

**REGULAR**

**\*8**

**NUMBER: 208.43**

**TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING TITLE VIII, CHAPTER 2, SECTION 7.04 OF THE MILPITAS MUNICIPAL CODE, RELATING TO TREATMENT PLANT FEES**

**HISTORY:** This Ordinance was introduced (first reading) by the City Council at its meeting of September 2, 2008 upon a motion by Vice Mayor Livengood and was adopted (second reading) by the City Council at its meeting of \_\_\_\_\_, upon motion by Councilmember \_\_\_\_\_. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

ORDAINING CLAUSE:

THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS:

## **SECTION 1:**

Title VIII, Chapter 2, Section 7.04 – “Treatment Plant Fees” of the Milpitas Municipal Code is hereby amended as follows:

The following is added:

### **SECTION VIII-2-7.04-E      EXCLUSION OF THE TRANSIT AREA SPECIFIC PLAN DEVELOPMENT**

The provisions of Sections 7.04-A through 7.04-D above shall not apply to Connectors located within the boundary of that planning area identified as within the Transit Area Specific Plan for permits to connect a house lateral, main sewer or trunk sewer issued after November 1, 2008. Fees for such excluded connections are set forth in Title VIII, Chapter 4 – “Fees for New Development” of the Milpitas Municipal Code.

## **SECTION 2   SEVERABILITY**

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid or unenforceable by a court of competent jurisdiction, the remainder of the ordinance and all prior amendments, language and iterations of any related ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of the ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clause, or phases, or the application of any of the foregoing to a particular person or circumstance, be held unconstitutional, invalid, or unenforceable.

## **SECTION 3   PUBLICATION AND EFFECTIVE DATE**

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect and be in force 30 days after the date of its passage. Within 15 days after the City Council’s adoption of this Ordinance, the City Clerk shall cause this ordinance to be published at least once, with the names of those city council members voting for and against the ordinance, and a certified copy of the full text of the proposed ordinance shall be posted in the office of the City Clerk in accordance with Section 36933 of the Government Code of the State of California.

**REGULAR**

**NUMBER:** 277

**TITLE:** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING CHAPTER 4, TITLE VIII OF THE MILPITAS MUNICIPAL CODE RELATED TO FEES FOR NEW DEVELOPMENT

**HISTORY:** This Ordinance was introduced (first reading) by the City Council at its meeting of September 2, 2008 upon motion by Vice Mayor Livengood and was adopted (second reading) by the City Council at its meeting of \_\_\_\_\_, upon motion by Councilmember \_\_\_\_\_. Said Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

ORDAINING CLAUSE:

THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS:

**WHEREAS**, the City of Milpitas (“City”) is a general law city located in the County of Santa Clara and operating under the laws of the State of California; and

**WHEREAS**, the City’s General Plan, specific area plans, and capital improvement plan were designed to ensure that the City’s public facilities and infrastructure meet present and future needs and are able to serve the anticipated development and population growth within the City’s boundaries; and

**WHEREAS**, the continuing growth of the City, combined with the expectation of high quality services by persons who live and work in the City, require that new development contribute their fair share for the cost of public facilities through the imposition of impact fees which will be used to finance, defray or reimburse the City for the appropriate portion of the cost of public facilities which serve such developments; and

**WHEREAS**, California Government Code Section 66000 et seq. (“Mitigation Fee Act”) and Article XI, Section 7 of the California Constitution, and other provisions of California law empower general law cities to impose impact fees and other exactions to provide the necessary public facilities required to mitigate the effects of such new development in the City; and

**WHEREAS**, pursuant to such authority, the City Council of the City of Milpitas (the “Council”) had previously established a developer impact fee program by ordinance in order to defray some or all of the costs of needed public facilities by charging a fee on all new developments in the City; and

**WHEREAS**, the Council now wishes to provide minor explanations and amendments to the existing program in order to streamline and clarify the purpose and procedures of said program and to continue to ensure that any development fees collected thereunder comply with requirements of the Mitigation Fee Act and the California Constitution; and

