

Visalia City Council Agenda

For the regular meeting of: MONDAY, December 1, 2008

Location: City of Visalia Corporation Yard – 336 N. Ben Maddox, Visalia, CA 93291
City Hall Council Chambers, 707 W. Acequia, Visalia CA 93291

Mayor: Jesus J. Gamboa
Vice Mayor: Bob Link
Council Member: Greg Collins
Council Member: Donald K. Landers
Council Member: Amy Shuklian

All items listed under the Consent Calendar are considered to be routine and will be enacted by one motion. If anyone desires discussion on any item on the Consent Calendar, please contact the City Clerk who will then request that Council make the item part of the regular agenda.

3:30 p.m. **TOUR OF CITY OF VISALIA CORPORATION YARD – 336 N. Ben Maddox, Visalia**
3:30 p.m.

4:30 p.m. **CONVENE AT CITY HALL COUNCIL CHAMBERS – 707 W. ACEQUIA, VISALIA**
4:30 p.m.

SWEARING IN CEREMONY – 707 W. Acequia, Visalia

Police Chief Bob Carden will swear-in two officers: Officer Carol Cortez and Officer Chris Jennings

4:35 p.m. **REGULAR SESSION**
4:35 p.m.

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

SPECIAL PRESENTATIONS/RECOGNITION

Present Resolution of Commendation to Mr. Lyle Stillwater

INTRODUCTIONS OF NEW EMPLOYEES

Fire Chief Mark Nelson will introduce new Visalia Firefighters: Bryan Gant, James Turnage, Curtis Mueller, Steve Walker

CITIZENS REQUESTS - This is the time for members of the public to comment on any matter within the jurisdiction of the Visalia City Council. This is also the public's opportunity to request that a Consent Calendar item be removed from that section and made a regular agenda item for discussion purposes. Comments related to Regular or Public Hearing Items listed on this agenda will be heard at the time the item is discussed or at the time the Public Hearing is opened for comment. The Council Members ask that you keep your comments brief and positive. Creative criticism, presented with appropriate courtesy, is welcome. The Council cannot legally discuss or

take official action on citizen request items that are introduced tonight. In fairness to all who wish to speak tonight, each speaker from the public will be allowed three minutes (speaker timing lights mounted on the lectern will notify you with a flashing red light when your time has expired). Please begin your comments by stating and spelling your name and providing your street name and city.

1. **INFORMATION ITEMS** (no action needed) - Receive Planning Commission Action Agenda for the meeting of November 24, 2008.

CHANGES TO THE AGENDA/ITEMS TO BE PULLED FOR DISCUSSION

2. **CONSENT CALENDAR** - Consent Calendar items are considered routine and will be enacted by a single vote of the Council with no discussion. For a Consent Calendar item to be discussed, or voted upon individually, it must be removed at the request of the Council.
 - a) Authorization to read ordinances by title only.
 - b) Request authorization to file a Notice of Completion for the Pinkham Street and Walnut Avenue Signal Improvements with the final contract amount of \$195,457. Project No. 1111-720000-9804-2008.
 - c) Authorize the City Manager to apply for federal funding for the Juvenile Accountability Block Grant (JABG) Program and if awarded, execute appropriate agreements with California Corrections Standards Authority, County of Tulare District Attorney's Office, and County of Tulare Probation Department. **Resolution 2008-59 required.**
 - d) Authorization for the City Manager to sign a banked water exchange agreement with the City of Bakersfield, Arvin-Edison Water Storage District, California Water Company and the Hills Valley Irrigation District, and on-going authorization for the City Manager to purchase up to \$100,000 of water annually for groundwater recharge at a price not to exceed \$55/acre foot.
 - e) Authorization for the City Manager to enter into a not to exceed \$450,000 contract with Taylor Teter Architectural firm to develop plans for a Sequoia Shuttle Visitors Center at the Convention Center as part of the City's efforts to meet potential federal stimulus package timelines, and appropriate Transit funds for the contract.
 - f) Review the second installment of Proposition 1B – Local Streets and Roads Improvement, Congestion Relief, and Traffic Safety Account Funds for \$1,750,422.56.
3. Adoption of Ordinance 2008-14 amending Chapter 16.44 of the Visalia Municipal Code relating to Transportation Impact Fees and Resolution implementing new Transportation Impact Fee Rates. **Ordinance 2008-14 and Resolution 2008-58 required.**

CLOSED SESSION

4. Conference with Real Property Negotiators (G.C. §54956.8)
Property: Two parcels at 139 N. Cain Street
Under Negotiation: Price, terms and conditions for inclusion in a potential purchase or lease
Negotiating Parties: Steve Salomon, Andrew Benelli, Johnny and Debra McElree (Trs), and Robert and Barbara McElree (Trs)
5. Conference with Legal Counsel – Anticipated Litigation - Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9: one potential case
6. Conference with Real Property Negotiators (G.C. §54956.8)
Property: Lot 2 (094-050-011) 3 NW 3rd Street (Community Campus)
Under Negotiation: Authority to negotiate terms and conditions of potential purchase
Negotiating Parties: Steve Salomon, Ricardo Noguera

REPORT ON ACTIONS TAKEN IN CLOSED SESSION

REPORT OF CLOSED SESSION MATTERS FINALIZED BETWEEN COUNCIL MEETINGS

Upcoming Council Meetings

- Monday, December 15, 2008, Work Session 4:00 p.m. Regular Session 7:00 p.m. Council Chambers, 707 W. Acequia, Visalia
- Monday, January 5, 2009, Work Session 4:00 p.m. Regular Session 7:00 p.m. – Council Chambers, 707 W. Acequia, Visalia
- Tuesday, January 20, 2009, Work Session 4:00 p.m. Regular Session 7:00 p.m. Council Chambers, 707 W. Acequia, Visalia

Note: Meeting dates/times are subject to change, check posted agenda for correct details.

In compliance with the American Disabilities Act, if you need special assistance to participate in meetings call (559) 713-4512 48-hours in advance of the meeting. For Hearing-Impaired - Call (559) 713-4900 (TDD) 48-hours in advance of the scheduled meeting time to request signing services.

Any written materials relating to an item on this agenda submitted to the Council after distribution of the agenda packet are available for public inspection in the Office of the City Clerk, 425 E. Oak Street, Visalia, CA 93291, during normal business hours.

ACTION

PLANNING COMMISSION AGENDA

CHAIRPERSON:
Vincent Salinas



VICE CHAIRPERSON:
Lawrence Segrue

COMMISSIONERS PRESENT: Vincent Salinas, Larry Segrue, Terese Lane, Roland Soltesz

MONDAY NOVEMBER 24, 2008; 7:00 P.M., CITY HALL WEST, 707 WEST ACEQUIA, VISALIA CA

7:00 TO 7:00

1. THE PLEDGE OF ALLEGIANCE

7:00 TO 7:00

2. CITIZEN'S REQUESTS - The Commission requests that a 5-minute time limit be observed for requests. Please note that issues raised under Citizen's Requests are informational only and the Commission will not take action at this time.

No one spoke

7:00 TO 7:00

3. CITY PLANNER AGENDA COMMENTS –

No comments

7:00 TO 7:00

4. CHANGES TO THE AGENDA –

No changes

7:00 TO 7:01

5. CONSENT CALENDAR – All items under the consent calendar are to be considered routine and will be enacted by one motion. For any discussion of an item on the consent calendar, it will be removed at the request of the Commission and made a part of the regular agenda.

- No items on Consent Calendar

7:01 TO 7:10

6. PUBLIC HEARING – Teresa Nickell

Approved as recommended (Peck, Lane) 4-0
Salinas absent

Conditional Use Permit No. 2008-39: A request by Neighborhood Church (Michael Boudreau, AIA, Agent) to allow a new 23,000 +/- sq. ft. sanctuary, classrooms, and expansion of an office and parking lots on an existing 18-acre church campus in the R-A (Rural Residential) zone, located on the southwest corner of Riggin Avenue and Akers Street. (APN: 077-100-062)

Open: 7:07

Close: 7:07

Spoke:

1. Michael Boudreau (agent)

7:10 TO 7:38

7. PUBLIC HEARING –Teresa Nickell

Approved as recommended (Soltesz, Lane) 3-0-1
Salinas absent, Segrue abstained

Conditional Use Permit No. 2008-40: A request by the Diocese of Fresno Education Corp. (Hyndman & Hyndman Architects, Agent) to allow a new 113,850 sq. ft. church campus (St. Charles Borromeo Catholic Church) to be constructed in multiple phases on 19.3 acres in the QP (Quasi-Public) zone, located on the southeast corner of Akers Street and West Caldwell Avenue. (APN: 119-070-071)

Open: 7:26

Close: 7:35

Spoke:

1. Dennis Hyndman
(agent)

7:38 TO 7:46

Approved as recommended
(Lane, Peck) 4-0
Salinas absent

Open: 7:45

Close: 7:45

Spoke:

1. Lee McClatchy
(agent)

8. PUBLIC HEARING –Andrew Chamberlain

- a. Conditional Use Permit No. 2008-41: A request by Lee's Paving Incorporated to allow the creation of 2 parcels with no public street frontage in the IL (Light Industrial) zone. The site is located at 1212 N. Plaza Drive. (APN: 081-110-028)
- b. Tentative Parcel Map No. 2008-17: A request by the Lee's Paving Incorporated for a tentative parcel map to create 2 parcels on 8.66 acres in the IL (Light Industrial) zone. The site is located at 1212 N. Plaza Drive. (APN: 081-110-028)

7:46 TO 8:00

- a) Commissioners Salinas and Segrue agreed to represent the Commission.

9. DIRECTOR'S REPORT/PLANNING COMMISSION DISCUSSION :

- a. Request for Representation on the General Plan Update Review committee.
- b. The City Council on November 17th approved the second reading of Ordinance 2008-12 relating to Planning Commissioners.
- c. There will only be one Planning Commission meeting in the month of December.

The Planning Commission meeting may end no later than 11:00 P.M. Any unfinished business may be continued to a future date and time to be determined by the Commission at this meeting. The Planning Commission routinely visits the project sites listed on the agenda.

For the hearing impaired, if signing is desired, please call (559) 713-4359 twenty-four (24) hours in advance of the scheduled meeting time to request these services. For the visually impaired, if enlarged print or Braille copy is desired, please call (559) 713-4359 for this assistance in advance of the meeting and such services will be provided as soon as possible following the meeting.

**THE NEXT REGULAR MEETING WILL BE HELD ON MONDAY, DECEMBER 8, 2008
CITY HALL COUNCIL CHAMBERS, 707 WEST ACEQUIA**

8:00 To 8:00

Motion to Adjourn (Segrue, Soltész) 4-0 Salinas absent

**City of Visalia
Agenda Item Transmittal**

Meeting Date: December 1, 2008

Agenda Item Number (Assigned by City Clerk): 2b

Agenda Item Wording: Request authorization to file a Notice of Completion for the Pinkham Street and Walnut Avenue Signal Improvements with the final contract amount of \$195,457 (Project No. 1111-720000-9804-2008).

Deadline for Action: None

Submitting Department: Community Development
Engineering Division

Contact Name and Phone Number:

Chris Young, Assistant Community Dev. Director – 713-4392
Michael Carr, Sr. Transportation Planner - 713-4595

Department Recommendation:

Staff recommends that the City Council authorize filing a Notice of Completion for the Pinkham Street and Walnut Avenue Signal Improvements. All work has been completed by the contractor (A-C Electric Company). The final contract amount was \$195,457.

Summary/background:

The Pinkham Street and Walnut Avenue Signal Improvement Project included the installation of a new 4-way traffic signal at the intersection of Pinkham Street and Walnut Avenue and new handicapped ramps that conform to the Americans with Disabilities Act (ADA) requirements at the three finished corners. The south-east corner will be completed with sidewalk and curb-and-gutter when that corner property is developed.

On April 7, 2008, Council awarded the Pinkham Street and Walnut Avenue Signal Improvement Project to A-C Electric Company of Visalia for the contract price of \$191,264.

There were three change orders required to complete this project with a cost increase totaling \$4,193. This represents a 2.2% increase over the originally awarded contract. The change orders were all reviewed and approved by the Change Order Committee and entailed the following work:

Reduce the street light pole height due to SCE overhead lines

Southern California Edison has overhead distribution lines on the east side of Pinkham Street at the Walnut Avenue intersection. The standard street light pole to be installed by this project on the north-east corner of Walnut and Pinkham would have positioned the light too close to the existing Edison lines. To achieve the clearance required by Edison, A-C Electric Company cut and welded the pole to make it approximately 6-feet shorter.

Contract cost increase = \$472.00

For action by:

City Council
 Redev. Agency Bd.
 Cap. Impr. Corp.
 VPFA

For placement on which agenda:

Work Session
 Closed Session

Regular Session:

Consent Calendar
 Regular Item
 Public Hearing

Est. Time (Min.): 1Min.

Review:

Dept. Head _____
(Initials & date required)

Finance _____
City Atty _____
(Initials & date required or N/A)

City Mgr _____
(Initials Required)

If report is being re-routed after revisions leave date of initials if no significant change has affected Finance or City Attorney Review.

Relocate Irrigation Backflow Device

An existing backflow device was shown on the plans outside the area of improvements. However, it was too close to the back edge of the proposed handicapped ramp to allow for construction of the ramp. It also would have been a potential hazard to pedestrians when the project was complete. It was moved approximately five feet further east.

Contract cost increase = \$623.00.

Remove and Replace Gutter Pan

The plans called for cutting out the curb and sidewalk on the southwest corner of Pinkham and Walnut, but leaving the existing gutter pan in place in an effort to save on construction costs. However, it was discovered during construction that the existing gutter could not meet ADA slope requirements and had to be replaced. The asphalt paving needed to be saw-cut approximately one-foot outside the gutter so that the old gutter could be removed and a new gutter formed. A new, ADA-compliant gutter was installed and the asphalt repaved.

Contract cost increase = \$3,098.00.

Prior Council/Board Actions: Award of contract on April 7, 2008.

Committee/Commission Review and Actions: None

Alternatives: None

Attachments: Location Map, Ownership Disclosure Form

Recommended Motion (and Alternative Motions if expected):

I move to authorize staff to file a Notice of Completion for the Pinkham Street and Walnut Avenue Signal Improvements with the final contract amount of \$195.457.

Tracking Information: *(Staff must list/include appropriate review, assessment, appointment and contract dates and other information that needs to be followed up on at a future date)
Notice of Completion to be filed with County Recorders Office through City Engineer's office.*

Copies of this report have been provided to:

**City of Visalia
Agenda Item Transmittal**

Meeting Date: December 1, 2008

Agenda Item Number (Assigned by City Clerk): 2c

Agenda Item Wording: Authorization for the City of Manager to apply for Federal funding for the Juvenile Accountability Block Grant (JABG) Program and appropriation of \$4,840 from the Asset Forfeiture Fund for the Police Department match.

Deadline for Action: December 3, 2008

Submitting Department: Police

Contact Name and Phone Number: Police Chief Bob Carden, ext. 4215, Lieutenant Jason Salazar, ext. 4102

Department Recommendation: It is recommended that the Council authorize the City Manager to apply for Federal funding for the Juvenile Accountability Block Grant (JABG) Program through the California Corrections Standards Authority (CSA), and, if awarded, to execute appropriate agreements with CSA, County of Tulare District Attorney's Office (DA), and County of Tulare Probation Department (Probation) which will fund a Partnership to Reduce Gang Violence and Activity. The amount of the grant request is \$207,360. The City's match of \$4,840 will come from currently appropriated asset forfeiture money.

Summary/background: The Juvenile Accountability Block Grant (JABG) Program, administered at the federal level by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) a division of the Department of Justice, Office of Justice Programs, supports state and local efforts to reduce juvenile crime through programs that focus on offender accountability. The California Corrections Standards Authority (CSA) announced the availability of one-time funding for the Juvenile Accountability Block Grant (JABG) Program, which is the result of redistribution of previously allocated funds that original awardees were unable to encumber. In an attempt to maximize the fiscal support of programs that improve public safety in California, these funds are being redirected.

Projects must clearly address gang intervention, or have strategies targeting gang activity or involvement by youth under eighteen years of age.

