

## Ordinance No. 276-2024

### AN ORDINANCE OF THE CITY OF CLEARLAKE, CALIFORNIA, AMENDING CHAPTER 3-5 OF THE CLEARLAKE MUNICIPAL CODE, RELATING TO A FIRE MITIGATION FEE

#### RECITALS

**WHEREAS**, subject to the restrictions of the Mitigation Fee Act (Section 66000 *et seq.* of the California Government Code), the City has the authority to levy mitigation fees upon new development to defray all or a portion of the cost of public facilities related to the development project; and

**WHEREAS**, in order to serve new development with fire protection and emergency medical services, it is necessary to construct, acquire or expand facilities and equipment needed to these services; and

**WHEREAS**, pursuant to Chapter 3-5 of the Municipal Code, the City has established a fire mitigation fee to fund needed facilities and equipment; and

**WHEREAS**, because fire protection and emergency medical services in the City have historically been provided by one or more agencies that are legally distinct from the City, the City largely has relied on these entities to determine what facilities and equipment are required by new development, and what fees will be necessary to fund the costs of providing those facilities and that equipment; and

**WHEREAS**, the Lake County Fire Protection District is the entity that currently provides these services in the City; and

**WHEREAS**, the City desires to clarify Chapter 3-5 of the Municipal Code to provide that the City will collect the fire mitigation fees and to make other changes; and

**WHEREAS**, it is the intention of the City Council to set the rates of the fire mitigation fee by resolution, and to make the findings required by the Mitigation Fee Act at the time it sets the rates of the fee; and

**WHEREAS**, the City, pursuant to the provisions of the California Environmental Quality Act ("CEQA") (Cal. Pub. Res. Code §§21000 and following) and State CEQA Guidelines (14 CCR §§15000 and following) has determined that this ordinance is not a project under CEQA pursuant to Title 14, Section 15378 (b)(5) of the California Code of Regulations;

**NOW, THEREFORE**, The City Council of the City of Clearlake, California, does hereby ordain as follows:

Section 1. The above recitals are true and are hereby incorporated into this ordinance.

Section 2. Chapter 3-5 of the Clearlake Municipal Code is hereby amended to read as follows:

#### 3-5 FIRE MITIGATION FEE.

##### 3-5.1 Title.

This Chapter shall be known and may be cited as the "Fire Mitigation Fee Ordinance."

##### 3-5.2 Need.

The Council of the City of Clearlake finds and declares as follows:

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- a. Adequate fire protection and emergency medical response facilities and equipment must be available to serve new development.
- b. New development requires the construction or expansion of fire protection and emergency medical response facilities and the acquisition of equipment.
- c. Property taxes and fire suppression assessments collected by the Fire Agency are insufficient to provide funds for expansion of construction of fire protection and emergency medical response facilities and purchase of equipment necessitated by new development resulting in the potential for inadequate fire protection and emergency medical response coverage for the new development and the growing population of Clearlake.
- d. The above conditions place the City of Clearlake's growing population in a condition perilous to its health and safety.
- e. The impacts of development on the existing fire protection and emergency medical response facilities and equipment cannot be alleviated without City involvement.

For the above reasons, new methods for funding fire protection and emergency medical response facilities and equipment necessitated by development are needed in the City of Clearlake.

### **3-5.3 Purpose.**

The purpose of this section is to implement the City of Clearlake General Plan policy providing for the adoption of fire mitigation fees and for the collection of said fees to be allocated to the Fire Agency for the development and acquisition of facilities and equipment in order to ensure the provision of the facilities and equipment necessary to provide fire protection and emergency medical response services necessitated by new development.

### **3-5.4 Definitions.**

- a. DEVELOPMENT shall mean all construction for which a building permit or other permit is required.
- b. DIRECTOR shall mean the Director of the Department of Community Development of the City of Clearlake.
- c. OTHER PERMITS shall mean conditional use permits and site plan review permits.
- d. CLERK shall mean the City Clerk of the City of Clearlake.
- e. FIRE AGENCY and AGENCY shall mean any special district providing fire protection services within the incorporated area of the City of Clearlake, currently Lake County Fire Protection District.
- f. FACILITIES and EQUIPMENT shall mean any long-term capital facilities and equipment used by a Fire Agency for the fire protection or emergency medical response services including all land, buildings, and other structures, as well as all apparatus, ambulances, vehicles, and other equipment.

