

APPENDIX A

Chapter 3.60 DEVELOPMENT IMPACT AND IN-LIEU FEES

3.60.010 Purpose.

Development Impact and In-Lieu Fees are fees imposed on specific development projects to defray the cost of new or additional public facilities that are needed to serve those developments. Common types of impact and in-lieu fees include traffic mitigation, multi-modal transportation facilities fees, park facilities fees, sewer facilities fees, library facilities fees, public art fees, public safety facilities fees, general government facilities fees, and commercial linkage fees. For purposes of this chapter the term “fee” shall be used to refer to any such development impact or in-lieu fee, regardless of how denominated elsewhere in this code.

3.60.015 Applicability.

- A. This Chapter applies to any development impact and in-lieu fee payment imposed under any provision of this code.
- B. The following fees are hereby established and shall be imposed as a condition of the approval of, or permit for, any development, whether residential or nonresidential, except as otherwise exempted by this chapter:
 - i. A fee, known as a “Park Impact Fee,” to fund acquisition of land and improvements for parks within the City of Los Altos, in an amount as set forth in the municipal fee schedule.
 - ii. A fee, known as a “Transportation Impact Fee,” to expand the citywide multimodal transportation network to accommodate increased demand from new development within the City of Los Altos, in an amount as set forth in the municipal fee schedule.
 - iii. A fee, known as a “Public Safety Impact Fee,” to upgrade existing Police and Fire stations, relocate, and reconstruct existing stations, as well as replace outdated public safety equipment within the City of Los Altos, in an amount as set forth in the municipal fee schedule.
 - iv. A fee, known as a “General Government Impact Fee,” to upgrade existing City Hall, Public Works Facilities, Library Branches and City equipment within the City of Los Altos, in an amount as set forth in the municipal fee schedule.
 - v. A fee, known as a “Public Art Development Fee,” to either place public art on private property or contribute to the public art fund within the City of Los Altos, in an amount as set forth in the municipal fee schedule and implementing ordinance.
 - vi. A fee, known as a “Commercial Linkage Fee,” to impose a fee on new development for its impact on creating the need for affordable housing in the community within the City of Los Altos, in an amount as set forth in the municipal fee schedule.
 - vii. A fee, known as a “Affordable Housing Fee,” to either construct inclusionary housing units onsite as a part of new development or contribute to the affordable housing fund within the City of Los Altos, in an amount as set forth in the municipal fee schedule.

3.60.020 Exemptions.

The provision of this chapter shall not apply to the following:

- A. Any city-owned buildings, structures or parcels;
- B. Public school buildings or structures for the use of education facilities;
- C. Residential housing units, either for sale or rental, which, by recordable means, is permanently obligated to be 100% affordable;
- D. Accessory dwelling units (ADU) less than 750 square feet in size. Any impact fees to be charged for an accessory dwelling unit of 750 square feet or more shall be proportional to the square footage of the primary dwelling unit;

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- E. Junior accessory dwelling units (JADU).
 - F. Any Below Market Rate (BMR) unit which, by recordable means, is obligated to be affordable for a minimum of 55-years.

3.60.025 Establishment of Fees.

The establishment of any fee shall be supported by an adopted Nexus Study consistent with all provisions of the Mitigation Fee Act. To establish a nexus between new development and the need for new facilities or infrastructure each fee shall determine the following the purpose of the fee, impact relationship, proportionality, benefit relationship and the use of fee revenue.

3.60.030 Annual Adoption of Fees.

All fees shall be adopted annually during the City of Los Altos annual budget process unless modification of fees prior is necessary to meet the intent or legal requirement of the fee.

3.60.035 Creation of Separate Fund Accounts.

The Finance Director is hereby directed to establish and maintain the following funds, into which all fees of each type described in this chapter, and any interest thereon, shall be deposited. Each fund shall be maintained as a separate account in a manner to avoid any commingling of the fees with other revenues, funds or accounts of the city. The separate funds established by this Chapter are:

- A. Park Development Fund;
- B. Transportation Improvement Fund;
- C. Public Safety Fund;
- D. General Government Fund;
- E. Public Art Development Fund;
- F. Affordable Housing Fund.

3.60.040 Payment of Fees.

A fee shall be paid on or before the issuance of the first building permit for the project. For a phased project, payments may be made for each portion of a phased project prior to issuance of the first building permit for that phase, to the extent allowed by applicable law. If there is no building permit for the project, the fee shall be paid upon issuance of the first city permit or other approval. If no city permit(s) or other approval is required, and the obligation to pay the fee is triggered by a change in use, payment of the fee must be made before the change in use occurs.

3.60.045 Deferred Payment of Fees.

For housing developments only as defined by the Housing Accountability Act (HAA), payment of a development impact fee (excluding any in-lieu fee) may be deferred to the date of final building inspection approval of the development, provided the owner of the real property for which the fees are required enters into a recordable agreement with the city prior to issuance of the building permit for the development, which from the date of recordation, shall constitute a lien on the property and shall be enforceable against successors in interest to the property owner. The agreement shall provide that final occupancy approval shall not be given until the fees are paid. The Development Services Director or their designee may execute the agreement on behalf of the city in a form acceptable to the city attorney.

3.60.050 Calculation of Fees.

A fee shall be payable at the rate specified in the City Council adopted municipal fee schedule. When the Calculation of Fees is determined based upon a square footage basis for a housing development the fee shall take into account only habitable square footage as defined by the California Building Code.