The Juvenile Accountability Block Grant (JABG) application is due on December 3, 2008 and must include a governing board resolution. The board resolution must state that the applicant

For action by:

- City Council
- Redev. Agency Bd.
- Cap. Impr. Corp.
- VPFA

For placement on which agenda:

- Work Session
- Closed Session

Regular Session:

- Consent Calendar
- Regular Item
- Public Hearing

Est. Time (Min.): 1

Review:

Dept. Head _____

Finance _____

City Atty N/A
(Initials & date required or N/A)

City Mgr _____

If report is being re-routed after revisions leave date of initials if no significant change has affected Finance or City Attorney Review.

agency 1) will accept the funds, if awarded, and 2) agrees to all terms and conditions of the grant, the major terms being:

- Funds must be expended in one or more of the 17 federally designated program purpose areas;
- Specifically funded projects must focus on gang intervention or have strategies targeting gang activity or involvement by youth under 18 years of age;
- Applicants must apply for no less than \$200,000, but can apply for more if the agency has the capacity to meet all requirements for this funding announcement;
- Applicants must provide a ten (10) percent cash match in addition to the requested funds;
- Applicants must provide a timeline of activities specific to the encumbrance and liquidation of all funds within the timeline referenced above;
- Applicants will obtain approval from their County's Juvenile Justice Coordinating Council; and,
- Submit a Resolution from their governing board (City Council, Board of Supervisors, or Tribal Government) at the time of application indicating it will accept the funds, if awarded, and agree to all terms and conditions of the grant including the encumbrance and liquidation dates as well as the match requirement.

Funds must be encumbered by June 30, 2009 and liquidated by September 29, 2009. The grant period is January 2, 2009 through June 30, 2009.

Gang activity and violence is an issue of great concern to the citizens of this community and the Visalia Police Department has responded with a comprehensive approach to reducing gang violence and activity through suppression, intervention, and prevention activities over the course of the last year. Juveniles are specifically targeted by gangs for recruitment as they are perceived as receiving much lighter sentences than adults. This specific gang predation of juveniles results in children being influenced, intimidated, injured and sometimes killed.

It is imperative that the Police Department and other law enforcement agencies, including the Sheriff's Department, Probation Department, and the District Attorney's Office, actively communicate, partner and share resources so that our streets and neighborhoods once again become safe for families and children.

Match Requirements

The City of Visalia will apply for \$207,360 in grant funds. A \$20,740 match will be provided, for a total project cost of \$228,100. Staff from the Visalia Police Department have met with County of Tulare staff from the District Attorney's Office and Probation Department and have negotiated the use of JABG funds.

	<u>Request</u>	<u>Match</u>	<u>Activity</u>
Visalia Police Department:	\$53,235	\$4,840	Equipment, Training
Probation Department:	\$86,704	\$7,884	Equipment
District Attorney's Office:	<u>\$88,158</u>	<u>\$8,016</u>	Equipment, Training, Gang Summit
	\$228,100	\$20,740	

The City's match of \$4,840 will come from currently funded asset forfeiture money.

* Final amounts may vary slightly.

The Police Department, District Attorney's Office, and Probation Department will partner on this project to purchase needed equipment and technology to enhance the ability of gang officers and prosecutors to effectively communicate with one another in an attempt to identify, arrest and prosecute local gang members who violate the law.

If approved, the Police Department's grant funds will be used for:

- Laptop computers, Air-Cards, MDT vehicle mounts, and associated software and licences - \$29,645
- Body Wire transmitter surveillance equipment - \$4,000
- California Gang Investigator's Conference in Anaheim, eleven officers - \$10,890
- Reimbursement of overtime for backfill of officers at training/gang summit - \$8,700

Through this grant, the District Attorney's Office will sponsor a Gang Conference, with a significant focus on juvenile gang involvement, which will feature well-known speakers from throughout the state and nation. The conference and other training will be certified by the California Commission of Peace Officer Standards and Training (POST), the California District Attorneys Association (CDAA), and the State Training for Corrections (STC).

Under federal law, a local advisory board must review how JABG funds will be expended. The board must include representatives from the police, sheriff, and probation departments, district attorney's office, juvenile court, education, social services, a non-profit and nongovernmental victim advocacy organization, and a non-profit community group. The existing Juvenile Justice Coordinating Council will be used to meet this requirement.

Prior Council/Board Actions: N/A

Committee/Commission Review and Actions: N/A

Alternatives: Deny the application for Juvenile Accountability Block Grant (JABG) Program funding.

Attachments: Letters of commitment from the Tulare County District Attorney's Office and Probation Department.

Resolution meeting grant application requirements.

Recommended Motion (and Alternative Motions if expected):

I move that the Council authorize the City Manager to apply for Federal funding for the Juvenile Accountability Block Grant (JABG) Program through the California Corrections Standards Authority (CSA), if awarded, to execute grant agreements with CSA, County of Tulare District Attorney's Office, and County of Tulare Probation Department, and to appropriate \$4,840 from the Asset Forfeiture fund for the Police Department share of the grant match.

Environmental Assessment Status

CEQA Review: N/A

NEPA Review: N/A

Tracking Information: (Staff must list/include appropriate review, assessment, appointment and contract dates and other information that needs to be followed up on at a future date.)

Copies of this report have been provided to:

RESOLUTION NO. 2008- 59

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VISALIA

AUTHORIZING THE CITY MANAGER

TO APPLY FOR A JUVENILE ACCOUNTABILITY BLOCK GRANT

WHEREAS, the City of Visalia desires to undertake a certain project designated Partnership to Reduce Gang Violence and Activity; and

WHEREAS, the monies are expected to be expended for the enhancement of services by the Police Department, the Tulare County District Attorney's Office, and the Tulare County Probation Department to the betterment of the community;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Visalia:

1. That the City Council of the City of Visalia will accept the grant funds if awarded; and
2. That the City of Visalia agrees to all terms and conditions of the grant including the encumbrance and liquidation dates as well as the match requirement as outlined in the California Corrections Standards Authority notice "Availability of funds for Short-term Projects with Gang Intervention Strategies."

- Funds must be expended in one or more of the 17 federally designated program purpose areas;
- Specifically funded projects must focus on gang intervention or have strategies targeting gang activity or involvement by youth under 18 years of age;
- Applicants must apply for no less than \$200,000, but can apply for more if the agency has the capacity to meet all requirements for this funding announcement;
- Applicants must provide a ten (10) percent cash match in addition to the requested funds;
- Applicants must provide a timeline of activities specific to the encumbrance and liquidation of all funds within the timeline referenced above;
- Applicants will obtain approval from their County's Juvenile Justice Coordinating Council; and,

- Submit a Resolution from their governing board (City Council, Board of Supervisors, or Tribal Government) at the time of application indicating it will accept the funds, if awarded, and agree to all terms and conditions of the grant including the encumbrance and liquidation dates as well as the match requirement.

PASSED AND ADOPTED:

STEVEN M. SALOMON, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF TULARE) ss.
CITY OF VISALIA)

I, Steven M. Salomon, City Clerk of the City of Visalia, certify the foregoing is the full and true Resolution 2008- passed and adopted by the Council of the City of Visalia at a regular meeting held on

Dated: December , 2008

STEVEN M. SALOMON, CITY CLERK

**City of Visalia
Agenda Item Transmittal**

Meeting Date: December 1, 2008

Agenda Item Number (Assigned by City Clerk): 2d

Agenda Item Wording: Authorization for the City Manager to sign a banked water exchange agreement with the City of Bakersfield, Arvin-Edison Water Storage District, California Water Company and the Hills Valley Irrigation District, and on-going authorization for the City Manager to purchase up to \$100,000 of water annually for groundwater recharge at a price not to exceed \$55/acre foot.

Deadline for Action: N/A

Submitting Department: Administration

Contact Name and Phone Number: Leslie Caviglia, 713-4317

Department Recommendation:

Authorization for the City Manager to sign a banked water exchange agreement with the City of Bakersfield, Arvin-Edison Water Storage District, California Water Company and the Hills Valley Irrigation District, and authorize the City Manager to purchase up to \$100,000 in water for groundwater recharge at a price not to exceed \$55/acre foot.

Summary/background:

This water exchange program, in concept, was first presented to the City Council last fall. The involved parties, including California Water Service, the City of Bakersfield, Hills Valley Irrigation District, and Arvin-Edison Water Storage District, have been working on the details during the year. The other agencies have approved the agreement.

This water agreement was recommended by the Water Management Committee last year. The Water Management Committee is comprised of a representative from Kaweah Delta Conservation District and the City of Visalia, with input from District and City staff, Cal Water, Tulare Irrigation District, and water engineers. It was formed as part of the agreement that resulted from the canal lining project that was proposed by Tulare Irrigation District.

The City can purchase the water from California Water Company. It is water from a source that is outside the City's water basin. Cal Water has access to 10,000 acre-feet of groundwater from the Bakersfield groundwater bank that is available for extraction over a 5-7 year timeframe.

For action by:

City Council
 Redev. Agency Bd.
 Cap. Impr. Corp.
 VPFA

For placement on which agenda:

Work Session
 Closed Session

Regular Session:

Consent Calendar
 Regular Item
 Public Hearing

Est. Time (Min.): _____

Review:

Dept. Head LBC
112508
(Initials & date required)

Finance _____
City Atty _____
(Initials & date required or N/A)

City Mgr _____
(Initials Required)

If report is being re-routed after revisions leave date of initials if no significant change has affected Finance or City Attorney Review.

Cal Water acquired water through a “detachment and water sale agreement” between Cal Water, Olcese Water District (a Kern County water supply district) and the City of Bakersfield. Cal Water “banked” the water as part of the Bakersfield District’s 2800 Acre bank. Pursuit to the Kern River/Friant-Kern Exchange Agreement of 2007 between the City of Bakersfield and the Arvin-Edison Water Storage District, the City of Bakersfield will make this water available to Cal Water for groundwater recharge purposes only in the Cal Water Visalia District portion of the Kaweah River Basin.

The City can buy this water from Cal Water; however, the cost of purchasing the water, extracting and exchanging it for ultimate delivery to the Visalia area was beyond the reasonable cost to be paid for recharge water (estimated to be in excess of \$150/acre-foot). On the other hand, the water is very firm in its reliability and as such, has value to other water users, such as the Hills Valley Irrigation District.

The agreement calls for Hills Valley to use and pay for the water, and in turn, to provide the City of Visalia water in future years at a cost not to exceed the actual purchase cost of the transferred supply. The price shall not exceed the Class 1 irrigation cost of service rate published by Reclamation for the CVP contract year for the Ivanhoe Irrigation District matching the scheduled delivery period for the purchased supply, plus the Friant Water Authority delivery charge. It is anticipated that at current rates, this price would be somewhere between \$25 and \$55 per acre-foot. The water to the City would be made available at a time when the City of Visalia does not otherwise have access to water at equivalent costs. Thus, the City of Visalia can access 10,000 acre-feet of water it otherwise would not be able to purchase elsewhere. The City’s cost, based on current prices, is estimated to be between \$250,000 and \$500,000. Funding is available from the Groundwater Recharge Fund which is funded through the Groundwater Recharge Fee, the Groundwater Extraction Fee, and the Groundwater Mitigation Fee. Currently, more than \$1.6 million are in these funds, although some has been designated for capital project work. Additional funds are acquired annually through the groundwater fees.

Staff also recommends that the City Council provide on-going authorization for the City Manager to annually purchase up to \$100,000 in water for ground water recharge at a price that does not exceed \$55/acre foot. Obviously the actual price would be dependent on the amount of available water and budget, and in wet years, may be significantly lower than \$55/acre foot. In many instances, the water becomes available on a very short timeline. It would be in the City’s best interest to be able to react quickly when these circumstances arise.

Prior Council/Board Actions:

November 19, 2007 – Received information on the proposed water exchange

Committee/Commission Review and Actions:

Alternatives:

Attachments:

Agreement

Recommended Motion (and Alternative Motions if expected):

I move to authorize the City Manager to sign a banked water exchange agreement with California Water Company and the Hills Valley Irrigation District, and authorize the City Manager to purchase up to \$100,000 in water for groundwater recharge at a price not to exceed \$55/acre foot.

Environmental Assessment Status

CEQA Review:

NEPA Review:

Tracking Information: *(Staff must list/include appropriate review, assessment, appointment and contract dates and other information that needs to be followed up on at a future date)*

Copies of this report have been provided to:

**City of Visalia
Agenda Item Transmittal**

Meeting Date: December 1, 2008

Agenda Item Number (Assigned by City Clerk): 2e

Agenda Item Wording: Authorization for the City Manager to enter into a not-to-exceed \$450,000 contract with Taylor Teter Architectural firm to develop plans for a Sequoia Shuttle Visitors Center at the Convention Center as part of the City's efforts to meet potential federal stimulus package timelines, and appropriate Transit funds for the contract.

Deadline for Action: Dec. 1, 2008

Submitting Department: Administration

Contact Name and Phone Number: Leslie Caviglia, 713-4317; Monty Cox, 713-4591, Wally Roeben, 713-4004.

Department Recommendation:

Authorization for the City Manager to enter into a not-to-exceed \$450,000 contract with Taylor Teter Architectural firm to develop plans for a Sequoia Shuttle Visitors Center at the Convention Center as part of the City's efforts to meet potential federal stimulus package timelines, and appropriate Transit funds for the contract

Summary/background:

The City Council has authorized staff to expedite a number of projects in an effort to attract federal funding as part of the stimulus project that is currently being developed by Congress and the President-elect. Initial information indicates that the local government projects most likely to get funded are those that are designed, through the permitting process and able to being construction within 90 days. With this in mind, at the last meeting, Council authorized staff to fast track a number of streets, roads, airport and transit related projects.

One of the projects that was not included in the previous fast-track authorization was the Sequoia Shuttle Visitors Center. At Council direction, Councilmember Amy Shuklian convened a committee earlier this year to determine a possible site for a Shuttle Center. The Committee included representatives from the Convention and Tourism Bureau, hotels, restaurants, ag tourism, the downtown organizations, the National Park and other related organizations. The Committee met several times and recommended that the Convention Center be expanded to include a Shuttle Center, probably as part of an expansion of the connected but separate building at the Convention Center most commonly referred to as the "Deli." Staff was working on

For action by:

City Council
 Redev. Agency Bd.
 Cap. Impr. Corp.
 VPFA

For placement on which agenda:

Work Session
 Closed Session

Regular Session:

Consent Calendar
 Regular Item
 Public Hearing

Est. Time (Min.): _____

Review:

Dept. Head LBC
112508
(Initials & date required)

Finance _____
City Atty _____
(Initials & date required or N/A)

City Mgr _____
(Initials Required)

If report is being re-routed after revisions leave date of initials if no significant change has affected Finance or City Attorney Review.

developing an initial space needs assessment and planning to bring back a recommendation to Council early in 2009. However, given the stimulus package timelines, the project would need to be expedited on a much faster timeline.

Councilmember Shuklian and City staff met with the Committee on Monday, November 24 to assess whether there was support to expedite the project, understanding that there would not be time to include as much community input as might otherwise be included in a project that would be a signature piece in the downtown. Unanimously, the Committee supported expediting the project. The Committee felt that the possibility of federal funding warranted the expedited process, and that the plans, even if not used as part of the stimulus package, would still be usable once funding is garnered for the project.

The Committee recommended the Convention Center site for a number of reasons including accessibility from the freeway, proximity to the downtown, cutout parking on Acequia for RV's trailers, etc., available vehicular parking at the Center and the parking structure across the street, adjacency to two hotels and the Convention Center, and land availability.

Staff is recommending that the architectural contract be entered into with Taylor Teter because of the local firm's familiarity with the Center. A principal in the firm designed the Convention Center expansion that was constructed in the early 1990;s, and has designed two remodel projects since that time. The principal experienced with the Center, Russ Taylor, has confirmed his availability to work on the project, and the firm is willing and able to meet the expedited timelines.

If approved, the planning process will begin immediately, and will include a core planning committee comprised of parties interested in sharing/using the space including the Visitors and Convention Bureau, the National Park Service, the Sequoia Natural History Association and an ag tourism vendor. It is thought that the Sequoia Shuttle Center plans would include a "National Park feel" to the design, an external facelift to the Convention Center so it compliments the Shuttle Center, and a redesign of the Plaza area to make it more inviting for gatherings, and more connected to the downtown.

Sufficient funding is available for design in the Transit capital budget.

Prior Council/Board Actions:

November 17, 2008 – Council authorized a number of projects to be expedited to meet potential federal stimulus project funding timelines.

