

ORDINANCE NO. 949

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ROSEMEAD, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AMENDING THE ROSEMEAD MUNICIPAL CODE BY REPEALING SECTION 12.44.020 (PARK AND RECREATION IMPACT FEE) OF TITLE 12, CHAPTER 12.44 AND ADDING ARTICLE 7 (DEVELOPMENT FEES), CHAPTER 17.170 (DEVELOPMENT IMPACT FEES) TO TITLE 17 TO ESTABLISH DEVELOPMENT IMPACT FEES FOR NEW RESIDENTIAL AND NONRESIDENTIAL DEVELOPMENT

THE CITY COUNCIL OF THE CITY OF ROSEMEAD DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Findings. The City Council finds and declares:

A. The City provides public services and constructs and maintains public improvements for the benefit of residents, businesses, and employees within the City; and

B. In 2010 the City adopted an update to the City of Rosemead General Plan, which anticipates and plans for new development in the City through the year 2025; and

C. New development generates impacts on public services, public facilities, and community amenities for which revenues generated through property taxes and other means are generally insufficient to accommodate; and

D. If additional capital facilities and public services are not added as development occurs, the existing facilities and services will not be adequate to serve the community. This could result in adverse impacts, such as inadequate public safety services, inadequate traffic safety and transportation improvements, inadequate parks and recreation facilities, as well as inadequate other general government facilities; and

E. Strategy 6 (A) of the City's Strategic Plan 2014 and 2015, states: *To address a foreseeable lack of funding for future capital improvements, complete a Development Impact Fee (DIF) study for the initiation of new fund accounts for infrastructure improvements; and*

F. To prevent undesirable consequences, and to reduce the impacts of new development on capital facilities, equipment, and services, the City's capital facilities must be constructed, and the City's public services must be provided, at a rate which will accommodate the expected growth in the City; and

G. The development impact fees established by this Chapter will be imposed upon development projects for the purpose of mitigating the impact of the development on the ability of the City to provide specified public improvements and services; and

H. The City has caused to be prepared a City of Rosemead Final Draft Development Impact Fee Study, dated April 21, 2015 (Study). The Study is on file with the City Clerk; and

I. The Study identifies the development potential of the City from the year 2014 until 2025; identifies four (4) categories of capital facilities and equipment required to serve and accommodate new development; and provides a summary of the portion of each improvement category's costs that can be funded by new development; and

J. The four (4) categories of capital facilities and equipment that will be funded by the development impact fee established by this Ordinance are (1) traffic facilities; (2) park facilities; (3) general government facilities; and (4) public safety facilities. These capital facilities and equipment are needed to promote and protect the public health, safety and general welfare within the City, to facilitate orderly urban development, to maintain existing levels of service, and to promote economic and social well-being.

K. The City Council has relied upon the factual information, analysis, and conclusions in the Study in adopting this Ordinance.

L. It is the City's intent and desire to have developers pay for their fair share of public costs associated with new development while at the same time facilitating growth that is in the public interest;

SECTION 2. The City Council finds that this Ordinance is statutorily exempt under California Environmental Quality Act (CEQA) Section 15273 (a)(1) "Rates, Tolls, Fairs and Charges," as well as Sections 15061 (b)(3) and 15378 (b)(4).

SECTION 3. The City Council HEREBY FINDS AND DETERMINES that Ordinance 949 complies with the requirements of the Mitigation Fee Act (the Act), contained in California Government Code Sections 66000 et seq.

SECTION 4. Municipal Code Amendment. Section 12.44.020 (Park and Recreation Impact Fee) of Title 12, Chapter 12.44 (Park and Recreation Areas) of the Rosemead Municipal Code is HEREBY REMOVED in its entirety.

SECTION 5. Municipal Code Amendment. Article 7 (Development Fees), Chapter 17.170 (Development Impact Fees) shall be added to Title 17 of the Rosemead Municipal Code to read as follows:

Article 7 Development Fees
Chapter 17.170 Development Impact Fees

Sections:

- 17.170.010 Authority.**
- 17.170.020 Findings and Purpose.**
- 17.170.030 Definitions.**
- 17.170.040 Establishment of DIFs.**
- 17.170.050 Calculation and Payment of DIFs.**
- 17.170.060 Exemptions and Credit for Existing Development.**
- 17.170.070 Fee Adjustment**
- 17.170.080 Fee Revenue Accounts.**
- 17.170.090 Distribution of Impact Fee Funds.**
- 17.170.100 Periodic Review and Inflation Adjustment.**
- 17.170.110 Fee Refunds.**
- 17.170.120 Fee Revision by Resolution.**
- 17.170.130 Regulations.**

