

ORDINANCE NO. 2286

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, AMENDING CHAPTER 17 (PLANNING) OF THE WEST COVINA MUNICIPAL CODE TO ADD ARTICLE IV TO ESTABLISH STANDARDS FOR DEVELOPMENT IMPACT FEES

WHEREAS, on the 15th day of September, 2015, the City Council adopted Resolution No. 2015-74 initiating a code amendment related to Development Impact Fees; and

WHEREAS, the City Council reviewed an Impact Fee Study at a study session on the 15th day of September, 2015; and

WHEREAS, the City Council considered evidence at duly advertised public hearing on the 17th day of November, 2015; and

WHEREAS, studies and investigations made by this City Council and in its behalf reveal the following facts:

1. To date the City has only charged development impact fees through Park Dedication Fees (Quimby Act) and for Art in Public Places. The City does not currently charge new development for the cost of providing additional facilities to provide such as Police, Fire, Public Works, Parks and Recreation and for general City Administration.
2. 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.
3. 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 equipment for public works, inadequate parks and recreation facilities, and inadequate other general government facilities.
4. The proposed action is considered to be statutorily exempt from the provisions of the California Environmental Quality Act (CEQA) Guidelines section 15273 (a)(1) "Rates, Tolls, Fairs and Charges," as well as sections 15061 (b)(3) and 15378 (b)(4).

NOW THEREFORE, the City Council of the City of West Covina does ordain as follows:

SECTION NO. 1: The above recitals are true and correct and are incorporated herein as if set forth herein in full.

SECTION NO. 2: Based on the evidence presented and the findings set forth, Code Amendment No. 15-02 is hereby found to be consistent with the West Covina General Plan and the implementation thereof and that the public necessity, convenience, general welfare.

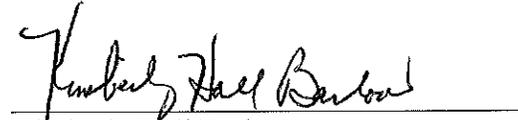
SECTION NO. 3: Based on the evidence presented and the findings set forth, the City Council of the City of West Covina approves Code Amendment No. 15-02 to amend Chapter 17 (Planning) of the West Covina Municipal Code to read as shown on Exhibit "A."

SECTION NO. 4: Severability. If any article, section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance or its application to other persons. The City Council of West Covina hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional.

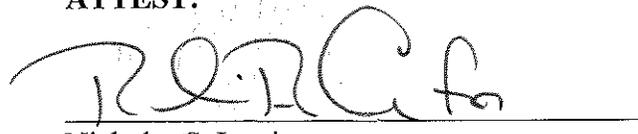
PASSED, APPROVED AND ADOPTED on this 1st day of December, 2015.


Fredrick Sykes
Mayor

APPROVED AS TO FORM:


Kimberly Hall Barlow
City Attorney

ATTEST:


Nickolas S. Lewis
City Clerk

I, NICKOLAS S. LEWIS, CITY CLERK of the City of West Covina, California, do hereby certify that the foregoing Ordinance was regularly introduced and placed upon its first reading at a regular meeting of the City Council on the 17th day of November, 2015. That thereafter said Ordinance was duly adopted and passed at a regular meeting of the City Council on the 1st day of December, 2015, by the following vote:

AYES: Toma, Warshaw, Wong, Sykes
NOES: Spence
ABSENT: None
ABSTAIN: None



Nickolas S. Lewis
City Clerk

EXHIBIT A

Chapter 17, Planning

Article IV, Development Impact Fees

17.201. Authority.

This Article IV of the West Covina 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 article shall be interpreted in accordance with the definitions set forth in the Mitigation Fee Act, unless otherwise specifically defined herein.

17.202. 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 article 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 police, fire, parks, administrative, and public works 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 article 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 article, every person who develops or redevelops land in the City pay development impact fees established by this article, 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 article.

17.203. Definitions.

For the purpose of this article, 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 West Covina.
- C. "Credit" means any amount credited against a DIF obligation for a development project in accordance with the provisions of Section 17.206 (Exemptions and Credit for Existing Development).
- D. "Development Impact Fee" and "DIF" mean each and all of the development impact fees established by this article.
- E. "Development Impact Fee Study," "DIF Study," and "Study", as used in this article, mean the Final Draft Development Impact Fee Study dated September 2, 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 article, which is on file with the Planning 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 21, Article XII, Division 11 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 article, 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 article, means all commercial, retail and hotel/motel development.
- M. "Single-family" as used in this article, means residential structures that do not contain more than two dwelling units.
- N. "Vacant." For the purpose of this article, a nonresidential property or a multi-family 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.

17.204. Establishment of DIFs.

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

- a. Police Facilities.
- b. Fire Facilities.

- c. Park Facilities.
- d. Administrative Facilities.
- e. Public Works 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.

17.205. Calculation and payment of DIFs.

A. Calculation of DIFs. The amount of the charge due under this article 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 prior to the issuance of building permits.
- 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.

17.206. 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 17.203) prior to the issuance of a building permit for the new structure.
 - 3. Upon request of the developer, the impact fees may be reduced or waived by the City Council for affordable housing units that are deed restricted to very-low income and low income households.
 - 4. The DIFs shall not be imposed upon a project that has received a building permit prior to the effective date of this article.
- 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 17.203), 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.

17.207. Fee adjustment.

An applicant of any project subject to the DIFs described in this article may apply to the City Council for a 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 shall be processed concurrently with the development permit application for the project when submitted to the Planning Department.
- B. The application shall state in detail the factual basis and legal theory for the claim of reduction or waiver. The applicant shall bear the burden of proof of presenting substantial evidence to support the request for an adjustment or waiver.
- C. The filing of a request for a fee reduction or waiver shall not stay the imposition or collection of any fee calculated by the City due unless sufficient and acceptable surety has been provided. No final tract or parcel map shall be recorded or building permit issued, for any development project for which a DIF is required unless a cash deposit, letter of credit, bond or other surety acceptable to the City Attorney in an amount equal to the fee calculated for the DIF.
- C. If a reduction or waiver is granted, any change in use within the project shall invalidate the waiver, adjustment, or reduction of the fee.

17.208. 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 article shall be deposited into the appropriate Impact Fee Reserve Account and used solely for the purpose described in this article. 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.

17.209. 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 article, 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 article, 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.

17.210. Periodic review and inflation adjustment.

- A. Periodic Review. The City shall comply with 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, 2016, 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.

17.211. Fee refunds.

Fees collected pursuant to this article that 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.

17.212. Fee revision by resolution.

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