Committee/Commission Review and Actions:

Alternatives:

Not expedite the project

Attachments:

Recommended Motion (and Alternative Motions if expected):

I move to authorize the City Manager to enter into a not-to-exceed \$450,000 contract with Taylor Teter Architectural firm to develop plans for a Sequoia Shuttle Visitors Center at the Convention Center, and appropriate the Transit funds for the contract

Environmental Assessment Status

CEQA Review:

NEPA Review:

Tracking Information: *(Staff must list/include appropriate review, assessment, appointment and contract dates and other information that needs to be followed up on at a future date)*

Copies of this report have been provided to:

City of Visalia Agenda Item Transmittal

Meeting Date: 12/1/2008

Agenda Item Number (Assigned by City Clerk): 2f

Agenda Item Wording: Appropriate the second installment of Proposition 1B – Local Streets and Roads Improvement, Congestion Relief, and Traffic Safety Account Funds for \$1,750,422.56

Deadline for Action: requested by 12/1/2008

Submitting Department: Community Development Department

Contact Name and Phone Number: Chris Young, Assistant Community Development Director - 713-4392, Chris Tavarez, Management Analyst - 713-4540

Department Recommendation

Staff recommends Council appropriate the second allocation of funds to the City of Proposition 1B Funds by the State of California. Review and approval of the project list on Table 1 is requested. The second allocation to be made to the City of \$1,750,422.56 for 2008/2009 is preceded by an allocation made to the City of \$1,893,832.07 for the 2007/2008 fiscal year. Council approval and appropriation of these projects is required before these funds are to be distributed to the City by the California Department of Finance and State Controller's Office. This is the last disbursement of funds scheduled to be available to the City from this voter approved proposition for a total of \$3,644,254.63.

Department Discussion

The following plan on Table 1 is a list of Capital Improvement Projects (CIP) to be funded with Prop 1B funds. The total of these allocations is \$3,644,254.63 and it is asked that Council appropriate the second allocation of \$1,750,422.56 for 2008/2009 in accordance with Proposition 1B's directives (see Table 1). All projects listed have a useful life of at least 15 years (in accordance with bond funding rules) and have a schedule that allows the funds to be expended within three years (the time frame set forth by the Prop 1B, otherwise funding is lost). Other requirements for receiving the second allocation of this proposition funding was that the City (explained further on Attachment 1):

- Shall have received full 2007/2008 allocation
- Shall have submitted information for the 2007/2008 allocation

For action by:

City Council
 Redev. Agency Bd.
 Cap. Impr. Corp.
 VPFA

For placement on which agenda:

Work Session
 Closed Session

Regular Session:

Consent Calendar
 Regular Item
 Public Hearing

Est. Time (Min.): 1

Review:

Dept. Head 11/24
(Initials & date required)

Finance 11/24
City Atty N/A
(Initials & date required or N/A)

City Mgr _____
(Initials Required)

If report is being re-routed after revisions leave date of initials if no significant change has affected Finance or City Attorney Review.

- Agree that funds for 2008/2009 will be used for projects not currently fully funded with a dedicated funding source(s)
- Encumber funds by July 1, 2009

Table 1 - Prop 1B Project List

	Capital Project Description	2007-08 Allocation	2008-09 Allocation	Design	Right of Way	Construction	Useful Life
1	Houston Avenue #9026 (Santa Fe to Ben Maddox), Project total \$3.1m; Measure R contributing \$625k	\$723,700	\$1,750,423	in progress	by Spring 2009	by Fall 2009	20 years
2	Akers, Modify signals for 2 left lanes to Cypress #9944, Project total \$680k; Transportation Impact fund contributing \$405k	\$275,000		completed	completed	by Fall 2008	20 years
3	Acequia two way traffic conversion #8056, Project total \$650k	\$650,000		completed	completed	by Spring 2009	20 years
4	Plaza Drive/198 SR interchange (Design Phase, ROW) #9438, Project total \$28.1m; Measure R/STIP \$20m	\$100,000		by Spring 2009	by Spring 2010	by Summer 2012	20 years
5	Walnut/Pinkham Traffic Signal #9804, Project total \$361k; Gas Tax contributing \$216k	\$145,132		completed	NA	by Fall 2008	20 years
	Total Prop 1B Allocation	\$1,893,832	\$1,750,423				

The proposed allocation for 2008/09 is based on current project priorities and projected budget shortfalls. Staff is proposing that the second Prop 1B allocation be expended for the Houston Avenue from Santa Fe to Ben Maddox project. This project has a revised total cost estimate to be approximately \$3.1 million. Current funding schedules show about \$2 million in available funding from 2007/08 budget rollover and 2008/09 budget allocations (\$732,173.55 from Measure R Local, Vehicle License Fee Funds \$803,100 and Prop 1B \$446,363.35 remaining 2007/08 allocation). With this second allocation of Prop 1B the funding gap that the City would need to fill for this project is eliminated and may free up approximately \$700,000 in Measure R Local or Vehicle License Fee funding for re-allocation to other projects with funding deficits after this project is completed.

In accordance with the bond regulations, this Proposition 1B project allocation schedule for 2008/09 is required to be approved by Council and will allow Staff to request the funding from the California Department of Finance and payment will be sent to the City from the State Controller's Office in the month following the month of receipt of a plan.

Updates are to be sent to the Department of Finance annually by Staff based on the approved plan of use until funds are exhausted. If a project becomes prolonged due to unforeseen circumstances and risks not spending the Prop 1B funding within the three year limit, Staff will bring back to Council a revised plan of use to make sure no funding is lost.

Prior Council/Board Actions:

2/19/2008 – First Appropriation of Proposition 1B 2007/08 projects

Committee/Commission Review and Actions:

N/A

Alternatives:

Other recommended Proposition 1B CIP budget appropriations

Attachments:

Attachment 1 –

'Eligibility Criteria for Cities' from California Department of Finance website regarding the 2008/2009 appropriation of Proposition 1B Disbursements – Local Streets and Roads

Recommended Motion (and Alternative Motions if expected):

I recommend the approval of the Prop 1B Local Streets and Road Improvement Project List and appropriate the second allocation of \$1,750,422.56 into the 2008/2009 CIP budget.

Environmental Assessment Status

CEQA Review: N/A

NEPA Review: N/A

Tracking Information: *(Staff must list/include appropriate review, assessment, appointment and contract dates and other information that needs to be followed up on at a future date)*

Copies of this report have been provided to:

Attachment1 - "Eligibility Criteria for Cities" from California Department of Finance website regarding the 2008/09 appropriation of Proposition 1B Disbursements - Local Streets and Roads

1. Of the funds appropriated in this item, \$187,000,000 is for allocation to cities or a city and county and \$63,000,000 is for allocation to counties or a city and county.
2. The Controller shall allocate these funds to cities or a city and county, on a first-come, first-served basis, following notification from the Department of Finance that the city or city and county has submitted a complete plan for the expenditure of these funds, pursuant to subdivision (b) of Section 8879.65 of the Government Code.
3. For purposes of this item, the following conditions shall apply for cities or a city and county receiving funds:
 - (a) A city or city and county shall have received its full allocation for the 2007-08 fiscal year.
 - (b) A city or city and county shall have submitted information for the 2007-08 fiscal year allocation as required in subdivision (c) of Section 8879.65 of the Government Code.
 - (c) A city or city and county shall agree that funds from the 2008-09 fiscal year allocation will be used for projects that are not currently fully funded with a dedicated funding source or sources.
 - (d) A city or city and county shall agree to encumber funds from the 2008-09 fiscal year allocation before July 1, 2009.
 - (e) A city or city and county shall report to the Department of Finance the total balance of unencumbered funds in the city's or city and county's existing account as described in subparagraphs (A) and (C) of paragraph (2) of subdivision (I) of Section 8879.23 of the Government Code.
 - (f) A city or city and county shall certify that the total balance of unencumbered funds in the account as described in subparagraphs (A) and (C) of paragraph (2) of subdivision (I) of Section 8879.23 of the Government Code is no more than the sum balance of three months of anticipated income from the Highway Users Tax Account in the Transportation Tax Fund, as described in Sections 2104, 2105, 2106, 2107, and 2107.5 of the Streets and Highways Code, and from the Transportation Investment Fund, as described in Section 7104 of the Revenue and Taxation Code. If a city or city and county has an unencumbered balance that exceeds the sum balance of the three months of anticipated income from the Highway Users Tax Account in the Transportation Tax Fund and the Transportation Investment Fund, the city or city and county shall reduce its existing unencumbered road fund balance, before the next report submitted to the Controller pursuant to Section 2151 of the Streets and Highways Code, by either of the following:
 - (1) By an amount equivalent to the allocation received under this subdivision.
 - (2) Until the unencumbered balance is no more than the sum balance of three months of anticipated income from the Highway Users Tax Account in the Transportation Tax Fund and the Transportation Investment Fund.
 - (g) For the purpose of this item, "unencumbered" means any portion of funding that is not designated, through prior approval by the city council, for use on the planning, review, design, or construction phase of a project currently underway at the time of the road fund report.
4. These funds shall be available for allocation by the Controller until June 30, 2011.

**City of Visalia
Agenda Item Transmittal**

Meeting Date: December 1, 2008

Agenda Item Number (Assigned by City Clerk): 3

Agenda Item Wording:

Second Reading and Adoption of Ordinance 2008-14 amending Section 16.44 of Visalia Municipal Code relating to Transportation Impact Fees. Consideration of revised Transportation Impact Fee Rates.

Adoption of Resolution 2008-58 establishing the Schedule of Transportation Impact Fees.

Deadline for Action: Not Applicable

Submitting Departments: Public Works, Community Development and Finance Departments

Contact Name and Phone Number:

Andrew Benelli, Public Works Director, 713-4340
Eric Frost, Finance Director, 713-4474

Department Recommendation and Summary:

It is recommended that the Visalia City Council hold the second reading and adopt Ordinance 2008-14 amending Section 16.44 of Visalia Municipal Code relating to Transportation Impact Fees.

It is also recommended that the City Council approves Resolution 2008-58 implementing new Transportation Impact Fee Rates.

Background:

On November 17, 2008 the City Council approved a new Transportation Impact Fee program and after a Public Hearing approved the first reading to amend Ordinance 2008-14.

Some of the language in the Ordinance has been changed from the first reading. The changes that were made were based on suggestions from the City Attorney's Office. They recommended changes that make the ordinance more enforceable and easier to understand. Some of the changes from the first reading are:

1. Eliminated the definitions for "Cash reimbursement", "Existing use deduction" and "Independent fee calculation generation study." These terms are no longer used in

For action by:

City Council
 Redev. Agency Bd.
 Cap. Impr. Corp.
 VPFA

For placement on which agenda:

Work Session
 Closed Session

Regular Session:

Consent Calendar
 Regular Item
 Public Hearing

Est. Time (Min.): 15

Review:

Dept. Head _____

Date: _____

Finance _____

City Atty _____

(Initials & date required or N/A)

City Mgr _____

(Initials Required)

If report is being re-routed after revisions leave date of initials if no significant change has affected Finance or City Attorney Review.

- the Ordinance. However, similar language still provides for all of these topics in the Ordinance.
2. Added a definition for “Nexus study”. This term was used in the Ordinance and needed to be defined.
 3. In Section 16.44.070 B1, language was added to allow for an annual adjustment of the reimbursement unit rates based on Engineering News Record Construction Cost Index (ENRCCI). This Index has always been used by the City to adjust the Fee Schedule but will now also be applied to the reimbursement payments for street construction.
 4. In Section 16.44.070 B2 and B3, added language to allow the Nexus Study and the Fee Schedule to be modified or amended whenever the Circulation Element of the General plan is amended, or when costs need to be adjusted more than would be reflected through a routine cost index adjustment. Procedures established by state law will be used in the event of modification or amendment of the Nexus Study or Fee Schedule.
 5. In Section 16.44.080 A1, changed the words in the Ordinance to clarify what fee rate will be applied to structures with two or more different or separable uses.
 6. Section 16.44.080 A2 addresses outdoor retail space. Permanent outdoor restaurant uses have now been included as area that is required to pay a fee.
 7. In Section 16.44.080 A5b, the current Ordinance allows developers to pay based on the Fee Schedule or gives them an option to pay based on an independent trip generation study. The proposed Ordinance will require that they pay based on the Fee Schedule when there is a category that matches their project. If not, they pay based on the Institute of Transportation Engineer’s Trip Generation Manual when the Manual has a category that matches their project. If neither the Fee Schedule nor the Trip Generation Manual has a matching category then they are allowed to pay based on an independent trip generation study.
 8. A large part of Section 16.44.150 “Reimbursement Agreements” was rewritten from the Ordinance presented to Council for the first reading. This section is now titled “Reimbursements for private construction of planned transportation facilities”. The revised language better addresses the process to prepare Reimbursement Agreements and authorizes the City Engineer to create and maintain a reimbursement policy manual that is consistent with the provisions of the Ordinance and the Nexus Study. This section provides for the developers to be repaid for making improvements within two years of completing the work. However, the proposed Ordinance does allow for the Reimbursement Agreement to specify a different payback terms if both the City and the Developer agree. The changes made from the last meeting are intended to reflect the intent of the staff as discussed during the last meeting and during meetings of the committee that has participated in the review of the mitigation fee program.

The changes to the existing Ordinance, that were presented on November 17, 2008, are still included in the proposed Ordinance. The November 17th Staff Report is included with this Report as Attachment 5.

The City Council is also being asked to approve revised Transportation Impact Fees. The Fee Schedule has not changed from what was presented on November 17th.

Prior Council/Board Actions: None

Committee/Commission Review and Actions: None

Alternatives:

Take no action.

Direct staff to make changes to the proposed Ordinance or Fee Schedule.

Attachments:

Attachment 1, Ordinance Number 2008-14

Attachment 2, Proposed Ordinance with strike-out of text as compared to first reading

Attachment 3, Proposed Ordinance with strike-out of text as compared to current ordinance

Attachment 4, Resolution 2008-58, A Resolution of the City Council of the City of Visalia

Adopting Revised Transportation Impact Fees

Attachment 5, November 17th Staff Report

Recommended Motion (and Alternative Motions if expected):

1. Hold the second reading of Ordinance 2008-14 amending Section 16.44 of Visalia Municipal Code relating to Transportation Impact Fees.
2. Approve Resolution 2008-58 implementing new Transportation Impact Fee Rates.

Environmental Assessment Status

CEQA Review: None

NEPA Review: None required.

Tracking Information: *(Staff must list/include appropriate review, assessment, appointment and contract dates and other information that needs to be followed up on at a future date)*

None.

Copies of this report have been provided to:
Transportation impact Fee Task Force

ORDINANCE NUMBER 2008 -- 14

AN ORDINANCE REPEALING CHAPTER 16.44, SECTIONS 16.44.010 THROUGH 16.44.180 AND REPLACING IT WITH A NEW CHAPTER 16.44, SECTIONS 16.44.010 THROUGH 16.44.190, IMPLEMENTING THE CITY OF VISALIA TRANSPORTATION IMPACT FEE PROGRAM

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF VISALIA

Section 1: Consistent with the authority of the Charter of the City of Visalia and the statutes of the State of California, the City Council of the City of Visalia hereby enacts a revised Transportation Impact Fee.

Section 2: Chapter 16.44, Sections 16.44.010 through 16.44.180, of the Visalia Municipal Code is hereby repealed in its entirety and replaced with a new Chapter 16.44, Section 16.44.010 through 16.44.190 as indicated in Exhibit A, attached hereto and incorporated herein.

Section 3: Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstances, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not effect the validity or enforceability of the remaining sections, subsections, subdivision, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of Visalia hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 4: Construction. The City Council intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

Section 5: Effective Date. This Ordinance shall take effect sixty days after its adoption.

Section 6: Certification. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

PASSED AND ADOPTED:

Jesus Gamboa, Mayor

ATTEST:

Steven M. Salomon, City Clerk

APPROVED AS TO FORM
BY CITY ATTORNEY:

Alex M. Peltzer, City Attorney

Exhibit A Ordinance 2008 - 14

Chapter 16.44

TRANSPORTATION IMPACT FEES

Sections:

- 16.44.010 Legislative findings.
- 16.44.020 Short title, authority and applicability.
- 16.44.030 Intents and purposes.
- 16.44.040 Rules of construction.
- 16.44.050 Definitions.
- 16.44.060 Imposition of transportation impact fee.
- 16.44.070 Fee schedule.
- 16.44.080 Computation of the amount of transportation impact fee.
- 16.44.090 Payment of fee.
- 16.44.100 Timing of fee payment.
- 16.44.110 Transportation impact fee trust fund established.
- 16.44.120 Use of funds.
- 16.44.130 Refund of fees paid.
- 16.44.140 Exemptions and reductions.
- 16.44.150 Reimbursement for private construction of planned transportation facilities.
- 16.44.160 Exceptions.
- 16.44.170 Appeal process.
- 16.44.180 Penalty provisions.
- 16.44.190 Severability.

Section 16.44.010 Legislative findings.

