

**REGULAR**

**NUMBER: 277.1**

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

**HISTORY:** This Ordinance was introduced (first reading) by the City Council at its meeting of March 5, 2014, upon motion by Councilmember Giordano, and was adopted (second reading) by the City Council at its meeting of \_\_\_\_\_, upon motion by \_\_\_\_\_. 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

**RECITALS AND FINDINGS:**

**WHEREAS**, the Mitigation Fee Act (California Government Code section 66000, *et seq.*) authorizes a local agency, which includes counties, cities, special districts and school districts, to establish, increase, or impose a fee as a condition of approval of a development project; and

**WHEREAS**, such new development fees are used to finance all or part of the cost of public facilities (such as streets, traffic signals, bridges and major thoroughfares, drainage and flood control facilities, water and sewer, and government buildings); and

**WHEREAS**, Chapter 4 of Title VIII of the Milpitas Municipal Code as enacted in 2008 sets forth the requirements for development impact fees that are necessary to mitigate the impacts caused by new development in the City of Milpitas; and

**WHEREAS**, Section VIII-4-2.01 currently establishes that development impact fees shall be paid by each developer prior to a building permit issuance, and that the amount, calculation and bases of such fees shall be established by City Council resolutions; and

**WHEREAS**, the City desires to update Chapter 4 of Title VIII in order to clarify the timing and rate for such development fee payment in accordance with current City practice and State law.

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

**SECTION 1. RECORD AND BASIS FOR ACTION**

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

**SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE VIII, CHAPTER 4**

Sections VIII-4-1.01 through 2.06 of the Milpitas Municipal Code are hereby repealed in their entirety and replaced with the text below to read 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.*

**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; funds collected under a reimbursement agreement; or assessment district proceedings, benefit assessments or property taxes.

#### **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), the development impact fee shall be paid by each applicant prior to issuance of the building permit unless later payment is required by City ordinance or State law. The amount of development impact fee to be paid shall be the amount in effect pursuant to the implementing City Council resolution at the time that full payment is made to the City at the time of building permit issuance. The obligation to pay development impact fees pursuant to this Chapter shall not replace an applicant's obligation to mitigate development project impacts in accordance with other requirements of State or local law.

#### **VIII-4-2.02 Fee Adjustment by the City**

The City reserves the right to update and adjust each development impact fee from time to time in accordance with the Mitigation Fee Act. The development impact fee in effect at the time any applicant has obtained a vested development right shall be subject to adjustment by the City based on any or all of the following criteria:

(a) Adjustments in the amount of the estimated construction costs of providing the specified public facilities based upon adjustments in accordance with the inflation index.

(b) Adjustments to replace estimated costs with actual costs (including carrying costs) of providing the specified public facilities.

(c) Adjustments to reflect more accurate cost estimates of providing the specified public facilities based upon more detailed analysis or design of the previously identified specified public facilities.

(d) Adjustments to reflect changes in the fee program or public facilities to be provided in the fee program.

#### **VIII-4-2.03 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:

2.03-1 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

2.03-2 Reimburse applicants who have been required or permitted by Section VIII-4-2.04, to install such listed facilities which are oversized with supplemental size, length or capacity.

#### **VIII-4-2.04 Fee Credit**

2.04-1 The City Council may adjust a development impact fee for a particular development under any of the following conditions:

A. Whenever an applicant 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, may 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 an applicant or funded by an assessment district, or Mello-Roos Community Facilities District or other land secured financing mechanism.

C. If the applicant'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.

#### **VIII-4-2.05 Fee Adjustments, Waiver or Findings of Exemption**

2.05-1 An applicant 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 applicant shall demonstrate that the project would become economically infeasible upon the imposition of said fee.

2.05-2 The application shall be made in writing and filed with the City Clerk not later than (1) 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 applicant shall have the burden of establishing the

factual basis supporting the claim of waiver, reduction, or adjustment. 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.

#### **VIII-4-2.06 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.

#### **VIII-4-2.07 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 3. SEVERABILITY**

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 4. EFFECTIVE DATE AND POSTING**

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.