**WHEREAS**, the Council does not intend by this Ordinance alone to create any new development impact fees and shall instead implement any such fees and make findings supporting such fees and otherwise satisfy applicable legal requirements through the adoption of developer impact fee resolutions pursuant to Section VIII-4-2.01 of the Milpitas Municipal Code, as amended herein; and

**WHEREAS**, establishing or modifying legislation for the purpose of obtaining funds for impact mitigation is statutorily exempt from the California Environmental Quality Act (“CEQA”) pursuant to Section 15273 of the CEQA Guidelines; and

**NOW, THEREFORE, BE IT RESOLVED**, the City Council of the City of Milpitas does ordain as follows:

**Section 1.** Sections VIII-4-1.01 of the Milpitas Municipal Code is hereby amended to read in its entirety as follows:

**VIII-4-1.01 Authority.**

In order to implement the goals and objectives of the City of Milpitas' General Plan and to mitigate the impacts caused by new development in the City of Milpitas, certain public facilities must be or had to be constructed. The City Council has determined that development impact fees are needed in order to finance these public improvements and to pay for the development's fair share of the construction costs of these improvements. In establishing the development impact fee described in

the following sections, the City Council finds the fee to be consistent with its General Plan and, pursuant to Government Code Section 65913.2, has considered the effects of the fee with respect to the City's housing needs as established in the Housing Element of the General Plan. This chapter is enacted under the police power of the City and pursuant to Government Code Section 66000 et seq.

**Section 2.** A new Section VIII-4-1.02 of the Milpitas Municipal Code is added as follows:

**VIII-4.1.02. Scope**

This chapter applies to development impact fees charged as a condition of development to defray all or a portion of the cost of public facilities and improvements. The cost of developing and administering the City's development impact fee program may be included as a component of the established fees. This chapter is not intended to and does not apply to in lieu fees for park land acquisition collected under Government Code Section 66477 (Quimby Act fees); subdivision map exactions or other measures required to mitigate site-specific impacts of a development project; regulatory and processing fees; fees collected pursuant to a development agreement; fees collected under agreements with the Milpitas Redevelopment Agency which provide for the redevelopment of property in furtherance or for the benefit of a redevelopment project; funds collected under a reimbursement agreement; or assessment district proceedings, benefit assessments or property taxes.

**Section 3.** Sections VIII-4-2.01 of the Milpitas Municipal Code is hereby amended to read in its entirety as follows.

**VIII.-4-2.01 Application of Development Impact Fee Program**

The amount, calculation and bases of City development impact fees shall be established by City Council resolution(s). Such City Council resolutions shall set forth the specific amount of the fee, describe the benefit and impact area on which the development impact fee is imposed, list the specific public improvements to be financed, describe the estimated cost of these facilities, describe the reasonable relationship between this fee and the various types of new developments and set forth time for payment. As described in the fee resolution(s), this development fee shall be paid by each developer prior to issuance of the building permit unless later payment is required by City ordinance or State Law. On an annual basis, the City Council shall review this fee to determine whether the fee amounts are reasonably related to the impacts of developments and whether the described public facilities are still needed.

**Section 4.** Sections VIII-4-2.02 of the Milpitas Municipal Code is hereby amended to read in its entirety as follows.

**VIII-4-2.02 Limited Use of Fees.**

The revenues raised by payment of each type of development impact fee shall be placed in a separate and special account and such revenues, along with any interest earnings on that account, shall be used solely to:

2.02-1 Pay for the City's future construction of facilities described in the fee resolution(s) enacted pursuant to Section VIII-4-2.01 above, or to reimburse the City for those described or listed facilities constructed by the City with funds advanced by the City from other sources; or

2.02-2 Reimburse developers who have been required or permitted by Section VIII-4-2.03, to install such listed facilities which are oversized with supplemental size, length or capacity.