The city council of the city finds, determines and declares that:

A. The city must expand its street system in order to maintain acceptable levels of service if new development is to be accommodated without reducing these levels of service to unacceptable levels as established in the circulation element of the general plan of the city. This must be done in order to promote and protect the public health, safety and welfare;

B. The California Legislature through the enactment of California statutes has authorized and encouraged cities to enact impact fees in order to meet the impacts of new development;

C. The imposition of impact fees is one of the preferred methods of ensuring that development bears a proportionate share of the cost of capital facilities necessary to accommodate such development. This must be done in order to promote and protect the public health, safety and welfare;

D. Each of the land use categories shown in the schedule of fees to be adopted pursuant to Section 16.44.070, will generate traffic necessitating the acquisition of rights-of-way, street construction and street improvements;

E. The fees established under the authority of Section 16.44.070 are derived from, are based upon, and do not exceed the costs of providing additional rights-of-way, street construction and street improvements necessitated by the new land developments for which the fees are levied;

F. The city has commissioned the completion of the report titled "Traffic Impact Fee Update Nexus Study City of Visalia," dated November 13, 2008. Such report, as it may be revised from time to time, sets forth a reasonable methodology and analysis for the determination of the impact of new development on the need for and costs for additional rights-of-way, street construction and street improvements in the city. (Prior code § 9465)

Section 16.44.020 Short title, authority and applicability.

A. This chapter shall be known and may be cited as the "City of Visalia Transportation Impact Fee Ordinance."

B. The city council of the city has the authority to adopt this chapter pursuant to its Charter and pursuant to Article XI of Section 7 of the Constitution of the state of California, and Government Code Sections 65300 et. seq., 66000 et. seq., and 66470 et. seq. of California statutes.

C. This chapter shall apply in the incorporated area of the city to the extent permitted by Article XI of Section 7 of the Constitution of the state of California. (Prior code § 9470)

Section 16.44.030 Intents and purposes.

A. This chapter is intended to assist in the implementation of the circulation element of the Visalia General Plan.

B. The purpose of this chapter is to regulate the use and development of land so as to

assure that new development bears a proportionate share of the cost of capital expenditures necessary to provide streets in the city. (Prior code § 9475)

Section 16.44.040 Rules of construction.

A. The provisions of this chapter shall be liberally construed so as to effectively carry out its purpose in the interest of the public health, safety and welfare.

B. For the purpose of administration and enforcement of this chapter, unless otherwise stated in this ordinance, the following rules of construction shall apply to the text of this chapter:

1. In case of any difference of meaning or implication between the text of this chapter and any caption, illustration, summary table, or illustrative table, the text shall control.

2. The word "shall" is always mandatory and not discretionary; the word "may" is permissive.

3. Words used in the present tense shall include the future; and words used in the singular number shall include the plural, and the plural the singular, unless the context clearly indicates the contrary.

4. The phrase "used for" includes "arranged for," "designed for," "maintained for," or "occupied for."

5. The word "person" includes an individual, a corporation, a partnership, an incorporated association, or any other similar entity.

6. Unless the context clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions, or events connected by the conjunction "and," "or" or "either...or," the conjunction shall be interpreted as follows:

a. "And" indicates that all the connected terms, conditions, provisions or events shall apply.

b. "Or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination.

c. "Either...or" indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.

7. The word "includes" shall not limit a term to the specific example but is intended to extend its meaning to all other instances or circumstances of like kind or character.

8. "City engineer" means the city engineer or city officials he/she may designate to carry out the administration of this chapter.

9. A street right-of-way used to define transportation impact fee district boundaries may be considered within any district it bounds. (Prior code § 9480)

Section 16.44.050 Definitions.

As used in this chapter, the following terms are defined in this section:

“Accepted by the city” means the acceptance by the city of newly constructed public improvements as evidenced by the recording by the city of a Notice of Completion with the County, or by the issuance of a final inspection of an encroachment permit.

"Arterial street" shall have the same meaning as set forth in Section 16.08.010 of the city of Visalia Municipal Code.

A "capital improvement" includes transportation planning, preliminary engineering, engineering design studies, land surveys, right-of-way acquisition, engineering, permitting and construction of all the necessary features for any street construction project including, but not limited to:

1. Construction of new through lanes;
2. Construction of new turn lanes;
3. Construction of new bridges or culverts;
4. Construction of new drainage facilities in conjunction with new street construction;
5. Purchase and installation of traffic signalization (including new and upgraded signalization);
6. Construction of curbs, medians, and shoulders; and
7. Relocating utilities to accommodate new street construction.

"Collector street" shall have the same meaning as set forth in Section 16.08.010 of the city of Visalia Municipal Code.

“Developer” means any person who undertakes a land development project within the City.

"Development permit" means a regulatory approval of a land development project by the city, including but not limited to a building permit, subdivision map, parcel map, conditional use permit or planned development permit, as those terms are defined in the Municipal Code.

"Expansion" of the capacity of a road applies to all street and intersection capacity enhancements and includes but is not limited to extensions, widening, intersection improvements, upgrading signalization, and expansion of bridges or culverts.

"Feepayer" means a developer who is required to pay the transportation impact with the issuance of a building permit or permit for mobile home installation.

"Freeway" shall have the same meaning as set forth in Section 16.08.010 of the Visalia Municipal Code.

"Land development project" means any land division, building, construction, reconstruction or remodeling project that results in new improvement to real property and requires the obtaining of development permits from the city.

"Land use categories" means the specific list of land uses shown in a fee schedule developed under the authority of this Chapter that generate vehicle trips and were used to project future vehicle trips for the calculation of the transportation impact fee.

"Level of service" shall have the same meaning as set forth in the Highway Research Board's Highway Capacity Manual (latest Edition, as amended).

"Major arterial" shall have the same meaning as set forth in Section 16.08.010 of the Visalia Municipal Code.

"Nexus study" means the report titled "Traffic Impact Fee Update Nexus Study City of Visalia," dated November 13, 2008, and any amendment or modification of such report that may be accepted by resolution of the City Council in a manner consistent with the requirements (including the required findings) contained in the Mitigation Fee Act (California Government Code section 66000 et seq.)

"Planned transportation facilities" means that portion of the arterial/collector street system that is established in the adopted circulation element of the general plan of the city and is included for funding in the calculation of the transportation impact fee in the nexus study.

"Site-related improvements" means street and related improvements and right-of-way dedications for direct access improvements to and/or within the land development project in question. Site related improvements include, but are not limited to the following: (1) street improvements consisting of, or the equivalent of, a parking lane with curb and gutter along the arterial/collector street frontages of the land development project; (2) local streets leading to the land development project; (3) driveways and streets within the land development project; (4) acceleration and deceleration lanes, and right and left turn lanes leading to those streets and driveways; (5) traffic control measures for those streets and driveways; and (6) utility realocations.

"Street" shall have the same meaning as set forth in Section 16.08.010 of the Visalia Municipal

Code.

"Trip" means a single or one direction vehicle movement with either the origin or destination (exiting or entering) inside the study site.

"Trip ends" means the total of all trips entering plus all trips leaving a designated land use or building type over a period of time. (Prior code § 9485)

Section 16.44.060 Imposition of transportation impact fee.

A. Any person who, after the effective date of this chapter, seeks to commence a land development project within the city by applying for: a building permit; an extension of a building permit issued prior to that date; a permit for mobile home installation; or an extension of a permit for mobile home installation issued prior to that date, to make an improvement to land which will generate additional traffic is required to pay a transportation impact fee in the manner and amount set forth in this chapter.

B. No new building permit or new permit for mobile home installation for any activity requiring payment of an impact fee pursuant to Section 16.44.070 shall be issued unless and until the transportation impact fee required has been paid.

C. No extension of a building permit or permit for mobile home installation issued prior to the effective date of this chapter, for any activity requiring payment of an impact fee pursuant to Section 16.44.070 shall be granted unless and until the transportation impact fee required has been paid. This subsection shall not apply if the applicant applying for an extension of a building permit or permit for mobile home installation can demonstrate that a good faith effort has been applied to begin construction or that substantial completion has occurred in conformance with the approved building permit or permit for mobile home installation. (Prior code § 9490)

Section 16.44.070 Fee schedule.

A. The council shall establish by resolution, a schedule of transportation impact fees calculated to provide the sum of money necessary to fund the portion of the total cost of the planned transportation facilities allocated to new development, as set forth in the nexus study. The resolution adopting such schedule shall be approved following at least one public hearing in conformity with the provisions of state law and this Chapter, shall be based on the nexus study, and shall include the following findings by the council:

1. That the planned transportation facilities are in conformity with the circulation element of the general plan of the city;

2. That the development of property will require construction or acquisition of planned transportation facilities and that the fees are fairly apportioned on the basis of benefits conferred on property developed or to be developed or on the need for planned transportation facilities created by proposed or existing development of property;

3. That transportation facilities are in addition to any existing transportation facilities serving the city at the time of adoption of the circulation element of the general plan are necessary to complete the planned transportation facilities.

B. The schedule of fees adopted pursuant to subsection A above shall remain in effect until revised pursuant to the following process and criteria:

1. On April 1st of each year the city engineer shall review the current Engineering News Record Construction Cost Index (ENRCCI) for the cities of Los Angeles and San Francisco, CA. When the average of such indices differs from the average of the indices for the preceding April 1st, the factor of increase or decrease shall be applied to the schedule of fees. Such factor shall be computed by dividing the average ENRCCI for the current April 1st by that pertaining to the previous April 1st. The individual transportation impact fee rates may be multiplied by the factor to determine the adjusted schedule of fees. The city engineer shall present the new fee schedule for adoption by resolution of council after at least one public hearing. The city engineer shall also apply such factor to the schedule of reimbursement unit rates as established pursuant to Section 16.44.150. Modifications of the fee rates and reimbursement unit rates as called for by this subparagraph shall be considered programmed adjustments, provided that such adjustments are addressed by the nexus study then in effect or the resolution approving such nexus study, and therefore shall not require a new, amended or revised nexus study.

2. In the event of a future amendment of the circulation element that has the effect of adding or removing new planned transportation facilities, the city engineer shall review the nexus study and if such review concludes that the costs of the planned transportation facilities attributable to new development is changed as a result of the addition or removal, the city engineer shall modify, amend or revise the nexus study, as may be appropriate. The city engineer shall present such modification, amendment or revision to the council together with a revised schedule of transportation impact fees, for approval by resolution in a manner that is consistent with this Chapter.

3. If in the determination of the city engineer the adjustment of the schedule of fees

produced by the procedure in subdivision (1) of this subsection is not representative of the actual change in costs of the planned transportation facilities, the city engineer may, in lieu of the procedures set forth in said paragraph, compute a new schedule of fees by initiating a modification, amendment or revision of the nexus study, as may be appropriate, and presenting such new schedule of fees together with such modified, amended or revised nexus study for adoption by resolution of the council after at least one public hearing.

4. In the event of the adoption of a new schedule of fees by resolution of the council, such new schedule shall become effective sixty (60) days after the adoption thereof by the council. The adjustment of such schedule provided in subdivision (1) of this subsection shall begin the April 1st next occurring after adoption of the new schedule. (Ord. 9719 § 2, 1997)

Section 16.44.080 Computation of the amount of transportation impact fee.

A. The feepayer shall pay the amount of the transportation impact fee as determined from the schedule of fees established pursuant to Section 16.44.070.

1. If a building permit is requested for a structure or structures that will feature two or more different and separable uses, the fee shall be determined by apportioning the space committed to the respective different and separable uses and applying the appropriate land use category for each such apportioned space.. Where a building permit is requested for a structure that will feature two or more distinguishable uses but such uses are not separable, the city engineer shall determine which use is the predominant use and shall apply the land use category appropriate for such predominant use to the entire building area of the project.

2 If a building permit is requested for a restaurant or retail use that includes outdoor space intended for permanent use in conjunction with the indoor portion of the restaurant or retail use, then the outdoor space will be included in overall building size as a restaurant or retail space, as the case may be, in the determination of the fee.

3. If a shell building permit is requested for a planned retail, office or industrial use tenant, then the fee will be determined at the lowest fee rate for the applicable land use shown in the schedule of fees. If necessary, additional fees will be determined at the time that a tenant improvement permit is requested if the land use is higher than that used for the shell building permit.

4. For applications for an extension of a building permit or an extension of a permit for mobile home installation, the amount of the fee is the difference between that fee then applicable and

any amount already paid pursuant to this chapter.

5. If the land use category for a development project that a building permit is applied for is not clearly specified on the applicable fee schedule, the city engineer shall use the fee applicable to the most nearly comparable type of land use category on the fee schedule. The city engineer shall be guided in the selection of a comparable type by the report titled "Trip Generation" (latest edition) prepared by Institute of Transportation Engineers. If the city engineer determines that there is no comparable type of land use category on the applicable fee schedule, then the city engineer shall determine the fee by:

a. Considering comparable traffic generation statistics for similar types of land use categories contained in the report titled "Trip Generation" (latest edition) prepared by Institute of Transportation Engineers; or

b. If no appropriate land use category can be determined through subparagraph a., allowing the feepayer to submit an independent trip generation study prepared in accordance with the requirements of the Institute of Transportation Engineers. The study shall be prepared and presented by professionals qualified in their respective fields. The city engineer shall consider the study, but is not required to accept the study as he/she shall reasonably deem to be inaccurate or not reliable and may, in the alternative, require an amended study for consideration. If an acceptable independent trip generation study is not presented, the feepayer shall pay transportation impact fees based upon the city engineer's determination in subsection (3)(a) of this section. If an acceptable independent trip generation study is presented, the city engineer shall determine the fee level by applying the number of trips indicated in the independent trip generation study to the fee rate calculation formula as contained in the nexus study.

6. In the case of change of use, redevelopment or expansion or modification of an existing use which requires the issuance of a building permit or permit for mobile home installation, the transportation impact fee shall be based upon the net positive increase in the impact fee for the new use as compared to the previous use. The city engineer shall be guided in this determination by traffic generation statistics contained in a report titled "Trip Generation" (latest edition) prepared by Institute of Transportation Engineers.

Section 16.44.090 Payment of fee.

A. The feepayer shall pay the transportation impact fee required by this ordinance to the city engineer or his designee prior to the issuance of a building permit or a permit for mobile home

installation.

B. All funds collected shall be properly identified and promptly transferred for deposit in the transportation impact fee fund as determined in Section 16.44.110 and used solely for the purposes specified in this chapter. (Prior code § 9505)

Section 16.44.100 Timing of fee payment.

A. Notwithstanding the requirements of Section 16.44.090, the city council may, by resolution, authorize the payment of the fee at a time other than that identified in Section 16.44.090.

B. In adopting the resolution identified in subsection (A) of this section, the city council shall make the following findings:

1. That the state of the economy in the city is such that the deferment of the fee required by this chapter will stimulate the economy and enhance the provision of jobs; and

2. That the deferment of the fee required by this chapter will not materially affect the ability of the city to deliver its five year capital improvement program.

C. In adopting the resolution identified in subsection (A) of this section, the city council shall:

1. Identify the point in time at which the fee shall be paid; provided, that in no event shall the deferral be extended beyond the time of the final inspection or issuance of the certificate of occupancy, whichever occurs first;

2. Identify to which major land use category (i.e., residential, commercial, office and/or industrial) the resolution applies;

3. Identify whether or not a contract shall be entered into by and between the property owner, or lessee if the lessee's interest appears of record, and the city prior to the issuance of the building permit. If a contract is required to be executed, it shall be processed and recorded in accordance with Government Code Section 66007(c). In lieu of entering into a contract, if one is required, the feepayer may provide such other form of surety instrument guaranteeing payment of the fee as may be acceptable to the city engineer or his/her designee and the city attorney;

4. Impose a penalty, equal to one hundred (100) percent of the amount of the fees deferred, on any party who fails to pay the deferred fee by the point in time specified in such resolution; and

5. Provide that a party who fails to pay such deferred fees by the point in time specified in such resolution shall further forfeit the future right to defer such fees on parcels in which such party

has a financial interest.

D. Companies classified within the following Standard Industrial Codes shall be able to pay their development impact fees over five years without interest or administrative fee. The first installment of twenty (20) percent shall be due upon occupancy and the balance shall be paid in five equal annual installments thereafter and shall be collected on the property tax roll. The collection of the balance due on the property tax roll shall not preclude the earlier payment of any outstanding balance.

- 2000--2099 Food processing
- 2200--3999 Certain other manufacturers
- 4200--4299 Trucking and warehousing
- 4500--4599 Air transportation
- 4700--5199 Transportation services and warehouse trade

(Ord. 9818 § 5, 1998)

Section 16.44.110 Transportation impact fee trust fund established.

A. There is established a separate transportation impact fee trust fund.

B. Funds withdrawn from this account must be used in accordance with the provisions of Section 16.44.120. (Prior code § 9510)

Section 16.44.120 Use of funds.

A. Funds collected from transportation impact fees shall be used for the purpose of capital improvements to and expansion of planned transportation facilities as designated by the city and any other transportation projects related to growth that may be determined from time to time by the city council.

B. No funds shall be used for periodic or routine maintenance.

C. In the event that bonds or similar debt instruments are issued for advance provision of planned transportation facilities for which transportation impact fees may be expended, impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the facilities provided are of the type described in subsection (A) of this section.

