Department of Public Works Improvement Standards. Any credits or repayments pursuant to this Chapter shall not include the funding, construction or dedications described in this section.

Section 4. Amendment. Section 16.83.160 of Chapter 16.83, Title 16 of the Elk Grove Municipal Code is hereby amended to read as follows:

16.83.160 CREDIT/REIMBURSEMENT FOR CONSTRUCTION OF PUBLIC FACILITIES.

I. Provisions

a. Fee credits and reimbursements shall be available for each LSPFF component administered by the City. Public facility projects eligible for reimbursement must be accepted by the City and must be constructed in accordance with City Improvement Standards and Standard Specifications. Public facility projects eligible for fee credit must be shown on City-approved improvement plans, and must be secured with bonds or other financial security to the satisfaction of the City. City makes no representation either express or implied as to whether or not the construction of public facility projects requires the payment of prevailing wages.

b. Developers may request fee credits or reimbursements only against the fee component out of which the facilities for which fee credits or reimbursements are being sought would have been constructed or funded.

c. Fee credits or reimbursements will only be granted for public facilities identified within the current or previous Five-Year Capital Improvement program (CIP) for that facility type or identified as an eligible public facility project in the LSPFFP.

II. Timing and Amount of Fee Credits/Reimbursements

a. Once all criteria are met, fee credits may be taken against fees when payable at the time the building permit is issued. To obtain fee credits on single-family residential building permits, developers must apply to the City prior to issuance of the first building permit associated with a final subdivision map. Fee credits granted shall be prorated over each lot shown on the final subdivision map(s). Large lot maps shall not be used to prorate fee credits in single-family residential developments. To obtain fee credits on multi-family residential or non-residential building permits, developers must apply to the City prior to issuance of building permits. Fee credits granted shall be prorated over each unit for multi-family residential projects or per gross leaseable square foot in non-residential development projects. Large lot maps may be used to allocate and assign fee credits in multi-family residential or non-residential developments upon mutual agreement between the developer and the City.

b. Reimbursements shall be due to developers who have advance funded a facility (or facilities) in excess of their fair share of that (those) public facility cost (or facilities costs). In this instance, developers would first obtain fee credits, up to their fair share requirement for a facility, and then await reimbursement from fee revenue collections from other fee payers.

c. Reimbursement priority shall be determined on a first in and first out basis monthly for each public facility type. All public facilities accepted by the City in a given month shall have equal weighting in terms of priority for reimbursement.

d. To obtain reimbursements, developers must enter into a reimbursement agreement with the City. When funds are available in each fee component, reimbursements shall be paid on a quarterly, semi-annual or other basis as determined by the City. As noted, reimbursements shall be paid only after City acceptance of public facilities improvements.

e. Reimbursements are an obligation of the Fee Program and not an obligation of the City General Fund.

f. With exceptions that may be provided by resolution of the City Council, within each of the fee component developers shall be eligible for fee credits/reimbursements up to but not exceeding 100 percent of the fee excluding administration costs.

g. Eligible public facility costs used to determine fee credits/reimbursements shall be based on the Cost Schedules set forth in the LSPFFP or actual construction costs. Actual construction costs shall be used when a public facility is publicly bid pursuant to the procedures set forth in California Public Contracts Code Section 20160, et seq.

h. In January of each calendar year, the Cost Schedules set forth in the LSPFFP shall be automatically adjusted by the change in the average of the San Francisco and 20-city Construction Cost Index as reported in the Engineering News Record for the 12-month period ending October of the prior year.

Section 5. In Lieu Levy. The payment and administration of Roadway Fees imposed on any particular land use type and levied pursuant to this Chapter will be in lieu of all other roadway fees imposed on that same particular land use type and paid and administered pursuant to sections 16.82.070, 16.82.071, 16.82.120 of Chapter 16.82, Title 16 of the Elk Grove Municipal Code; sections 16.83.020(m) and 16.83.140 of Chapter 16.83, Title 16 of the Elk Grove Municipal Code; sections 16.87.090, 16.87.100, 16.87.115, of Chapter 16.87 Title 16 of the Elk Grove Municipal Code.

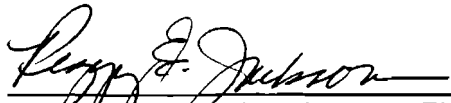
Section 6. No Effect. The payment and administration of Roadway Fees levied pursuant to this Chapter will not be in lieu of roadway fees paid and administered pursuant to Chapter 16.85, Title 16 of the Elk Grove Municipal Code. The payment and administration of Roadway Fees levied pursuant to this Chapter will not be in lieu of roadway fees levied on Phase 1 and Phase 2 of the Elk Grove Automall.

Section 7 . Effective Date- Urgency Ordinance. This ordinance shall take effect immediately as an urgency ordinance. New construction in the City continues to increase resulting in an increasing burden on existing City services. So that the City has sufficient funding to maintain adequate City service, the City must ensure that it begins receiving revenue from this new construction as soon as possible. For these reasons and the findings found in Section 2 above, the City Council finds that the immediate passage of this ordinance is necessary for the immediate preservation of the public peace, health and safety, and the fiscal integrity of the City.

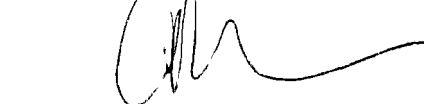
PASSED AND ADOPTED by the City Council of the City of Elk Grove this 3rd day of September 2003.


SOPHIA SCHERMAN, MAYOR OF THE
CITY OF ELK GROVE

ATTEST:


PEGGY JACKSON, CITY CLERK

APPROVED AS TO FORM:


ANTHONY B. MANZANETTI
CITY ATTORNEY

Effective Date: September 3, 2003

AYES: Cooper, Soares, Briggs, Leary
NOES: None
ABSTAIN: None
ABSENT: Scherman