**Section 5.** Sections VIII-4-2.03 is hereby amended to read in its entirety as follows:

**VIII-4-2.03 Fee Credit**

4.2.03.1. The City Council may adjust a development impact fee for a particular development under any of the following conditions:

- A. Whenever a developer is required, as a condition of approval of a development permit, to construct a public facility described in a fee resolution adopted pursuant to Section VIII-4-2.01 which is determined by the City to have supplemental size, length or capacity over that needed for the impacts of that development, and when such construction is necessary to ensure efficient and timely construction of the facilities network, a reimbursement agreement with the developer and a credit against the fee, which would otherwise be charged pursuant to this chapter on the development project, shall be offered. The reimbursement amount shall not include the portion of the improvement needed to provide services or mitigate the need for the facility or the burdens created by the development.
- B. As consideration for public facilities listed in a City infrastructure program that are constructed and dedicated to the City, funded by a developer or property owner or funded by an assessment district, or Mello-Roos Community Facilities District or other land secured financing mechanism.
- C. If the developer's or property owner's actual construction cost for an improvement(s) exceeds that documented in a City infrastructure program, after accounting for allowable costs adjustments, a fee credit shall not be granted for this cost difference; if the actual construction cost of an improvement is below that estimated in a City infrastructure program, a fee credit shall be granted for the full construction cost as identified in the infrastructure program, accounting for allowable cost increases.

**Section 6.** Sections VIII-4-2.04 is hereby amended to read in its entirety as follows:

**VIII-4-2.04 Fee Adjustments, Waiver or Findings of Exemption.**

2.04.1. A developer of any project subject to the development impact fee described in Section VIII-4-2.01 may apply to the City Council for a reduction or adjustment to that fee, or a waiver or finding of exemption from that fee, based upon the absence of any reasonable relationship or nexus between the impacts of that development and either the amount of the fee charged or the type of facility to be financed. Alternatively, in considering a fee adjustment, waiver or exemption for a project with below market rate housing units, the developer shall demonstrate that the project would become economically infeasible upon the imposition of said fee.

2.04.2. The application shall be made in writing and filed with the City Clerk not later than (10) ten days prior to the public hearing on the development permit application for the project, or (2) if no development permit is required, at the time of the filing of the request for a building permit. The application shall state in detail the factual basis for the claim of waiver, reduction, or adjustment. The City Council shall consider the application at the public hearing on the permit application or at a separate hearing held within sixty (60) days after the filing of the fee adjustment application, whichever is later. The decision of the City Council shall be final. If a reduction, adjustment, or waiver is granted, any change in use within the project shall invalidate the waiver, adjustment or reduction of fee.

**Section 7.** A new Section VIII-4-2.05 of the Milpitas Municipal Code is added as follows:

**VIII-4-2.05 Reporting Requirements for Accounts or Funds.**

The Finance Director or his or her designee shall comply with the public reporting requirements for the funds collected under this chapter within 180 days of the end of each fiscal year, as specified in Government Code Section 66006(b), or any applicable successor statute. The Director of Finance or his or her designee shall also present the public reports to the City Council for review at the first regular council meeting that occurs not more than fifteen (15) days after the reports are made available to the public as specified in Government Code Section 66006(b), or any applicable successor statute.

**Section 8.** A new Section VIII-4-2.06 of the Milpitas Municipal Code is added as follows:

**VIII-4-2.06 Required Findings for Funds and Refunds**

In the fifth fiscal year following the first deposit of impact fees into a development impact fund or account, and every five (5) years thereafter, the City Council shall make the findings required by Gov. Code Section 66001(d), or any applicable successor statute, with respect to any monies remaining unexpended in a development impact fee funds or the account. The City shall also comply with the provisions of Government Code Section 66001(e) and (f), or any applicable successor statutes, for refunding unexpended revenues.

**Section 9.** The provisions of this ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

**Section 10.** This Ordinance shall take effect 60 days after the date of its adoption, as provided by Government Code Section 66017. Prior to the expiration of 15 days from the passage thereof, this Ordinance shall be posted in at least three public places in the City of Milpitas.