D. At least once each fiscal year, the city engineer shall present to the city council a proposed capital improvement program for planned transportation facilities, assigning funds, including

any accrued interest, from the transportation impact fee to specific road improvement projects and related expenses. Monies, including any accrued interest, not assigned in any fiscal year shall be retained in the transportation impact fee fund until the next fiscal year except as provided by the refund provisions of this chapter.

E. Funds may be used to provide refunds as described in Section 16.44.130.

F. The city shall be entitled to retain not more than five percent of the funds collected as compensation for the expense of collecting the fee and administering this chapter. (Prior code § 9515)

Section 16.44.130 Refund of fees paid.

If a building permit or permit for mobile home installation expires without commencement of construction, then the feepayer shall be entitled to a refund, without interest, of the impact fee paid as a condition of its issuance; except, that the city shall retain five percent of the fee to offset a portion of the costs of collection and refund. The feepayer must submit an application for such refund to the city engineer within thirty (30) days of the expiration of the permit.

Section 16.44.140 Fee exemptions and reductions.

A. The following shall be exempted from payment of the impact fee:

1. Alterations or expansion of an existing building where no additional units are created, where the use is not changed, and where no additional vehicular trips will be produced over and above those produced by the existing use.

2. The construction of accessory buildings or structures which will not produce additional vehicular trips over and above those produced by the principal building or use of the land.

3. The replacement of a destroyed or partially destroyed building or structure with a new building or structure of the same size and use provided that no additional trips will be produced over and above those produced by the original use of the land.

4. The installation of a replacement mobile home on a lot or other such site when a transportation impact fee for such mobile home site has previously been paid pursuant to this ordinance or where a mobile home legally existed on such site on or prior to the effective date of this chapter.

5. Any claim of exemption must be made in writing and agreed to by the city prior to the issuance of the applicable building permit or permit for mobile home installation. Any claim not so

made shall be deemed waived.

B. Where a fee is otherwise payable pursuant to this chapter, a feepayer may apply for a reduction of the fee to recognize an existing or previous use on the subject real property. A reduction for existing or previous use shall be provided where an existing structure or structures with clearly established uses will be demolished in conjunction with a land development project, or a structure or structures have been demolished on the subject property within twenty (20) years of a land development project and where there is clear documentation of the previous existence and use. No reduction pursuant to this subsection shall result in a reduction of the fee to less than zero. No reduction pursuant to this subsection may be transferable to other projects on other properties. The feepayer is responsible for submitting all documentation required by the city for consideration of an existing or previous use fee reduction. Any request for an existing or previous use reduction must be made in writing and the amount determined by the city prior to the issuance of the applicable building permit or permit for mobile home installation. The amount of reduction shall be determined by the city engineer and shall be based on the amount fee that would be payable by the previous use with reference to the fee schedule in existence at the time of the new building permit.

Section 16.44.150 Reimbursements for private construction of planned transportation facilities.

A. It is the intent of the city that, whenever practicable, planned transportation facilities be constructed, and related right of way be dedicated, by developers in conjunction with land development projects, and that such construction and dedication be required as conditions of the development permit related to such projects pursuant to and consistent with the authority of various provisions the Municipal Code and statutes of the State of California. It is also the intent of the city that a portion of the cost for such construction and dedication of the planned transportation facilities and related right of way be reimbursed by the city, and that such reimbursements be among the assumptions made by the nexus study in establishing the fee schedule to be adopted pursuant to this Chapter. Consistent with this intent, developers who are required to construct planned transportation facilities and make right-of-way dedications are entitled to reimbursement for all such facilities, except that a developer shall not be reimbursed for the cost of site related improvements as defined in this chapter or for the value of right of way associated with site related improvements.

B. The city engineer is authorized to create and maintain a reimbursement policy manual setting forth the manner in which this section shall be implemented. Such reimbursement policy

manual shall be consistent with the provisions of this section and with the assumptions and methodologies contained in the nexus study.

C. As may be more fully described in the reimbursement policy manual, reimbursements for planned transportation facilities shall be made on the basis of unit costs and right of way values as established by the schedules of costs and land values as contained in the nexus study and that serve as the basis for that study, as adjusted from time to time pursuant to this chapter, and shall not be made based on actual construction or land costs or market values.

D. No reimbursement shall be made except as provided in a written reimbursement agreement between the City and the developer entered into prior to commencement of construction of the subject planned transportation facilities. Among other things, such agreements shall provide for the following:

1. The reimbursement agreement shall set forth the agreed to unit costs and right of way values.

2. The reimbursement agreement shall set forth the timing and manner of reimbursement payments.

3. To the extent the total amount of reimbursement due to a developer is less than or equal to the total amount of fees that are anticipated to be paid by feepayers in relation to the subject land development project, the reimbursement agreement shall provide that such amount shall be paid as reimbursement only as such fees are received by the City, but in no event later than two years from the date of acceptance of the improvements, or as otherwise agreed to in the reimbursement agreement.

4. To the extent the reimbursement to be made to the developer exceeds the total amount of transportation impact fees that are to be paid by feepayers related to the subject land development project, the reimbursement agreement shall set forth the manner and timing of such reimbursement payments.

5. The reimbursement agreement shall require that the developer apply for reimbursement pursuant to the agreement no later than four (4) years after: (1) the construction of the public improvements, including planned transportation facilities, for a land development project are completed and accepted by the city or (2) the effective date of this ordinance; whichever date is later. The developer shall waive the right of reimbursement for construction costs payable under this section when the reimbursement is not applied for within said four (4) year limitation.

E. Reimbursement payments otherwise due to the developer will not be made until all of the following requirements are met:

1. Construction of the public improvements, including planned transportation facilities, for the land development project are completed and accepted by the city; and
2. A reimbursement request is submitted to the city per the requirements of the city's reimbursement policy manual; and
3. Thirty (30) days have past since acceptance by the city to ensure that no claims of nonpayment have been filed with the city by any contractor or subcontractor; and
4. Any further requirements of the city's reimbursement policy manual have been met.

F. No interest shall be paid by the city on any outstanding reimbursement amount set forth in a reimbursement agreement.

G. If the city enters into a reimbursement agreement authorized by this section, the agreement shall provide that:

1. The general fund of the city is not liable for payment of any obligations arising from the agreement;
2. The credit of the city is pledged for the payment of any obligations arising from the agreement solely from dedicated transportation funds;
3. The landowner shall not compel the exercise of the city taxing power or the forfeiture of any of its property to satisfy any obligations arising from the agreement; and
4. The obligation arising from the agreement is a debt of the city, payable from income, receipts, or revenues from the transportation impact fee trust fund and other dedicated transportation funds.

Section 16.44.160 Exceptions.

A. The city council may, from time to time, authorize exceptions to the payment of the transportation impact fee required by this Chapter.

B. If the city council determines to authorize exceptions pursuant to subsection (A) of this section, the city council shall adopt a resolution to that effect which shall:

1. State the findings made to support the decision to authorize exceptions to the payment

of the transportation impact fee required by this Chapter;

2. Determine which land use categories (residential, commercial, office or industrial) to which they will authorize exceptions to the payment of the transportation impact fee required by Section 16.44.090;

3. Determine the percentage of the transportation impact fee for each land use category to which they will authorize exceptions to the payment of the transportation impact fee required by Section 16.44.090;

4. Make a budget appropriation in the general fund, or such other discretionary fund, of a dollar amount equal to the estimated revenues which would have been collected had the city council determined not to authorize exceptions to the payment of the transportation impact fee required by Section 16.44.090;

5. Set a date upon which the resolution expires. In any event, the resolution shall expire at the end of the then current fiscal year.

C. Upon the issuance of a building permit for a land use category which has been determined to be excepted from the payment of the transportation impact fee pursuant to this section, the finance director shall transfer from the general fund, or such other discretionary fund as deemed appropriate by the city council, to the transportation impact fee fund an amount equal to the excepted portion of the transportation impact fee.

D. The city council may, by the adoption of a resolution, amend any exceptions or approvals granted pursuant to any resolution adopted consistent with subsection (B) of this section.

E. It is the intent of this section to provide the city council with a tool to promote the economic development of the city, while at the same time insuring sufficient revenue in the transportation impact fee fund to fund the projects that have been identified as a result of growth and development in the community. It is not the intent of this section to exempt the feepayer from having to construct or pay for site-related improvements. (Prior code § 9530)

Section 16.44.170 Appeal process.

Determinations made by the city engineer pursuant to this chapter may be appealed by filing a written request to the city manager within fourteen (14) days of the city engineer's decision. The city manager will consider the written appeal and issue a final decision.

Section 16.44.180 Penalty provisions.

A violation of this chapter shall be prosecuted in the same manner as misdemeanors are prosecuted and upon conviction, the violator shall be punishable according to law; however, in addition to or in lieu of any criminal prosecution the city shall have the power to sue in civil court to enforce the provisions of this chapter. (Prior code § 9535)

Section 16.44.190 Severability.

If any section, phrase, sentence or portion of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof. (Prior code § 9540)

Revised 16.44.010
Showing Changes From First Reading

Chapter 16.44

TRANSPORTATION IMPACT FEES

Sections:

- 16.44.010** Legislative findings.
- 16.44.020** Short title, authority and applicability.
- 16.44.030** Intents and purposes.
- 16.44.040** Rules of construction.
- 16.44.050** Definitions.
- 16.44.060** Imposition of transportation impact fee.
- 16.44.070** Fee schedule.
- 16.44.080** Computation of the amount of transportation impact fee.
- 16.44.090** Payment of fee.
- 16.44.100** Timing of fee payment.
- 16.44.110** Transportation impact fee trust fund established.
- 16.44.120** Use of funds.
- 16.44.130** Refund of fees paid.
- 16.44.140** Exemptions and ~~deductions~~reductions.
- 16.44.150** Reimbursement ~~agreements~~for private construction of planned transportation facilities.
- 16.44.160** Exceptions.
- 16.44.170** Appeal process.
- 16.44.180** Penalty provisions.
- 16.44.190** Severability.

Section 16.44.010 Legislative findings.

The city council of the city finds, determines and declares that:

A. The city must expand its street system in order to maintain acceptable levels of service if new development is to be accommodated without reducing these levels of service to unacceptable levels as established in the circulation element of the general plan of the city. This must be done in order to promote and protect the public health, safety and welfare;

B. The California Legislature through the enactment of California statutes has ~~sought~~ authorized and encouraged cities ~~to encourage the city~~ to enact impact fees in order to meet the impacts of new development;

C. The imposition of impact fees is one of the preferred methods of ensuring that development bears a proportionate share of the cost of capital facilities necessary to accommodate such development. This must be done in order to promote and protect the public health, safety and welfare;

D. Each of the land use categories shown in the schedule of fees to be adopted pursuant to ~~in~~ Section 16.44.070, will generate traffic necessitating the acquisition of rights-of-way, street construction and street improvements;

E. The fees established ~~by~~ under the authority of Section 16.44.070 are derived from, are based upon, and do not exceed the costs of providing additional rights-of-way, street construction and street improvements necessitated by the new land developments for which the fees are levied;

F. The city has commissioned the completion of the report ~~entitled~~ "Traffic Impact Fee Update Nexus Study City of Visalia," dated November ~~6~~13, 2008. Such report, ~~and~~ as it may be revised from time to time, sets forth a reasonable methodology and analysis for the determination of the impact of new development on the need for and costs for additional rights-of-way, street construction and street improvements in the city. (Prior code § 9465)

Section 16.44.020 Short title, authority and applicability.

A. This chapter shall be known and may be cited as the "City of Visalia Transportation Impact Fee Ordinance."

B. The city council of the city has the authority to adopt this chapter pursuant to its Charter and pursuant to Article XI of Section 7 of the Constitution of the state of California, and ~~pursuant to~~ Government Code Sections 65300 et. seq., 66000 et. seq., and 66470 et. seq. of California statutes.

C. This chapter shall apply in the incorporated area of the city to the extent permitted by Article XI of Section 7 of the Constitution of the state of California. (Prior code § 9470)

Section 16.44.030 Intents and purposes.

A. This chapter is intended to assist in the implementation of the circulation element of the Visalia General Plan.

B. The purpose of this chapter is to regulate the use and development of land so as to assure that new development bears a proportionate share of the cost of capital expenditures necessary to provide streets in the city. (Prior code § 9475)

Section 16.44.040 Rules of construction.

A. The provisions of this chapter shall be liberally construed so as to effectively carry out its purpose in the interest of the public health, safety and welfare.

B. For the purpose of administration and enforcement of this chapter, unless otherwise stated in this ordinance, the following rules of construction shall apply to the text of this chapter:

1. In case of any difference of meaning or implication between the text of this chapter and any caption, illustration, summary table, or illustrative table, the text shall control.

2. The word "shall" is always mandatory and not discretionary; the word "may" is permissive.

3. Words used in the present tense shall include the future; and words used in the singular number shall include the plural, and the plural the singular, unless the context clearly indicates the contrary.

4. The phrase "used for" includes "arranged for," "designed for," "maintained for," or "occupied for."

5. The word "person" includes an individual, a corporation, a partnership, an incorporated association, or any other similar entity.

6. Unless the context clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions, or events connected by the conjunction "and," "or" or "either...or," the conjunction shall be interpreted as follows:

a. "And" indicates that all the connected terms, conditions, provisions or events shall apply.

b. "Or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination.

c. "Either...or" indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.

7. The word "includes" shall not limit a term to the specific example but is intended to extend its meaning to all other instances or circumstances of like kind or character.

8. "City engineer" means the city engineer or city officials he/she may designate to carry

out the administration of this chapter.

9. A street right-of-way used to define transportation impact fee district boundaries may be considered within any district it bounds. (Prior code § 9480)

Section 16.44.050 Definitions.

As used in this chapter, the following terms are defined in this section:

"Accepted by the city" means ~~the process performed by the city to officially~~the acceptance by the city of~~accept responsibility for~~ newly constructed public improvements as evidenced by. ~~This process is completed when the city records~~the recording by the city of a Notice of Completion with the County, or by the issuance of a ~~grants a final approval~~inspection of an ~~to the related~~ encroachment permit.

"Arterial street" shall have the same meaning as set forth in Section 16.08.010 of the city of Visalia Municipal Code.

A "capital improvement" includes transportation planning, preliminary engineering, engineering design studies, land surveys, right-of-way acquisition, engineering, permitting and construction of all the necessary features for any street construction project including, but not limited to:

1. Construction of new through lanes;
2. Construction of new turn lanes;
3. Construction of new bridges or culverts;
4. Construction of new drainage facilities in conjunction with new street construction;
5. Purchase and installation of traffic signalization (including new and upgraded signalization);
6. Construction of curbs, medians, and shoulders; and
7. Relocating utilities to accommodate new street construction.

~~"Cash reimbursement" is a form of reimbursement to a developer that results in a cash payment for the construction of planned transportation facilities as set forth in greater detail in a reimbursement agreement.~~

"Collector street" shall have the same meaning as set forth in Section 16.08.010 of the city of Visalia Municipal Code.

"Developer" means any person ~~commencing~~who undertakes a land development project within the city ~~that generates traffic. The developer may or may not be a feepayer.~~

"Development permit" means a regulatory approval of a land development project by the city.

including but not limited to a building permit, subdivision map, parcel map, conditional use permit or planned development permit, as those terms are defined in the Municipal Code.

~~“Existing use deduction” means a decrease applied to the calculation of the fee determined from existing structures that are or were located on the same property where a land development project is occurring.~~

"Expansion" of the capacity of a road applies to all street and intersection capacity enhancements and includes but is not limited to extensions, widening, intersection improvements, upgrading signalization, and expansion of bridges or culverts.

"Feepayer" means ~~any person commencing a land development activity project within the city which that generates traffic and which~~ a developer who is required to pay the transportation impact with the issuance of a building permit or permit for mobile home installation. ~~A feepayer may or may not be a developer.~~

"Freeway" shall have the same meaning as set forth in Section 16.08.010 of the Visalia Municipal Code.

~~"Independent fee calculationtrip generation study" means the traffic engineering and/or economic documentation prepared by a feepayer to allow the determination of the appropriate category of trip generation for a type of land development projectimpact fee other than those project types shown only by the use of the table fee schedule referenced in Section 16.44.070(A).~~

"Land development project" means any land division, building, construction, reconstruction or remodeling project that results in new improvement to real property and ~~project initiated by a developer that generates traffic and~~ requires the obtaining of development permits from the city ~~and typically includes new building construction, existing building remodeling and the construction of site-related improvements and planned transportation facilities.~~

"Land use categories" means the specific list of land uses shown in ~~the~~ a fee schedule developed under the authority of this Chapter that generate vehicle trips and were used to project future vehicle trips for the calculation of the transportation impact fee. ~~These specific land use categories are defined in a report titled "Trip Generation" (latest edition) prepared by Institute of Transportation Engineerse.~~

"Level of service" shall have the same meaning as set forth in the Highway Research Board's Highway Capacity Manual (latest Edition, as amended).