### **3-5.5 Establishment of Fire Service Impact Fees Under New Development.**

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There is hereby established a fee to be paid by all applicants for building permits or other permits for development and in particular on all classes of covered occupancies constructed within the City, unless otherwise excepted therefrom. A covered occupancy is defined as a roof assembly as the same is described within the Uniform Building Code heretofore adopted by the City Council and as readopted and amended from time to time in accordance with State law. This fee shall be paid to the Agency as provided for in subsection [3-5.9](#) of this section

### **3-5.5.50 Prior Agreements and in Lieu Dedication.**

- a. Any agreement existing prior to the operative date of this section between an applicant for development and a Fire Agency or the City pertaining to the dedication of land or payment of fees for facilities and equipment to serve the property which is the subject of the application, or any portion thereof, shall satisfy the requirements of this section.
- b. If land, facilities or equipment has been dedicated or donated to, and accepted by, the Fire Agency as a condition of approval of a discretionary permit, such dedication or donation may be considered by the City Council as satisfying the requirements of this section.

### **3-5.6 Deposit and Expenditure of Fees.**

- a. Fees paid under this section shall be collected by the City and held in a separate account or fund in a manner to avoid any commingling of the fees with other revenues and funds of the City, except for temporary investments. Interest on fee revenue shall also be placed in that account or fund.
- b. The City may retain from this account or fund the amount necessary to reimburse the City for its reasonable costs of collecting and administering the fees.
- c. The remaining balance of the fund shall be transferred quarterly, or on some other interval as agreed upon, to the Fire Agency serving the area from which the fees were collected, subject to the requirement that the Fire Agency retains this balance its City of Clearlake Fire Mitigation Fee account or fund that is governed by the requirements of its resolution adopted in compliance with Chapter 3-5.7.50(b) of this Code, that the Fire Agency is in compliance with the requirements of such resolution, and that such resolution has not been amended by the Agency without the permission of the City. Funds may only be expended in accordance with the requirements of the resolution setting the rate for the fee.

All fees collected pursuant to this section and transferred to a Fire Agency, including any interest accrued after transfer, shall be used by the Agency for the purpose of providing for capital facilities and equipment. Facilities funded by fees collected within the City shall only be spent on facilities within the Clearlake City boundary.

### **3-5.7 Exemptions.**

- a. There shall be exempt from the requirements of this article, building permits for the following types of
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Development:

- 1) Piers which are not covered, ramps, boat lifts, docks, suspended platforms, and pilings;
- 2) Agricultural buildings requiring an exempt building permit.

b. The requirements of this article shall not apply to buildings and structures constructed owned and used by governmental entities.

c. The requirements of this section shall not apply to the replacement on the same parcel by the owner of a dwelling or dwellings destroyed by fire or other calamity or demolished for replacement, provided that:

- 1) The application for a building permit to replace such dwelling is filed with the Director within one (1) year after destruction or demolition of the dwelling, or within three (3) years of the date a local emergency is declared if the destruction or demolition occurred within the geographical area encompassed by that local emergency declaration and resulted from events giving rise to said declaration;
- 2) There is no change in class of occupancy or type of use; and
- 3) The square footage is not increased. Fees shall be required only for additional square footage greater than five hundred (500) square feet

### **3-5.7.50 Required Actions of the Fire Agency.**

This section shall become applicable to new development within that area which is within the boundaries of a Fire Agency and the incorporated area of the City when the following events occur:

a. The governing body of the Fire Agency adopts a resolution making the following findings:

- 1) The Agency does not have existing fire protection facilities and equipment which could be used to provide an adequate level of services to new development within the Agency's boundaries.
- 2) The Agency has determined it does not have sufficient funds available to construct additional facilities to serve new development from fund balances, capital facility funds, property tax sources, fire suppression assessments, or any other appropriate sources.
- 3) The lack of facilities and equipment to serve new development would create a situation perilous to the public health and safety if fire mitigation fees are not levied within the Agency's district.

b. The governing body of a Fire Agency resolves as follows:

- 1) The Agency requests that the City collect a specified fire mitigation fee on the Agency's behalf from applicants for building permits or other permits for development.
  - 2) The Agency makes the findings with respect to the proposed rate that would be required by Section 66001 of the Government Code in connection with the imposition of the rate.
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3) The Agency (i) adopts and proposes to the City a Capital Fire Facility and Equipment Plan, containing the information required by Government Code Section 66002, that identifies how the Agency will use proceeds of the fee at the proposed rate, and (ii) adopts and proposes to the City a Nexus Study containing the information required by Government Code Section 66016.5 with respect to such fee and rate. The Capital Fire Facilities and Equipment Plan and the Nexus Study may be combined in one document.

