

RESOLUTION NO. ____**AN URGENCY RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS
ADJUSTING EXISTING TRANSIT AREA DEVELOPMENT IMPACT FEE FOR PUBLIC
INFRASTRUCTURE AND IMPROVEMENTS****RECITALS**

WHEREAS, the City Council of the City of Milpitas (“City”) has previously established a development impact fee program, as set forth in Chapter 4 of Title VIII of the Milpitas Municipal Code, in order to collect revenues to defray the cost of public infrastructure and improvements necessitated by new development; and

WHEREAS, pursuant to Chapter 4 of Title VIII of the Milpitas Municipal Code, the City Council may adopt development impact fees for different areas within the City by resolutions with appropriate findings that set forth the bases for such fees and the formulae to calculate such fees; and

WHEREAS, on June 3, 2008, the City Council adopted Resolution No. 7760 approving the Transit Area Specific Plan, which identified basic public infrastructure needed to serve new development in the Transit Specific Plan area and to maintain or improve existing levels of service for public facilities; and

WHEREAS, on September 2, 2008, the City Council adopted Resolution No. 7778 establishing a Transit Area Development Impact Fee pursuant to Government Code Section 66000, *et seq.* (“Mitigation Fee Act”) and Chapter 4 of Title VIII of the Milpitas Municipal Code to defray the costs of constructing public infrastructure and improvements necessitated by new development in the Transit Area Specific Plan area; and

WHEREAS, on December 18, 2012, the City Council adopted Resolution No. 8214 revising the Transit Area Development Impact Fee applicable to new development situated within the Transit Area Specific Plan area in order to defray additional costs of constructing such public infrastructure that have been imposed by new conditions occurring since the time of the original establishment of the Transit Area Development Impact Fee on September 2, 2008; and

WHEREAS, on March 4, 2014, the City Council adopted Resolution No. ____ adjusting the Transit Area Development Impact Fee applicable to new development situated within the Transit Area Specific Plan area in order to defray additional costs of constructing such public infrastructure that have been imposed by new conditions occurring since the time of fee adjustment on December 18, 2012; and

WHEREAS, Resolution No. _____ increasing the Transit Area Development Impact Fee by law will not be effective until sixty (60) days after final action of the City Council and it will be necessary to enact this interim urgency measure in accordance with Government Code Section 66017(b) in order to capture the full cost of development impacts in the period of time before the new Resolution becomes effective. The facts supporting a finding of current and immediate threat to the public health, welfare and safety are that staff has informed the Council that numerous projects are ready for permit issuance and may not be covered by the increased fees when it becomes effective in sixty (60) days, creating a significant potential shortfall in funding of the true cost of infrastructure improvements, resulting in a residual cost burden to the public in general, unless the interim period is covered by this Urgency Resolution; and

WHEREAS, establishing fees for the purpose of obtaining funds for impact mitigation is not an essential step culminating in action which may affect the environment and is statutorily exempt from the California Environmental Quality Act (“CEQA”) pursuant to Section 15273 of the CEQA Guidelines.

FINDINGS

NOW THEREFORE, the City Council of the City of Milpitas after duly considering the record before it makes the following findings and determinations based on the reports, testimony and other materials before it, including but not limited to the documents and information listed in the Recitals above, which are found to be true and correct and incorporated herein by reference:

1. In order to protect the public health, welfare and safety, it is necessary to enact as an urgency measure the fees imposed by Resolution No. _____ immediately so that the true cost of impacts by development within the Transit Area are recouped during the time between enactment of that Resolution and its effective date 60 days later. It is essential that development projects for which building permits are issued within the sixty (60) day period pay their fair share of public infrastructure costs such that these costs do not become a residual burden upon the public in general. This is a matter of urgency because the City predicts numerous projects will be or might be subject to the increased fees and which would avoid them during the sixty (60) day period if this urgency measure does not become immediately effective. The facts provided herein and from all sources constitute a current and immediate threat to the public health, welfare and safety.

2. The proposed Transit Area Development Impact Fee as adopted as an interim measure by this Resolution is consistent with the City of Milpitas General Plan and the Transit Area Specific Plan.

RESOLVED ACTIONS

NOW THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

Section 1. General.

- A) This Resolution is adopted pursuant to California Government Code Section 66000 *et seq.* (“Mitigation Fee Act”), Article XI, Section 7 of the California Constitution, and the provisions of Chapter 4 of Title VIII of the Milpitas Municipal Code (“Fees for New Development”).
- B) The fee established by this Resolution shall apply to new development within the Transit Area immediately and is based upon the findings set forth above. The fee is established as an interim urgency measure and does hereby incorporate by reference as if set forth herein in their entirety, the Recitals, Findings and Resolved Action contained in Resolution No. _____. More specifically, the fees described in Section 3 of Resolution No. _____ are hereby adopted on an interim basis.
- C) This interim urgency measure is enacted under the authority of Government Code Section 66017(b) and by the terms thereof must be adopted by a four-fifths (4/5) vote and shall be effective for thirty (30) days. After notice and public hearing pursuant to Government Code Section 66016, this interim measure may be extended for another thirty (30) days upon a four-fifths (4/5) vote. No more than two extensions shall be approved.

Section 2. Severability. The provisions of this Resolution are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

Section 3. Effective Date. This Resolution shall take effect immediately upon adoption as provided by California Government Code Section 66017(b). Prior to the expiration of fifteen (15) days from the passage thereof, this Resolution shall be posted in at least three (3) public places in the City of Milpitas.

PASSED AND ADOPTED this _____ day of _____, 2014, by the following vote: (4/5 required for adoption)

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael Ogaz, City Attorney