"Major arterial" shall have the same meaning as set forth in Section 16.08.010 of the Visalia Municipal Code.

"Nexus study" means the report titled "Traffic Impact Fee Update Nexus Study City of Visalia," dated November 13, 2008, and any amendment or modification of such report that may be accepted by resolution of the City Council in a manner consistent with the requirements (including the required findings) contained in the Mitigation Fee Act (California Government Code section 66000 et seq.)

_____ "Planned transportation facilities" means that portion of the arterial/collector street system that is established in the adopted circulation element of the general plan of the city and is included for funding in the calculation of the transportation impact fee in the nexus study.

~~_____ "Programmed costs" means the total amount of improvements eligible for reimbursement as set forth in a reimbursement agreement.~~

~~_____ "Primary use" means the land use that the city accepts in determining the appropriate zone for that use.~~

~~_____ "Reimbursement policy manual" means the administrative document prepared under the authority of the city engineer and city manager that sets forth the details of developer reimbursement in conformance with the provisions of this chapter.~~

~~_____ "Secondary use" means the various uses within the primary land use space that are committed to supporting the primary use.~~

"Site-related improvements" means street and related improvements and right-of-way dedications for direct access improvements to and/or within the land development project in question.

~~Direct access~~ Site related improvements include, but are not limited to the following: (1) street improvements consisting of, or the equivalent of, a parking lane with curb and gutter along the arterial/collector street frontages of the land development project; (2) local streets leading to the land development project; (3) driveways and streets within the land development project; (4) acceleration and deceleration lanes, and right and left turn lanes leading to those streets and driveways; ~~and~~ (5) traffic control measures for those streets and driveways; and (6) utility relocations.

"Street" shall have the same meaning as set forth in Section 16.08.010 of the Visalia Municipal Code.

"Trip" means a single or one direction vehicle movement with either the origin or destination (exiting or entering) inside the study site.

"Trip ends" means the total of all trips entering plus all trips leaving a designated land use or building type over a period of time. (Prior code § 9485)

Section 16.44.060 Imposition of transportation impact fee.

A. Any person who, after the effective date of this chapter, seeks to commence a land development project within the city by applying for: a building permit; an extension of a building permit issued prior to that date; a permit for mobile home installation; or an extension of a permit for mobile home installation issued prior to that date, to make an improvement to land which will generate additional traffic is required to pay a transportation impact fee in the manner and amount set forth in this chapter.

B. No new building permit or new permit for mobile home installation for any activity requiring payment of an impact fee pursuant to Section 16.44.070 shall be issued unless and until the transportation impact fee required has been paid.

C. No extension of a building permit or permit for mobile home installation issued prior to the effective date of this chapter, for any activity requiring payment of an impact fee pursuant to Section 16.44.070 shall be granted unless and until the transportation impact fee required has been paid. This subsection shall not apply if the applicant applying for an extension of a building permit or permit for mobile home installation can demonstrate that a good faith effort has been applied to begin construction or that substantial completion has occurred in conformance with the approved building permit or permit for mobile home installation. (Prior code § 9490)

Section 16.44.070 Fee schedule.

A. The council shall establish by resolution, a schedule of transportation impact fees calculated to provide the sum of money necessary to fund the portion of the total cost of the planned transportation facilities allocated to new development, as set forth in ~~the report entitled "City of Visalia Traffic Impact Fee Update Transportation Fee Methodology the Nexus nexus sStudy."~~ The resolution adopting sSuch schedule shall be approved following at least one public hearing in conformity with the provisions of state law and this Chapter, shall be based on the nexus study, and shall~~be conditional and based on~~include the following findings by the council:

1. That the planned transportation facilities are in conformity with the circulation element of the general plan of the city;

2. That the development of property will require construction or acquisition of planned transportation facilities and that the fees are fairly apportioned on the basis of benefits conferred on property developed or to be developed or on the need for planned transportation facilities created by proposed or existing development of property;

3. That transportation facilities are in addition to any existing transportation facilities

serving the city at the time of adoption of the circulation element of the general plan are necessary to complete the planned transportation facilities.

B. The schedule of fees adopted pursuant to subsection A above shall remain in effect until revised pursuant to the following process and criteria:~~shall be these amounts as established by Resolution No. 97-392008 _____ of the council and shall remain in effect until July 1, 19982009. Effective July 1, 1998 2009 and each July 1st thereafter, the schedule of fees shall be adjusted in accordance with the following criteria:~~

1. On April 1st of each year the city engineer shall review the current Engineering News Record Construction Cost Index (ENRCCI) for the cities of Los Angeles and San Francisco, CA. When the average of such indices differs from the average of the indices for the preceding April 1st, the factor of increase or decrease shall be applied to the schedule of fees. Such factor shall be computed by dividing the average ENRCCI for the current April 1st by that pertaining to the previous April 1st. The individual transportation impact fee rates may be multiplied by the factor to determine the adjusted schedule of fees. ~~The engineer~~The city engineer shall present the new fee schedule for adoption by resolution of council after at least one public hearing. The city engineer shall also apply such factor to the schedule of reimbursement unit rates as established pursuant to Section 16.44.150. Modifications of the fee rates and reimbursement unit rates as called for by this subparagraph shall be considered programmed adjustments, provided that such adjustments are addressed by the nexus study then in effect or the resolution approving such nexus study, and therefore shall not require a new, amended or revised nexus study.

2. In the event of a future amendment of the circulation element that has the effect of adding or removing new planned transportation facilities, The engineer~~the city engineer~~ shall review the nexus study and if such review concludes that the costs of the planned transportation facilities attributable to new development is changed as a result of the addition or removal, the city engineer shall modify, amend or revise the nexus study, as may be appropriate. The city engineer shall present such modification, amendment or revision to the council together with a revised schedule of transportation impact fees, for approval by resolution in a manner that is consistent with this Chapter.~~add to the schedule of fees the transportation impact fee rates for the new planned transportation facilities established by the council concurrently with the amendment of the circulation element adding thereto such new planned transportation facilities.~~

3. If in the determination of ~~the engineer~~the city engineer the adjustment of the schedule of fees produced by the procedure in subdivision (1) of this subsection is not representative of the

actual change in costs of the planned transportation facilities, the city engineer may, in lieu of the procedures set forth in said paragraph, compute a new schedule of fees by initiating a modification, amendment or revision of the nexus study, as may be appropriate, and presenting such new schedule of fees together with such modified, amended or revised nexus study for adoption by resolution of the council after at least one public hearing.

4. In the event of the adoption of a new schedule of fees by resolution of the council, such new schedule shall become effective sixty (60) days after the adoption thereof by the council. The adjustment of such schedule provided in subdivision (1) of this subsection shall begin the April 1st next occurring after adoption of the new schedule. (Ord. 9719 § 2, 1997)

Section 16.44.080 Computation of the amount of transportation impact fee.

A. The feepayer shall pay the amount of the transportation impact fee as determined from the schedule of fees established pursuant to Section 16.44.070.

1. If a building permit is requested for a structure or structures with clearly identified that will feature two or more different and separable uses, mixed primary uses, then the fee shall be determined ~~through using the applicable schedule~~ by apportioning the space committed to uses the respective different and separable uses and applying the appropriate land use category for each such apportioned space, specified on the applicable schedule. This does not apply to space Where a building permit is requested for a structure that will feature two or more distinguishable uses but such uses are not separable, the city engineer shall determine which use is the predominant use and shall apply the land use category appropriate for such predominant use to the entire building area of the project. ~~committed to secondary uses related to the primary use. Space committed to secondary uses will be charged the same fee rate as the primary use.~~

2. If a building permit is requested for a restaurant or retail use that includes outdoor space intended for permanent use in conjunction with the indoor portion of the restaurant or as retail space use, then the ~~is~~ outdoor space will be included in overall building size as a restaurant or retail space, as the case may be, in the determination of the fee.

3. If a shell building permit is requested for a planned retail, office or industrial use tenant, then the fee will be determined at the lowest fee rate for the applicable land use shown in the schedule of fees. If necessary, additional fees will be determined at the time that a tenant improvement permit is requested if the land use is higher than that used for the shell building permit.

4. For applications for an extension of a building permit or an extension of a permit for mobile home installation, the amount of the fee is the difference between that fee then applicable and any amount already paid pursuant to this chapter.

5. If the land use category for a development project that a building permit is applied for is not clearly specified on the applicable fee schedule, the city engineer shall use the fee applicable to the most nearly comparable type of land use category on the fee schedule. The city engineer shall be guided in the selection of a comparable type by the report titled "Trip Generation" (latest edition) prepared by Institute of Transportation Engineers. If the city engineer determines that there is no comparable type of land use category on the applicable fee schedule, then the city engineer shall determine the fee by:

a. Considering comparable traffic generation statistics for ~~other~~-similar types of land use categories contained in the report titled "Trip Generation" (latest edition) prepared by Institute of Transportation Engineers; or

b. If no appropriate land use category can be determined through subparagraph a.,
aAllowing the feepayer to submit an independent trip generation study prepared in accordance with the requirements of the Institute of Transportation Engineers. The study shall be prepared and presented by professionals qualified in their respective fields. The city engineer shall consider the study, but is not required to accept the study as he/she shall reasonably deem to be inaccurate or not reliable and may, in the alternative, require an amended study for consideration. If an acceptable independent trip generation study is not presented, the feepayer shall pay transportation impact fees based upon the city engineer's determination in subsection (3)(a) of this section. If an acceptable independent trip generation study is presented, the city engineer shall determine the fee level by applying the number of trips indicated in the independent trip generation study to the fee rate calculation formula as contained in the nexus study.

6. In the case of change of use, redevelopment or expansion or modification of an existing use which requires the issuance of a building permit or permit for mobile home installation, the transportation impact fee shall be based upon the net positive increase in the impact fee for the new use as compared to the previous use. The city engineer shall be guided in this determination by traffic generation statistics contained in a report titled "Trip Generation" (latest edition) prepared by Institute of Transportation Engineers.

Section 16.44.090 Payment of fee.

A. The feepayer shall pay the transportation impact fee required by this ordinance to the city engineer or his designee prior to the issuance of a building permit or a permit for mobile home installation.

B. All funds collected shall be properly identified and promptly transferred for deposit in the transportation impact fee fund as determined in Section 16.44.110 and used solely for the purposes specified in this chapter. (Prior code § 9505)

Section 16.44.100 Timing of fee payment.

A. Notwithstanding the requirements of Section 16.44.090, the city council may, by resolution, authorize the payment of the fee at a time other than that identified in Section 16.44.090.

B. In adopting the resolution identified in subsection (A) of this section, the city council shall make the following findings:

1. That the state of the economy in the city is such that the deferment of the fee required by this chapter will stimulate the economy and enhance the provision of jobs; and

2. That the deferment of the fee required by this chapter will not materially affect the ability of the city to deliver its five year capital improvement program.

C. In adopting the resolution identified in subsection (A) of this section, the city council shall:

1. Identify the point in time at which the fee shall be paid; provided, that in no event shall the deferral be extended beyond the time of the final inspection or issuance of the certificate of occupancy, whichever occurs first;

2. Identify to which major land use category (i.e., residential, commercial, office and/or industrial) the resolution applies;

3. Identify whether or not a contract shall be entered into by and between the property owner, or lessee if the lessee's interest appears of record, and the city prior to the issuance of the building permit. If a contract is required to be executed, it shall be processed and recorded in accordance with Government Code Section 66007(c). In lieu of entering into a contract, if one is required, the feepayer may provide such other form of surety instrument guaranteeing payment of the fee as may be acceptable to the city engineer or his/her designee and the city attorney;

4. Impose a penalty, equal to one hundred (100) percent of the amount of the fees deferred, on any party who fails to pay the deferred fee by the point in time specified in such resolution; and

5. Provide that a party who fails to pay such deferred fees by the point in time specified in such resolution shall further forfeit the future right to defer such fees on parcels in which such party has a financial interest.

D. Companies classified within the following Standard Industrial Codes shall be able to pay their development impact fees over five years without interest or administrative fee. The first installment of twenty (20) percent shall be due upon occupancy and the balance shall be paid in five equal annual installments thereafter and shall be collected on the property tax roll. The collection of the balance due on the property tax roll shall not preclude the earlier payment of any outstanding balance.

- 2000--2099 Food processing
- 2200--3999 Certain other manufacturers
- 4200--4299 Trucking and warehousing
- 4500--4599 Air transportation
- 4700--5199 Transportation services and warehouse trade

(Ord. 9818 § 5, 1998)

Section 16.44.110 Transportation impact fee trust fund established.

A. There is established a separate transportation impact fee trust fund.

B. Funds withdrawn from this account must be used in accordance with the provisions of Section 16.44.120. (Prior code § 9510)

Section 16.44.120 Use of funds.

A. Funds collected from transportation impact fees shall be used for the purpose of capital improvements to and expansion of planned transportation facilities as designated by the city and any other transportation projects related to growth that may be determined from time to time by the city council.

B. No funds shall be used for periodic or routine maintenance.

C. In the event that bonds or similar debt instruments are issued for advance provision of planned transportation facilities for which transportation impact fees may be expended, impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the facilities provided are of the type described in subsection (A) of this section.

D. At least once each fiscal year, the city engineer shall present to the city council a proposed capital improvement program for planned transportation facilities, assigning funds, including any accrued interest, from the transportation impact fee to specific road improvement projects and related expenses. Monies, including any accrued interest, not assigned in any fiscal year shall be retained in the transportation impact fee fund until the next fiscal year except as provided by the refund provisions of this chapter.

E. Funds may be used to provide refunds as described in Section 16.44.130.

F. The city shall be entitled to retain not more than five percent of the funds collected as compensation for the expense of collecting the fee and administering this chapter. (Prior code § 9515)

Section 16.44.130 Refund of fees paid.

If a building permit or permit for mobile home installation expires without commencement of construction, then the feepayer shall be entitled to a refund, without interest, of the impact fee paid as a condition of its issuance; except, that the city shall retain five percent of the fee to offset a portion of the costs of collection and refund. The feepayer must submit an application for such refund to the city engineer within thirty (30) days of the expiration of the permit.

Section 16.44.140 Fee eExemptions and deductions.

A. The following shall be exempted from payment of the impact fee:

1. Alterations or expansion of an existing building where no additional units are created, where the use is not changed, and where no additional vehicular trips will be produced over and above those produced by the existing use.

2. The construction of accessory buildings or structures which will not produce additional vehicular trips over and above those produced by the principal building or use of the land.

3. The replacement of a destroyed or partially destroyed building or structure with a new building or structure of the same size and use provided that no additional trips will be produced over and above those produced by the original use of the land.

4. The installation of a replacement mobile home on a lot or other such site when a transportation impact fee for such mobile home site has previously been paid pursuant to this ordinance or where a mobile home legally existed on such site on or prior to the effective date of this chapter.

5. Any claim of exemption must be made in writing and agreed to by the city prior to the issuance of the applicable building permit or permit for mobile home installation. Any claim not so made shall be deemed waived.

B. Where a fee is otherwise payable pursuant to this chapter, a feepayer may apply for a reduction of the fee to recognize an existing or previous use on the subject real property. A reduction for existing or previous use shall be provided where an ~~The following shall be considered for the calculation of an existing use Creditsdeduction that can be applied towards the payment of the impact fee.. An existing use deduction shall only be applicable for structures located on the same property where a land development project is occurring.~~

~~1.~~ eExisting structure or structures with clearly established uses ~~that~~ will be demolished in conjunction with a land development project, ~~or~~

~~2.~~ Sa structure or structures ~~previously have been~~ demolished on the subject property within twenty (20) years of a land development project and where there is clear documentation of the previous existence and use. No reduction pursuant to this subsection shall result in a reduction of the fee to less than zero. No reduction pursuant to this subsection may be transferable to other projects on other properties.

~~3.~~ The feepayer is responsible ~~to~~ for submitting all documentation required by the city for consideration of an existing or previous use ~~fee r~~eduction. ~~n.~~

~~4.~~ Any request for an existing or previous use ~~r~~eduction must be made in writing and the amount determined ~~agreed to~~ by the city prior to the issuance of the applicable building permit or permit for mobile home installation. The amount of reduction shall be determined by the city engineer and shall be based on the amount fee that would be payable by the previous use with reference to the fee schedule in existence at the time of the new building permit.