17.170.010 Authority.

This Chapter 17.170 of the Rosemead Municipal Code may be referred to as the Development Impact Fee Ordinance and is adopted pursuant to the police power of the City and under Government Code Section 66000 et seq. (Mitigation Fee Act). All words, phrases, and terms used in this Chapter shall be interpreted in accordance with the definitions set forth in the Mitigation Fee Act, unless otherwise specifically defined herein.

17.170.020 Findings and Purpose.

- A. The City has prepared a Development Impact Fee Nexus Study. It shows, and the City Council finds that there is a reasonable relationship between the purpose for which the fees established by this Ordinance are to be used and the type of development projects on which the fees are imposed, and between the amount of the fees and the cost of the traffic, public safety, general government, and park facilities or the portion of those facilities attributable to the development on which the fees are imposed.
- B. It is the intent of the City Council that the fee required by this Chapter shall be supplementary to any conditions imposed upon a development project pursuant to other provisions of the Municipal Code, the Subdivision Map Act, the California Environmental Quality Act, other state and local laws, which may authorize the imposition of project specific conditions on development.
- C. It is intended that, as further provided for in this Chapter, every person who develops or redevelops land in the City pay development impact fees established by this Chapter, as provided herein. No developer, property owner, or other person or entity shall be eligible to receive a building certificate of occupancy unless such

developer, property owner, or other person or entity has first complied with all applicable provisions of this Chapter.

17.170.030 Definitions.

For the purpose of this Chapter, the following terms shall have the meaning set forth herein:

- A. "Applicant" means the person(s) or legal entity or entities, who may also be the property owner, who is applying for a building permit.
- B. "City" means the City of Rosemead.
- C. "Credit" means any amount credited against a DIF obligation for a development project in accordance with the provisions of Section 17.170.060 (Exemptions and Credit for Existing Development).
- D. "Development Impact Fee" and "DIF" mean each and all of the development impact fees established by this Chapter.
- E. "Development Impact Fee Study," "DIF Study," and "Study", as used in this Chapter, mean the Final Draft Development Impact Fee Study dated April 21, 2015 and any present and future amendments, additions, and updates to said Study, all of which are deemed included in such definitions as used in this Chapter, which is on file with the Community Development Department and the City Clerk.
- F. "Industrial" means all industry, manufacturing, and warehouse development.
- G. "Mixed Uses" includes combinations of land use types in a single project. Generally, a Mixed Use Development consists of commercial and residential uses integrated either vertically in the same structure or group of structures, or horizontally on the same development site where parking, open spaces, and other development features are shared. However, light industrial and commercial development may also be considered as Mixed Use. In a Mixed Use Development, both uses are considered primary uses of the land.
- H. "Multi-family" or "Multi-Family Dwelling Unit" means a structure or portion thereof containing three or more dwelling units designed for the independent occupancy of three or more households, such as apartments and condominiums. For the purpose of DIF calculation, a second dwelling unit as defined by Government Code Section 65852.2 and regulated by Title 17, Article 3, Chapter 17.30, Section 17.30.190 shall also be categorized as a multi-family unit.
- I. "Office" means all general, administrative business professional, corporate, and medical and dental office development.

- J. "Project," as used in this Chapter, means the development or redevelopment proposal that is the subject of an application for a building permit to construct improvements on real property which are designed to be occupied for the purpose of single-family residential, multi-family residential, retail, office, or an industrial use as defined in this Section.
- K. "Public Facilities" means public facilities identified in the Study, including a capital improvement project list and cost estimates of the public facilities, which may be funded by the DIFs, and may include public improvements, public services, and community amenities.
- L. "Retail" as used in this Chapter, means all commercial, retail and hotel/motel development.
- M. "Single-family" as used in this Chapter, means residential structures that do not contain more than two dwelling units.
- N. "Vacant." For the purpose of this Chapter, a nonresidential property or a multifamily residential property shall be deemed "vacant" during the two years prior to the issuance of the building permit for a new structure, if the property owners or property tenants failed to maintain an active business license for the property during the entire two year period. For the purpose of a single-family home, the property is "vacant" if records do not show energy usage consistent with occupancy of the building and/or adjacent single-family properties that were occupied during the two-year period.