3.60.055 Credit of Existing Habitable Square Footage.

Credit of existing habitable square footage shall only be given for existing square footage that is known and provided on the latest County of Santa Clara Assessors Office Tax Roll. No credit shall be provided for non-habitable square footage. Any proposed development shall pay the net new habitable square footage above the existing assessed square footage.

3.60.060 Notice of Protest Rights.

- A. Each applicant is hereby notified that, in order to protest the imposition of any impact fee required by this chapter, the protest must be filed in accordance with the requirements of this chapter and the Mitigation Fee Act. Failure of any person to comply with the protest requirements of this chapter or the Mitigation Fee Act shall bar that person from any action or proceeding or any defense of invalidity or unreasonableness of the imposition.
- B. On or before the date on which payment of the fee is due, the applicant shall pay the full amount required by the city and serve a written notice to the Development Services Director with all of the following information:
 1. a statement that the required payment is tendered, or will be tendered when due, under protest; and
 2. a statement informing the city of the factual elements of the dispute and the legal theory forming the basis for the protest.
 3. The applicant shall bear the burden of proving, to the satisfaction of the director, entitlement to a fee adjustment.

3.60.065 Informal Hearing.

- A. The director shall schedule an informal hearing regarding the protest, to be held no later than sixty days after the imposition of the impact fees upon the development project, and with at least ten days' prior notice to the applicant (unless either date are otherwise agreed by the director and the applicant).
- B. During the informal hearing, the director shall consider the applicant's protest, relevant evidence assembled as a result of the protest, and any additional relevant evidence provided during the informal hearing by the applicant and the city. The director shall provide an opportunity for the applicant to present additional evidence at the hearing in support of the protest.
- C. The director shall issue a written determination regarding the protest. The director's determination shall support the fee imposed upon the development project unless the applicant establishes, to the satisfaction of the director, entitlement to an adjustment to the fee.
- D. The director may elect to appoint a designee to hear and decide a protest under this section.

3.60.070 Appeal of Director Determination.

- A. Any applicant who desires to appeal a determination issued by the director shall submit a written appeal to the director and the city manager. A complete written appeal shall include a complete description of the factual elements of the dispute and the legal theory forming the basis for the appeal of the director's determination. An appeal received by the city manager more than ten calendar days after the director's determination may be rejected as late. Upon receipt of a complete and timely appeal, the city manager shall appoint an independent hearing officer to consider and rule on the appeal.
- B. The independent hearing officer shall, in coordination with the applicant and the director, set the time and place for the appeal hearing, and provide written notice thereof. The independent hearing officer shall consider relevant evidence, provide an opportunity for the applicant and the city to present additional noncumulative evidence at the hearing, and preserve the complete administrative record of the proceeding.
- C. Within thirty days after the independent hearing officer closes the hearing and receives post-hearing briefs (if any), the independent hearing officer shall issue a written decision on the appeal hearing which shall include a statement of findings of fact in support of the decision. The independent hearing officer's discretion shall be limited to a determination that either supports the director's determination or orders the city to refund all or a portion of the impact fees to the applicant. The applicant shall bear the burden

of proving entitlement to a fee adjustment. The decision of the hearing officer is final and conclusive and is subject to judicial review.

3.60.075 Cost of Appeal/Protest.

The applicant shall pay all city costs related to any protest or appeal pursuant to this chapter, in accordance with the fee schedule adopted by the city. At the time of the applicant's protest, and at the time of the applicant's appeal, the applicant shall pay a deposit in an amount established by the city to cover the estimated reasonable cost of processing the protest and appeal. If the deposit is not adequate to cover all the city costs, the applicant shall pay the difference within twenty days after receipt of written notice from the director.

3.60.080 Administration.

The city manager or their designee is authorized to adopt administrative regulations or guidelines that are consistent with and that further the terms and requirements set forth in this code. All such administrative regulations or guidelines must be in writing. Such regulations or guidelines may interpret any provision of this chapter, as well as any provision of this code relating to the calculation of a fee.

3.60.085 Annual Adjustments.

Annual adjustments will provide the ability to increase any fee covered by this chapter based upon the Construction Code Index (CCI). Annual increase based upon CCI shall only be allowed for eight (8) years post adoption of the Nexus Study. The City of Los Altos shall reevaluate its development impact and in-lieu fees no later than every eight (8) years.

3.60.090 Annual Reporting.

Pursuant to Government Code Section 66006 within 180-days of the close of the fiscal year, the City of Los Altos must make available to the public detailed information regarding impact fees. The annual reporting required as a part of this chapter must be submitted and reviewed by the City Council within 15 days of being posted publicly. The detailed information shall include but is not limited to:

1. Impact Fee Description and Fund Number;
2. Impact Fee Amount;
3. Beginning and Ending balance of the account or fund;
4. Amount of the fees collected in the fiscal year and the total interest earned;
5. Identification of project(s) one which the funds are being earmarked for;
6. Identification of the approximate date on which the projects would commence;
7. Identification of any interfund loans or transfers related to capital projects, and the amount of the transfer;
8. Amount of any refunds or allocations made on behalf of the impact fee funds.

3.60.095 Severability.

If any portion of this chapter is held to be invalid, unconstitutional, or unenforceable by a court of competent jurisdiction, that decision will not affect the validity of the remaining portions of this code. The city council declares that this chapter and each portion would have been adopted without regard to whether any portion of this chapter would be later declared invalid, unconstitutional, or unenforceable.