Section 16.44.150 Reimbursements for private construction of planned transportation facilities. ~~Agreements.~~

A. It is the intent of the city that, whenever practicable, planned transportation facilities be constructed, and related right of way be dedicated, by developers in conjunction with land development projects, and that such construction and dedication be required as conditions of the development permit related to such projects pursuant to and consistent with the authority of various provisions the Municipal Code and statutes of the State of California. It is also the intent of the city that a portion of the cost for such construction and dedication of the planned transportation facilities

and related right of way be reimbursed by the city, and that such reimbursements be among the assumptions made by the nexus study in establishing the fee schedule to be adopted pursuant to this Chapter. Consistent with this intent, ~~No credit reimbursement is available for land development projects with~~ shall be given for site-related improvements or street improvements and right-of-way dedications that are not planned transportation facilities included in the transportation impact fee program.

~~2B. Land development projects that~~ developers who are required to construct planned transportation facilities ~~included in the transportation impact fee program, including required~~ and make right-of-way dedications, ~~are entitled to reimbursement for all such these facilities~~ facilities, except that a developer shall not be reimbursed for the cost of site related improvements as defined in this chapter or for the value of right of way associated with site related improvements.

B. The city engineer is authorized to create and maintain a reimbursement policy manual setting forth the manner in which this section shall be implemented. Such reimbursement policy manual shall be consistent with the provisions of this section and with the assumptions and methodologies contained in the nexus study.

C. As may be more fully described in the reimbursement policy manual, reimbursements for planned transportation facilities shall be made on the basis of unit costs and right of way values as established by the schedules of costs and land values as contained in the nexus study and that serve as the basis for that study, as adjusted from time to time pursuant to this chapter, and shall not be made based on actual construction or land costs or market values.

D. No reimbursement shall be made except as provided in a written reimbursement agreement between the City and the developer entered into prior to commencement of construction of the subject planned transportation facilities. Among other things, such agreements shall provide for the following:

1. The reimbursement agreement shall set forth the agreed to unit costs and right of way values.

2. The reimbursement agreement shall set forth the timing and manner of reimbursement payments.

3. To the extent the total amount of reimbursement due to a developer is less than or equal to the total amount of fees that are anticipated to be paid by feepayers in relation to the subject land development project, the reimbursement agreement shall provide that such amount shall be paid as reimbursement only as such fees are received by the City, but in no

event later than two years from the date of acceptance of the improvements, or as otherwise agreed to in the reimbursement agreement.

4. To the extent the reimbursement to be made to the developer exceeds the total amount of transportation impact fees that are to be paid by feepayers related to the subject land development project, the reimbursement agreement shall set forth the manner and timing of such reimbursement payments.

5. The reimbursement agreement shall require that the developer apply for reimbursement pursuant to the agreement no later than four (4) years after: (1) the construction of the public improvements, including planned transportation facilities, for a land development project are completed and accepted by the city or (2) the effective date of this ordinance; whichever date is later. The developer shall waive the right of reimbursement for construction costs payable under this section when the reimbursement is not applied for within said four (4) year limitation.

~~The details of the reimbursement shall be set forth in a reimbursement agreement with the city.~~

~~1. Reimbursement agreements shall be prepared by the city engineer in accordance with the provisions of this chapter and in accordance with the city's reimbursement policy manual.~~

~~2. Reimbursement agreements will be based credited on a pro rata basis against transportation impact fees otherwise due or to become due for the development that prompted the city to require such dedications or street improvements. Such credits shall be determined and provided as set forth in Section 16.44.140(B)(3) (a), (b), (c) and (d) on the provisions and costs for construction and right of way used in the calculation of the transportation impact fee in effect at that time.. The programmed costs shall be set forth in the reimbursement agreement.~~

~~C. Reimbursement for the programmed costs will be in the form of cash reimbursement and shall generally be paid in accordance with the follow provisions, unless otherwise agreed to by the city and developer, and set forth in the reimbursement agreement:~~

~~1. For a period of two (2) years following the date the public improvements for the land development project are accepted by the city, cash reimbursement will only be made from impact fees collected by the city from building permits issued within the land development project. These cash reimbursements must be requested by the developer and will be processed by the city within thirty (30) days of the request. Requests should be limited to a quarterly basis to reduce the amount of administration time expended by the city.~~

~~2. After two (2) years following the date the public improvements for the land development project are accepted by the city, final cash reimbursement by the city will be available for the remainder of the programmed costs not made by the city pursuant to subsection (C)(1) of this section. Final cash reimbursement must be requested by the developer and will be processed by the city within thirty (30) days of the request.~~

~~DE.~~ ~~Cash~~ ~~r~~Reimbursement payments otherwise due to the developer will not be ~~provided~~made until all of the following requirements are met:

1. Construction of the public improvements, including planned transportation facilities, for the land development project are completed and accepted by the city; and
2. A reimbursement request is submitted to the city per the requirements of the city's reimbursement policy manual; and
3. Thirty (30) days have past since acceptance by the city to ensure that no claims of nonpayment have been filed with the city by any contractor or subcontractor; and
4. Any further requirements of the city's reimbursement policy manual have been met.

~~EE.~~ No interest shall be paid by the city on any outstanding reimbursement amount set forth in a reimbursement agreement.

~~EG.~~ If the city enters into a reimbursement agreement authorized by this section, the agreement shall provide that:

1. The general fund of the city is not liable for payment of any obligations arising from the agreement;
2. The credit of the city is pledged for the payment of any obligations arising from the agreement solely from dedicated transportation funds;
3. The landowner shall not compel the exercise of the city taxing power or the forfeiture of any of its property to satisfy any obligations arising from the agreement; and
4. The obligation arising from the agreement is a debt of the city, payable from income, receipts, or revenues from the transportation impact fee trust fund and other dedicated transportation funds.

~~G. The developer shall apply for reimbursement as set forth in this section no later than four (4) years after: (1) the construction of the public improvements, including planned transportation facilities, for a land development project are completed and accepted by the city or (2) the effective date of this ordinance; whichever date is later. The developer shall waive the right of reimbursement~~

~~for construction costs payable under this section when the reimbursement is not applied for within said four (4) year limitation.~~

Section 16.44.160 Exceptions.

A. The city council may, from time to time, authorize exceptions to the payment of the transportation impact fee required by ~~Section 16.44.090~~[this Chapter](#).

B. If the city council determines to authorize exceptions pursuant to subsection (A) of this section, the city council shall adopt a resolution to that effect which shall:

1. State the findings made to support the decision to authorize exceptions to the payment of the transportation impact fee required by ~~Section 16.44.090~~[this Chapter](#);

2. Determine which land use categories (residential, commercial, office or industrial) to which they will authorize exceptions to the payment of the transportation impact fee required by Section 16.44.090;

3. Determine the percentage of the transportation impact fee for each land use category to which they will authorize exceptions to the payment of the transportation impact fee required by Section 16.44.090;

4. Make a budget appropriation in the general fund, or such other discretionary fund, of a dollar amount equal to the estimated revenues which would have been collected had the city council determined not to authorize exceptions to the payment of the transportation impact fee required by Section 16.44.090;

5. Set a date upon which the resolution expires. In any event, the resolution shall expire at the end of the then current fiscal year.

C. Upon the issuance of a building permit for a land use category which has been determined to be excepted from the payment of the transportation impact fee pursuant to this section, the finance director shall transfer from the general fund, or such other discretionary fund as deemed appropriate by the city council, to the transportation impact fee fund an amount equal to the excepted portion of the transportation impact fee.

D. The city council may, by the adoption of a resolution, amend any exceptions or approvals granted pursuant to any resolution adopted consistent with subsection (B) of this section.

E. It is the intent of this section to provide the city council with a tool to promote the economic development of the city, while at the same time insuring sufficient revenue in the transportation impact fee fund to fund the projects that have been identified as a result of growth and development in the community. It is not the intent of this section to exempt the feepayer from having to

construct or pay for site-related improvements. (Prior code § 9530)

Section 16.44.170 Appeal process.

Determinations made by the city engineer pursuant to this chapter may be appealed by filing a written request to the city manager within fourteen (14) days of the city engineer's decision. The city manager will consider the written appeal and issue a final decision.

Section 16.44.180 Penalty provisions.

A violation of this chapter shall be prosecuted in the same manner as misdemeanors are prosecuted and upon conviction, the violator shall be punishable according to law; however, in addition to or in lieu of any criminal prosecution the city shall have the power to sue in civil court to enforce the provisions of this chapter. (Prior code § 9535)

Section 16.44.190 Severability.

If any section, phrase, sentence or portion of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof. (Prior code § 9540)

Revised 16.44.010
Showing Changes Against Existing Municipal Code

Chapter 16.44

TRANSPORTATION IMPACT FEES

Sections:

- 16.44.010 Legislative findings.
- 16.44.020 Short title, authority and applicability.
- 16.44.030 Intents and purposes.
- 16.44.040 Rules of construction.
- 16.44.050 Definitions.
- 16.44.060 Imposition of transportation impact fee.
- 16.44.070 Fee schedule.
- 16.44.080 Computation of the amount of transportation impact fee.
- 16.44.090 Payment of fee.
- 16.44.100 Timing of fee payment.
- 16.44.110 Transportation impact fee trust fund established.
- 16.44.120 Use of funds.
- 16.44.130 Refund of fees paid.
- 16.44.140 ~~Exemption~~Exemptions and ~~credits~~reductions.
- 16.44.150 Reimbursement for private construction of planned transportation facilities.
- 16.44.160 Exceptions.
- ~~16.44.160~~ ~~Penalty provisions.~~
- 16.44.170 Appeal process.
- 16.44.180 Penalty provisions.
- 16.44.190 Severability.

Section 16.44.010 Legislative findings.

The city council of the city finds, determines and declares that:

A. The city must expand its street system in order to maintain ~~current~~acceptable levels of service if new development is to be accommodated without ~~decreasing current~~reducing these levels of service to unacceptable levels as established in the circulation element of the general plan of the city.

This must be done in order to promote and protect the public health, safety and welfare;

B. The California Legislature through the enactment of California statutes has ~~sought to encourage the city~~ authorized and encouraged cities to enact impact fees in order to meet the impacts of new development;

C. The imposition of impact fees is one of the preferred methods of ensuring that development bears a proportionate share of the cost of capital facilities necessary to accommodate such development. This must be done in order to promote and protect the public health, safety and welfare;

D. Each of the ~~types of land development described~~ use categories shown in the schedule of fees to be adopted pursuant to Section 16.44.070, will generate traffic necessitating the acquisition of rights-of-way, street construction and street improvements;

E. The fees established ~~by~~ under the authority of Section 16.44.070 are derived from, are based upon, and do not exceed the costs of providing additional rights-of-way, street construction and street improvements necessitated by the new land developments for which the fees are levied;

F. ~~The report entitled "City of Visalia Transportation Fee Methodology," dated July 17, 1989 and~~ The city has commissioned the completion of the report titled "Traffic Impact Fee Update Nexus Study City of Visalia," dated November 13, 2008. Such report, as it may be revised from time to time, sets forth a reasonable methodology and analysis for the determination of the impact of new development on the need for and costs for additional rights-of-way, street construction and street improvements in the city. (Prior code § 9465)

Section 16.44.020 Short title, authority and applicability.

A. This chapter shall be known and may be cited as the "City of Visalia Transportation Impact Fee Ordinance."

B. The city council of the city has the authority to adopt this chapter pursuant to its Charter and pursuant to Article XI of Section 7 of the Constitution of the state of California, and ~~pursuant to~~ Government Code Sections 65300 et. seq., 66000 et. seq., and 66470 et. seq. of California statutes.

C. This chapter shall apply in the incorporated area of the city to the extent permitted by Article XI of Section 7 of the Constitution of the state of California. (Prior code § 9470)

Section 16.44.030 Intents and purposes.

A. This chapter is intended to assist in the implementation of the circulation element of the

Visalia General Plan.

B. The purpose of this chapter is to regulate the use and development of land so as to assure that new development bears a proportionate share of the cost of capital expenditures necessary to provide streets in the city. (Prior code § 9475)

Section 16.44.040 Rules of construction.

A. The provisions of this chapter shall be liberally construed so as to effectively carry out its purpose in the interest of the public health, safety and welfare.

B. For the purpose of administration and enforcement of this chapter, unless otherwise stated in this ordinance, the following rules of construction shall apply to the text of this chapter:

1. In case of any difference of meaning or implication between the text of this chapter and any caption, illustration, summary table, or illustrative table, the text shall control.

2. The word "shall" is always mandatory and not discretionary; the word "may" is permissive.

3. Words used in the present tense shall include the future; and words used in the singular number shall include the plural, and the plural the singular, unless the context clearly indicates the contrary.

4. The phrase "used for" includes "arranged for," "designed for," "maintained for," or "occupied for."

5. The word "person" includes an individual, a corporation, a partnership, an incorporated association, or any other similar entity.

6. Unless the context clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions, or events connected by the conjunction "and," "or" or "either...or," the conjunction shall be interpreted as follows:

a. "And" indicates that all the connected terms, conditions, provisions or events shall apply.

b. "Or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination.

c. "Either...or" indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.

7. The word "includes" shall not limit a term to the specific example but is intended to extend its meaning to all other instances or circumstances of like kind or character.

8. "City engineer" means the city engineer or city officials he/she may designate to carry out the administration of this chapter.

9. A street right-of-way used to define transportation impact fee district boundaries may be considered within any district it bounds. (Prior code § 9480)

Section 16.44.050 Definitions.

As used in this chapter, the following terms are defined in this section:

"Accepted by the city" means the acceptance by the city of newly constructed public improvements as evidenced by the recording by the city of a Notice of Completion with the County, or by the issuance of a final inspection of an encroachment permit.

"Arterial street" shall have the same meaning as set forth in Section 16.08.010 of the city of Visalia Municipal Code.

A "capital improvement" includes transportation planning, preliminary engineering, engineering design studies, land surveys, right-of-way acquisition, engineering, permitting and construction of all the necessary features for any street construction project including, but not limited to:

1. Construction of new through lanes;
2. Construction of new turn lanes;
3. Construction of new bridges or culverts;
4. Construction of new drainage facilities in conjunction with new street construction;
5. Purchase and installation of traffic signalization (including new and upgraded signalization);
6. Construction of curbs, medians, and shoulders; and
7. Relocating utilities to accommodate new street construction. _____

"Collector street" shall have the same meaning as set forth in Section 16.08.010 of the city of Visalia Municipal Code.

"Developer" means any person who undertakes a land development project within the City.

"Development permit" means a regulatory approval of a land development project by the city, including but not limited to a building permit, subdivision map, parcel map, conditional use permit or planned development permit, as those terms are defined in the Municipal Code.

"Expansion" of the capacity of a road applies to all street and intersection capacity

enhancements and includes but is not limited to extensions, widening, intersection improvements, upgrading signalization, and expansion of bridges or culverts.

"Feepayer" means a ~~person commencing a land development activity which generates traffic and which requires~~ developer who is required to pay the transportation impact with the issuance of a building permit or permit for mobile home installation.

"Freeway" shall have the same meaning as set forth in Section 16.08.010 of the Visalia Municipal Code.

~~"Independent fee calculation study" means the traffic engineering and/or economic documentation prepared by a feepayer to allow the determination of the impact fee other than by the use of the table referenced in Section 16.44.070(A).~~

~~"Land development activity generating traffic" means any change in land use or any construction of buildings or structures or any change in the use of any structure that attracts or produces vehicular trips.~~

"Land development project" means any land division, building, construction, reconstruction or remodeling project that results in new improvement to real property and requires the obtaining of development permits from the city.

"Land use categories" means the specific list of land uses shown in a fee schedule developed under the authority of this Chapter that generate vehicle trips and were used to project future vehicle trips for the calculation of the transportation impact fee.

"Level of service" shall have the same meaning as set forth in the Highway Research Board's Highway Capacity Manual (latest Edition, as amended).

"Major arterial" shall have the same meaning as set forth in Section 16.08.010 of the Visalia Municipal Code.

~~"Mandatory or required right-of-way dedication and/or street improvements" means such noncompensated dedications and/or street improvements required by the city.~~

"Nexus study" means the report titled "Traffic Impact Fee Update Nexus Study City of Visalia," dated November 13, 2008, and any amendment or modification of such report that may be accepted by resolution of the City Council in a manner consistent with the requirements (including the required findings) contained in the Mitigation Fee Act (California Government Code section 66000 et seq.)

"Planned transportation facilities" means that portion of the arterial/collector street system that is established in the adopted circulation element of the general plan of the city and is included for funding in the calculation of the transportation impact fee in the nexus study.

"Site-related improvements" means ~~capital~~street and related improvements and right-of-way dedications for direct access improvements to and/or within the land development project in question. ~~Direct access~~Site related improvements include, but are not limited to the following: (1) ~~access streets leading to the~~street improvements consisting of, or the equivalent of, a parking lane with curb and gutter along the arterial/collector street frontages of the land development project; (2) local streets leading to the land development project; (3) driveways and streets within the land development ~~project~~; (4) acceleration and deceleration lanes, and right and left turn lanes leading to those streets and driveways; ~~and (4)~~(5) traffic control measures for those streets and driveways; ~~and~~ (6) utility relocations.