17.170.040 Establishment of DIFs.

Except as otherwise provided in this Chapter, an Applicant for a building permit proposing new development shall pay the following DIFs according and pursuant to the procedure set forth in this Chapter:

- a. Traffic Facilities.
- b. Public Safety Facilities.
- c. General Government Facilities.
- d. Park Facilities.

The amount of each DIF shall be as established by resolution of the City Council and shall be set forth in the City's current comprehensive fee schedule in effect at the time of project submittal into building plan check.

17.170.050 Calculation and Payment of DIFs.

- A. Calculation of DIFs. The amount of the charge due under this Chapter shall be determined at the time of submittal into building plan check for the project. Following

project submittal the City shall timely provide the applicant with a notice in writing, a statement of the amount of the fees and notification of the 90-day appeal period in which the applicant may protest the imposition of the fees. Said notice shall be in substantially the following form:

The conditions of project approval for your project, identified as _____, include development impact fees, more specifically described as: _____ (identification of the amount of the fee). The applicant is hereby notified that the 90-day protest period to challenge such fees has begun as of the date of the fee imposition, which date was _____.

If the applicant fails to file a protest regarding the fees, as specified in California Government Code § 66020, the applicant shall be legally barred from later challenges.

- B. Payment of DIFs. The full amount shall be due and payable to the City on the date of final inspection or the date of the issuance of the certificate of occupancy, whichever occurs later. No certificate of occupancy shall be granted for the project, no one shall occupy the new dwelling unit or the new nonresidential building area, and no utility connections shall be permitted until the fee is paid in full.
- C. Mixed Uses. When improvement plans include more than one land use type, the impact fee shall be calculated separately for each land use type.

17.170.060 Exemptions and Credit for Existing Development.

A. Exemptions. The following Projects are exempt from the requirement to pay DIFs:

1. The DIFs shall not be imposed upon a building permit for remodeling or for an addition to an existing residential structure so long as the remodeling or addition does not add a dwelling unit.
2. The DIFs shall not be imposed upon a building permit for the demolition of an existing residential structure and the construction of a new residential structure on the same site, provided the demolished structure was not "vacant" (as defined in Section 17.170.030) prior to the issuance of a building permit for the new structure.
3. The DIFs shall not be imposed on any alteration of a nonresidential structure, where the square footage is not increased by more than two hundred (200) square feet or ten (10) percent of the existing structure, whichever is less, cumulatively over a two year period, unless the alteration includes an intensification of use such as a shift to a higher cost fee category. If the alteration includes an intensification of use a credit for the existing development shall apply as outlined in Section 17.170.060.B.

4. The following projects, square footage, and affordable residential units shall not be subject to the requirements of this Chapter: places of worship, City projects, day care centers, private K-12 schools, square footage used for outdoor dining in the public right-of-way, and affordable housing units that are deed restricted to very-low income and low income households.
5. The DIFs shall not be imposed upon a project that has been submitted with complete land use development application(s) and processing fee(s) to the City's Planning Division prior to the effective date of this Ordinance.
6. There are no other exemptions to the DIF.

B. **Credit for Existing Development.** For a project that involves the demolition of an existing structure and the construction of a new structure, the applicant shall be entitled to a credit in the amount of the applicable DIFs for the structure to be demolished, provided that such structure has not been vacant (as defined in Section 17.170.030), and provided that no DIF shall be reduced below \$0. For nonresidential structures, the credit will be calculated based on the square footage of the existing structure to be demolished. For residential structures, the credit will be calculated based on the type and number of existing dwelling units to be demolished.

17.170.070 Fee Adjustment

An applicant of any project subject to the DIFs described in this Chapter may apply to the City Council for an adjustment, reduction, or waiver of the DIF based upon the absence of any reasonable relationship between the impact on public facilities of that development and either the amount of fee charged or the type of facilities to be financed. Such requests shall be subject to the process outlined below.

- A. The application shall be made in writing and filed with the City Clerk not later than the time for filing of the request for a building permit.
- B. The application shall state in detail the factual basis and legal theory for the claim of waiver, reduction or adjustment. The applicant shall bear the burden of proof of presenting substantial evidence to support the request for an adjustment or waiver.
- C. The City Council shall consider the application at a public hearing held within sixty (60) days after the filing of the fee adjustment application. The decision of the City Council shall be final.
- D. If a reduction, adjustment, or waiver is granted, any change in use within the project shall invalidate the waiver, adjustment, or reduction of the fee.