4) Mitigation fees paid under this section shall only be used to expand the availability of facilities and equipment to serve new development in the City of Clearlake, as identified in the Capital Facilities Plan adopted by the Agency for the Fee.. Fees collected by the City must be used on facilities within the boundary of the City. Fee proceeds shall not be used to defray costs attributable to existing deficiencies in public facilities, but may be used to defray costs attributable to the increased demand for public facilities reasonably related to the development project in order to (1) refurbish existing facilities to maintain the existing level of service or (2) achieve an adopted level of service that is consistent with the general plan

5) The Agency shall place all funds received from the City under this section and all interest subsequently accrued by the Agency on these funds, in a separate account or fund to be known as the "City of Clearlake Fire Mitigation Fee".

6) The Agency shall submit a Fire Mitigation Fee Annual Report no later than October 31 of each year to the City Clerk. Said report shall include, but not be limited to, the balance in the account at the end of the previous fiscal year, the fee revenue received, the amount and type of expenditures made, and the ending balance in the fund. In addition, the report shall specify the actions the Agency plans to take to alleviate the facility and equipment needs caused by new development in a capital fire facilities and equipment plan adopted at a noticed public hearing. The Agency shall make available, upon request by the City Clerk, a copy of its annual audit report. The annual report shall also include all information that is needed by the City to comply with its annual reporting obligations under the Mitigation Fee Act.

7) The Agency shall make its records available to the public on request which justify the basis for the fee amount.

8) The Agency shall defend, indemnify, and hold the City harmless for any errors made by the City in collecting or transmitting the fees to the Agency, and for any alleged errors made by the Agency that are challenged in proceedings against the City for a refund of fees collected.

9) The Agency shall make findings, with respect to any portion of the fee remaining unexpended or uncommitted in its account five (5) or more years after deposit of the fee, to identify the purpose to which the fee is to be put and to demonstrate a reasonable relationship between the fee and the purpose for which it was charged. The Agency shall refund to the then current record owner or owners of the development project or projects on a prorated basis, the unexpended or uncommitted portion of the fee and any interest accrued thereon, for which need cannot be demonstrated. Such findings shall include all information needed for the City to Comply with its reporting obligations under the Mitigation Fee Act with respect to such unexpended or uncommitted funds.

c. The governing body of the Fire Agency shall send a certified copy of the Resolution, the Capital Fire Facility and Equipment Plan, and the Nexus Study to the City Clerk.

d. If the City Council approves an ordinance or resolution changing the rate of the fire fee, it shall send a certified copy of the resolution to the Fire District,

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### **3-5.8 Fire Mitigation Fee Set By Resolution.**

- a. *Fire Mitigation Fee.* The amount of the fire mitigation fee established pursuant to 3-5.5 shall be set by City Council resolution and shall be allocated to the affected fire agency for the acquisition of capital facilities and equipment in order to ensure the provision of necessary levels of fire protection services necessitated by new development via a nexus study adopted by the agency.
- b. The City Council shall, by resolution in accordance with the Mitigation Fee Act, set forth the specific amount of the fire mitigation fees, describe the benefit and impact area on which the fees are imposed, list the specific public improvements to be financed, describe the estimated cost of these facilities and the reasonable relationship between the fees and the various types of new development on which the fees are imposed, and set forth the time and terms of payment of the fees.
- c. On an annual basis, the City Council shall review the fire mitigation fees to determine whether the fee amounts are reasonably related to the impacts of development and whether the described public facilities are still needed.

### **3-5.9 Fire Mitigation Fee Payment.**

- a. Prior to the issuance of any building permit or other permit for Development, unless exempted, the applicant shall pay to the City fees prescribed by the Fire Mitigation Fee resolution as approved by the City Council and the applicant shall present written evidence to the Director that the provisions of this section have otherwise been satisfied with respect to the development for which permits are sought.
  - b. Prior to the date of the final inspection or of the issuance of a certificate of occupancy, whichever occurs first, for residential building permits or other permits for development, the applicant shall pay to the City the fees prescribed by the Fire Mitigation Fee resolution as approved by the City Council, or shall present written evidence that the provisions of this Article have otherwise been satisfied with respect to the development for which permits are sought. In a residential development project of more than one dwelling, the City will determine whether to collect the fees either for individual units or for project phases upon final inspection or certificate of occupancy, whichever occurs first, or for the entire project upon final inspection or certificate of occupancy, whichever occurs first, for the first dwelling unit. The City may require fee payment from residential development at an earlier time:
    1. If the City determines that the fees will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan prior to final inspection or issuance of the certificate of occupancy.
    2. When the fees are to reimburse the Agency for expenditures previously made.
  - c. The amount of such fees shall be determined by the Fire Mitigation Fee in effect on the date of the payment of
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fees for an unexpired plan check.

d. When application is made for a new building permit following the expiration of a previously issued building permit for which fees were paid, the fee payment shall not be required.

e. In the event that subsequent development occurs on a property, additional fees shall be required only for additional square footage of development which was not included in computing the prior fee.

### **3.5.10 Reserved.**

### **3-5.11 Changes to Fee**

a. The Fire Agency may, at any time, request that the rate of the Fee be changed, that the Capital Fire Facility and Equipment Plan applicable to the Fee be amended, or that the Fee be terminated. Except with respect to a request to terminate the fee, which shall be made by resolution, the Fire Agency shall make such request by following the procedure set forth in Section 3-5.7.50 of this chapter.

b. If rate of the then current Fee was recommended by the Fire Agency to include an inflation adjustment, the Fire Agency need not take action to request that the City implement each year of the adjustment.

c. In order to allow the Fee to comply with the requirements of Section 66016.5(a)(7), the Fire Agency must adopt a new Nexus Study and make a new request pursuant to Section 3-5.7.50 of this chapter at least once every eight years.

SECTION 3. **ENVIRONMENTAL DETERMINATION.** The proposed ordinance has been reviewed for compliance with CEQA, the CEQA Guidelines, and the City's environmental procedures. Because the proposed ordinance is an administrative activity which will not result in direct or indirect physical changes to the environment, it has been found to be not a project under Section 15378 (b)(5) of the CEQA Guidelines.

SECTION 4. **INCONSISTENCIES.** Any provision of the Clearlake Municipal Code or appendices thereto inconsistent with the provisions of this ordinance, to the extent of such inconsistencies and/or further, is hereby repealed or modified to the extent necessary to affect the provisions of this ordinance.

Section 5. **EXISTING FEE.** Notwithstanding Section 4 of this ordinance, the adoption of this ordinance is not intended to interfere with the ongoing collection and use of any fee already adopted by the City Council under the existing provisions of Section 3-5 of the Municipal Code. The existing fire mitigation fee applicable in the territory of a Fire Agency shall continue to be collected until both (i) the City Council adopts a new rate pursuant to this Ordinance for such fire mitigation fee and (ii) said new rate becomes effective. At that point, new rate shall replace the existing rate.

SECTION 5. **SEVERABILITY.** If any provision or clause of this ordinance or the application thereof to any person or circumstances is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or clauses or applications of this ordinance which can be implemented without the invalid provision, clause or application; and to this end, the provisions of this ordinance are declared to be severable.

SECTION 6. **EFFECTIVE DATE.** This ordinance shall be in full force and effect commencing thirty (30) days after its final adoption and a summary hereof shall be published once within fifteen (15) days in a newspaper of general circulation printed and published in the County of Lake and circulated in the City of Clearlake and hereby designated for that purpose by the City Council.

SECTION 7. The City Clerk shall certify to the passage and adoption of this ordinance and shall cause the same to be published in the manner and form provided by law in a newspaper of general circulation printed and published in the City of Clearlake, State of California, which said newspaper is hereby designated for that purpose.

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Introduced at a regular meeting of the City Council on the 21<sup>st</sup> day of November, 2024, by the following roll call vote:

MOTION:

AYES:

NOES:

ABSENT

ABSTAINED

Passed and approved at the regular meeting of the City Council on the \_\_\_\_ day of \_\_\_\_, 2024, by the following roll call vote:

MOTION:

AYES:

NOES:

ABSENT:

ABSTAINED:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
David Claffey, Mayor

APPROVED AS TO FORM:

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Dean J. Pucci, City Attorney

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