17.170.080 Fee Revenue Accounts.

Pursuant to Government Code Section 66006, an Impact Fee Reserve Account is hereby established for each fee category. The fees paid to the City pursuant to the

provisions of this Chapter shall be deposited into the appropriate Impact Fee Reserve Account and used solely for the purpose described in this Chapter. All monies deposited into the Reserve Accounts shall be held separate and apart from other City funds. All interest or other earnings on the unexpended balance in the Reserve Account shall be credited to the Reserve Account.

17.170.090 Distribution of Impact Fee Funds.

All monies and interest earnings in each of the Impact Fee Reserve Accounts shall be expended on the construction and related design and administration costs of constructing public facility improvements and purchasing land and equipment identified in the Nexus Study. Such expenditures may include, but are not necessarily limited to the following:

- A. All direct and indirect costs incurred by the City to construct facility improvements pursuant to this Chapter, including but not limited to, the cost of land and right-of-way acquisition, planning, legal advice, engineering, design, construction, construction management, materials and equipment.
- B. Costs of issuance or debt service associated with bonds, notes or other security instruments issued to fund facility improvements identified.
- C. Administrative costs incurred by the City in establishing or maintaining the Impact Fee Reserve Accounts required by this Chapter, including but not limited to the cost of studies to establish the requisite nexus between the fee amount and the use of fee proceeds and yearly accounting and reports.

17.170.100 Periodic Review and Inflation Adjustment.

- A. Periodic Review. The City shall comply with the annual and five-year reporting requirements of the Mitigation Fee Act. For facilities to be funded by a combination of impact fees and other revenues, identification of the source and amount of these non-fee revenues shall be included in the report. Identification of the timing of receipt of other revenues to fund the facilities is also important.
- B. Inflation Adjustment. To account for inflation in facility construction costs, the fee imposed by this Ordinance shall be adjusted automatically on July 1 of each fiscal year, beginning on July 1, 2018, by a percentage equal to the appropriate Construction Cost Index as published by Engineering News Record, or its successor publication, for the preceding twelve (12) months.

17.170.110 Fee Refunds.

Fees collected pursuant to this Chapter which remain unexpended or uncommitted for five or more fiscal years after deposit into the Impact Fee Reserve Account may be refunded as provided by State law.

17.170.120 Fee Revision by Resolution.

The amount of the DIFs and the formula for the automatic annual adjustment established by this Chapter may be reviewed and revised periodically by resolution of the City Council. This Chapter shall be considered enabling and directive in this regard.

17.170.130 Regulations.

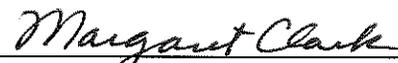
The Community Development Director, or her/his designee, is authorized to adopt written administrative regulations or guidelines that are consistent with and that further the terms and requirements set forth within this Chapter.

SECTION 6. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this chapter is declared by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this chapter. The City Council declares that it would have adopted this chapter, and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, phrases, or portions be declared invalid or unconstitutional.

SECTION 7. Publication. The City Clerk shall cause this Ordinance to be published in the manner required by law.

SECTION 8. Effective Date. The Mayor shall sign and the City Clerk attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the official newspaper within fifteen (15) days after its adoption. This Ordinance shall go into effect and be in full force and effect sixty (60) days from its date of adoption.

PASSED, APPROVED AND ADOPTED this 9th day of June, 2015.


Margaret Clark, Mayor
City of Rosemead

ATTEST:


Gloria Mollada, City Clerk

APPROVED AS TO FORM:


Rachel H. Richman, City Attorney
Burke Williams and Sorensen, LLP

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS.
CITY OF ROSEMEAD)

I, Gloria Molleda, City Clerk of the City of Rosemead, California, do hereby certify that the foregoing **Ordinance No. 949** was regularly introduced and placed upon its first reading at a regularly meeting of the City Council on the 26th of May, 2015. Thereafter, said Ordinance was duly adopted and passed at a regular meeting of the City Council on the 9th of June, 2015 by the following vote to wit:

Yes: Alarcon, Clark, Low, Ly
No: None
Abstain: None
Absent: None



Gloria Molleda
City Clerk