"Street" shall have the same meaning as set forth in Section 16.08.010 of the Visalia Municipal Code.

"Trip" means a single or one direction vehicle movement with either the origin or destination (exiting or entering) inside the study site.

"Trip ends" means the total of all trips entering plus all trips leaving a designated land use or building type over a period of time. (Prior code § 9485)

Section 16.44.060 Imposition of transportation impact fee.

A. Any person who, after the effective date of this chapter, seeks to ~~develop~~commence a land development project within the city by applying for: a building permit; an extension of a building permit issued prior to that date; a permit for mobile home installation; or an extension of a permit for mobile home installation issued prior to that date, to make an improvement to land which will generate additional traffic is required to pay a transportation impact fee in the manner and amount set forth in this chapter.

B. No new building permit or new permit for mobile home installation for any activity requiring payment of an impact fee pursuant to Section 16.44.070 shall be issued unless and until the transportation impact fee required has been paid.

C. No extension of a building permit or permit for mobile home installation issued prior to the effective date of this chapter, for any activity requiring payment of an impact fee pursuant to Section 16.44.070 shall be granted unless and until the transportation impact fee required has been paid. This subsection shall not apply if the applicant applying for an extension of a building permit or permit for mobile home installation can demonstrate that a good faith effort has been applied to begin

construction or that substantial completion has occurred in conformance with the approved building permit or permit for mobile home installation. (Prior code § 9490)

Section 16.44.070 Fee schedule.

A. The council shall establish by resolution, a schedule of transportation impact fees calculated to provide the sum of money necessary to payfund the estimated portion of the total cost of the planned transportation facilities allocated to new development, as set forth in the ~~report entitled "City of Visalia Transportation Fee Methodology."~~ Such nexus study. The resolution adopting such schedule shall be conditional approved following at least one public hearing in conformity with the provisions of state law and this Chapter, shall be based on the nexus study, and shall include the following findings by the council:

1. That the planned transportation facilities are in conformity with the circulation element of the general plan of the city;

2. That the development of property will require construction or acquisition of planned transportation facilities and that the fees are fairly apportioned on the basis of benefits conferred on property developed or to be developed or on the need for planned transportation facilities created by proposed or existing development of property;

3. That transportation facilities ~~planned~~ are in addition to any existing transportation facilities serving the city at the time of adoption of the circulation element of the general plan are necessary to complete the planned transportation facilities.

B. The schedule of fees ~~shall be those amounts as established by Resolution No. 97-39 of the council and adopted pursuant to subsection A above~~ shall remain in effect until ~~July 1, 1998. Effective July 1, 1998 and each July 1st thereafter, the schedule of fees shall be adjusted in accordance with the revised pursuant to the~~ following process and criteria:

1. On April 1st of each year the city engineer shall review the current Engineering News Record Construction Cost Index (ENRCCI) for the cities of Los Angeles and San Francisco, CA. When the average of such indices differs from the average of the indices for the preceding April 1st, the factor of increase or decrease shall be applied to the schedule of fees. Such factor shall be computed by dividing the average ENRCCI for the current April 1st by that pertaining to the previous April 1st. The individual transportation impact fee rates may be multiplied by the factor to determine the adjusted schedule of fees. The city engineer shall present the new fee schedule for adoption by resolution of council after at least one public hearing. The city engineer shall also apply such factor to

the schedule of reimbursement unit rates as established pursuant to Section 16.44.150. Modifications of the fee rates and reimbursement unit rates as called for by this subparagraph shall be considered programmed adjustments, provided that such adjustments are addressed by the nexus study then in effect or the resolution approving such nexus study, and therefore shall not require a new, amended or revised nexus study.

2. ~~The engineer shall add to the schedule of fees the transportation impact fee rates for the new planned transportation facilities established by the council concurrently with the amendment of the circulation element adding thereto such new planned transportation facilities~~In the event of a future amendment of the circulation element that has the effect of adding or removing new planned transportation facilities, the city engineer shall review the nexus study and if such review concludes that the costs of the planned transportation facilities attributable to new development is changed as a result of the addition or removal, the city engineer shall modify, amend or revise the nexus study, as may be appropriate. The city engineer shall present such modification, amendment or revision to the council together with a revised schedule of transportation impact fees, for approval by resolution in a manner that is consistent with this Chapter.

3. If in the determination of the city engineer the adjustment of the schedule of fees produced by the procedure in subdivision ~~(1)~~ of this subsection is not representative of the actual change in costs of the planned transportation facilities, the city engineer may, in lieu of the procedures set forth in said paragraph, compute a new schedule of fees by initiating a modification, amendment or revision of the nexus study, as may be appropriate, and presenting such new schedule of fees together with such modified, amended or revised nexus study for adoption by resolution of the council after at least one public hearing.

4. In the event of the adoption of a new schedule of fees by resolution of the council, such new schedule shall become effective sixty (60) days after the adoption thereof by the council. The adjustment of such schedule provided in subdivision ~~(1)~~ of this subsection shall begin the April 1st next occurring after adoption of the new schedule. (Ord. 9719 § 2, 1997)

Section 16.44.080 Computation of the amount of transportation impact fee.

A. ~~At the option of the~~The feepayer, ~~shall pay~~ the amount of the transportation impact fee ~~may be as~~ determined from the ~~fee~~-schedule of fees established pursuant to Section 16.44.070.

1. If a building permit is requested for ~~mixed~~a structure or structures that will feature two

or more different and separable uses, ~~then~~ the fee shall be determined ~~through using the applicable schedule~~ by apportioning the space committed to the respective different and separable uses ~~specified on the applicable schedule~~ and applying the appropriate land use category for each such apportioned space.. Where a building permit is requested for a structure that will feature two or more distinguishable uses but such uses are not separable, the city engineer shall determine which use is the predominant use and shall apply the land use category appropriate for such predominant use to the entire building area of the project.

~~2. For applications for an extension of a building permit or an extension of a permit for mobile home installation, the amount of the fee is the difference between that fee then applicable and any amount already paid pursuant to this chapter.~~

~~3. If a building permit is requested for a restaurant or retail use that includes outdoor space intended for permanent use in conjunction with the type indoor portion of the restaurant or retail use, then the outdoor space will be included in overall building size as a restaurant or retail space, as the case may be, in the determination of the fee.~~

3. If a shell building permit is requested for a planned retail, office or industrial use tenant, then the fee will be determined at the lowest fee rate for the applicable land use shown in the schedule of fees. If necessary, additional fees will be determined at the time that a tenant improvement permit is requested if the land use is higher than that used for the shell building permit.

4. For applications for an extension of a building permit or an extension of a permit for mobile home installation, the amount of the fee is the difference between that fee then applicable and any amount already paid pursuant to this chapter.

5. If the land use category for a development activity project that a building permit is applied for is not clearly specified on the applicable fee schedule, the city engineer shall use the fee applicable to the most nearly comparable type of land use category on the fee schedule. The city engineer shall be guided in the selection of a comparable type by the report titled "Trip Generation" (latest edition) prepared by Institute of Transportation Engineers. If the city engineer determines that there is no comparable type of land use category on the applicable fee schedule, then the city engineer shall determine the fee by:

a. ~~Using~~Considering comparable traffic generation statistics for similar types of land use categories contained in ~~a the~~ report titled "Trip Generation" (latest edition) prepared by Institute of Transportation Engineers; ~~and or~~

b. ~~Applying the formula set forth in Section 16.44.070(B).~~

~~4. A. In the case of change of use, redevelopment or expansion or modification of an existing use which requires the issuance of a building permit or permit for mobile home installation, the impact fee shall be based upon the net positive increase in the impact fee for the new use as compared to the previous use. The city engineer shall be guided in this determination by traffic generation statistics contained in a report titled "Trip Generation" (latest edition) prepared by Institute of Transportation Engineers.~~

~~B. If a feepayer opts not to have the impact fee determined according to subsection (A) of this section, then the feepayer shall prepare and submit to the city engineer an independent fee calculation study for the land development activity for which a building permit or permit for mobile home installation is sought. The~~lf no appropriate land use category can be determined through subparagraph a., allowing the feepayer to submit an independent trip generation study prepared in accordance with the requirements of the Institute of Transportation Engineers. The study shall be prepared and presented by professionals qualified in their respective fields. The city engineer shall consider the study, but is not required to accept the study as he/she shall reasonably deem to be inaccurate or not reliable and may, in the alternative, require an amended study for consideration. If an acceptable independent ~~fee calculation study shall follow professionally accepted methodologies and formats for a study of this type. The traffic engineering and/or economic documentation submitted shall show the basis upon which the independent fee calculation was made, including but not limited to the following:~~

~~1. Traffic Engineering Studies.~~

~~a. Documentation of trip generation rates appropriate for the proposed land development activity.~~

~~b. Documentation of any other trip data appropriate for the proposed land development activity.~~

~~2. Economic Documentation Studies.~~

~~a. Documentation of credits attributable to the proposed land development activity which can be expected to be available to replace the portion of the service volume used by the traffic generated by the proposed land development activity.~~

~~b. Independent fee calculation studies shall be prepared and presented by professionals qualified in their respective fields. The city engineer shall consider the documentation submitted by the feepayer but is not required to accept such documentation as he/she shall reasonably deem to be inaccurate or not reliable and may, in the alternative, require the feepayer to submit additional or~~

~~different documentation for consideration. If an acceptable independent fee calculation study~~ is not presented, the feepayer shall pay transportation impact fees based upon the ~~schedules referenced~~city engineer's determination in subsection (A3)(a) of this section. ~~Determinations made by the city engineer pursuant to this paragraph may be appealed to the city council by filing a written request with the city clerk within ten days of the city engineer's determination.~~ If an acceptable independent trip generation study is presented, the city engineer shall determine the fee level by applying the number of trips indicated in the independent trip generation study to the fee rate calculation formula as contained in the nexus study.

~~C. Upon acceptance of an independent fee calculation study, the city engineer shall determine the impact fee per unit of development pursuant to the formula established by resolution of the city council. (Prior code § 9500)~~

6. In the case of change of use, redevelopment or expansion or modification of an existing use which requires the issuance of a building permit or permit for mobile home installation, the transportation impact fee shall be based upon the net positive increase in the impact fee for the new use as compared to the previous use. The city engineer shall be guided in this determination by traffic generation statistics contained in a report titled "Trip Generation" (latest edition) prepared by Institute of Transportation Engineers.

Section 16.44.090 Payment of fee.

A. The feepayer shall pay the transportation impact fee required by this ordinance to the city engineer or his designee prior to the issuance of a building permit or a permit for mobile home installation.

B. All funds collected shall be properly identified and promptly transferred for deposit in the transportation impact fee fund as determined in Section 16.44.110 and used solely for the purposes specified in this chapter. (Prior code § 9505)

Section 16.44.100 Timing of fee payment.

A. Notwithstanding the requirements of Section 16.44.090, the city council may, by resolution, authorize the payment of the fee at a time other than that identified in Section 16.44.090.

B. In adopting the resolution identified in subsection (A) of this section, the city council shall make the following findings:

1. That the state of the economy in the city is such that the deferment of the fee required by this chapter will stimulate the economy and enhance the provision of jobs; and

2. That the deferment of the fee required by this chapter will not materially affect the ability of the city to deliver its five year capital improvement program.

C. In adopting the resolution identified in subsection (A) of this section, the city council shall:

1. Identify the point in time at which the fee shall be paid; provided, that in no event shall the deferral be extended beyond the time of the final inspection or issuance of the certificate of occupancy, whichever occurs first;

2. Identify to which major land use category (i.e., residential, commercial, office and/or industrial) the resolution applies;

3. Identify whether or not a contract shall be entered into by and between the property owner, or lessee if the lessee's interest appears of record, and the city prior to the issuance of the building permit. If a contract is required to be executed, it shall be processed and recorded in accordance with Government Code Section 66007(c). In lieu of entering into a contract, if one is required, the fee payer may provide such other form of surety instrument guaranteeing payment of the fee as may be acceptable to the city engineer or his/her designee and the city attorney;

4. Impose a penalty, equal to one hundred (100) percent of the amount of the fees deferred, on any party who fails to pay the deferred fee by the point in time specified in such resolution; and

5. Provide that a party who fails to pay such deferred fees by the point in time specified in such resolution shall further forfeit the future right to defer such fees on parcels in which such party has a financial interest.

D. Companies classified within the following Standard Industrial Codes shall be able to pay their development impact fees over five years without interest or administrative fee. The first installment of twenty (20) percent shall be due upon occupancy and the balance shall be paid in five equal annual installments thereafter and shall be collected on the property tax roll. The collection of the balance due on the property tax roll shall not preclude the earlier payment of any outstanding balance.

- | | |
|------------|-----------------------------|
| 2000--2099 | Food processing |
| 2200--3999 | Certain other manufacturers |
| 4200--4299 | Trucking and warehousing |

4500--4599 Air transportation

4700--5199 Transportation services and warehouse trade

(Ord. 9818 § 5, 1998)

Section 16.44.110 Transportation impact fee trust fund established.

A. There is established a separate transportation impact fee trust fund.

B. Funds withdrawn from this account must be used in accordance with the provisions of Section 16.44.120. (Prior code § 9510)

Section 16.44.120 Use of funds.

A. Funds collected from transportation impact fees shall be used for the purpose of capital improvements to and expansion of planned transportation facilities ~~associated with the major arterial, arterial and collector street network~~ as designated by the city and any other transportation projects related to growth that may be determined from time to time by the city council.

B. No funds shall be used for periodic or routine maintenance.

C. ~~Funds shall be expended in the order in which they are collected.~~

~~D.~~ In the event that bonds or similar debt instruments are issued for advance provision of ~~capital~~ planned transportation facilities for which transportation impact fees may be expended, impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the facilities provided are of the type described in subsection (A) of this section.

~~D.~~ At least once each fiscal year, the city engineer shall present to the city council a proposed capital improvement program for ~~roads~~ planned transportation facilities, assigning funds, including any accrued interest, from the transportation impact fee to specific road improvement projects and related expenses. Monies, including any accrued interest, not assigned in any fiscal year shall be retained in the transportation impact fee fund until the next fiscal year except as provided by the refund provisions of this chapter.

~~E.~~ Funds may be used to provide refunds as described in Section 16.44.130.

~~F.~~ The city shall be entitled to retain not more than five percent of the funds collected as compensation for the expense of collecting the fee and administering this chapter. (Prior code § 9515)

Section 16.44.130 Refund of fees paid.

~~——A.~~ If a building permit or permit for mobile home installation expires without commencement of construction, then the feepayer shall be entitled to a refund, without interest, of the impact fee paid as a condition of its issuance; except, that the city shall retain five percent of the fee to offset a portion of the costs of collection and refund. The feepayer must submit an application for such refund to the city engineer within thirty (30) days of the expiration of the permit.

~~——B.—— Any funds not expended or encumbered by the end of the calendar quarter immediately following six years from the date the transportation impact fee was paid shall, upon application of the then current landowner, be returned to such landowner with any interest incurred thereon; provided, that the landowner submits an application for a refund to the city engineer within one hundred eighty (180) days of the expiration of the six year period. (Prior code § 9520)~~

Section 16.44.140 ~~Exemption~~Fee exemptions and ~~credits~~reductions.

A. The following shall be exempted from payment of the impact fee:

1. Alterations or expansion of an existing building where no additional units are created, where the use is not changed, and where no additional vehicular trips will be produced over and above those produced by the existing use.

2. The construction of accessory buildings or structures which will not produce additional vehicular trips over and above those produced by the principal building or use of the land.

3. The replacement of a destroyed or partially destroyed building or structure with a new building or structure of the same size and use provided that no additional trips will be produced over and above those produced by the original use of the land.

4. The installation of a replacement mobile home on a lot or other such site when a transportation impact fee for such mobile home site has previously been paid pursuant to this ordinance or where a mobile home legally existed on such site on or prior to the effective date of this chapter.

5. Any claim of exemption must be made ~~no later than the time of application for a~~ in writing and agreed to by the city prior to the issuance of the applicable building permit or permit for mobile home installation. Any claim not so made shall be deemed waived.

B. ~~Credits.~~

~~——1.—— No credit shall be given for site-related improvements or right-Where a fee is otherwise payable pursuant to this chapter, a feepayer may apply for a reduction of-way dedication.~~

~~——2.—— All mandatory or required right-of-way dedications and/or street improvements made by~~

~~a feepayer, subsequent to the effective date of this chapter, except for site-related improvements, shall be credited on a pro rata basis against transportation impact fees otherwise due or to become due for the development that prompted the city to require such dedications or street improvements. Such credits shall be determined and provided as set forth in Section 16.44.140(B)(3) (a), (b), (c) and (d).~~

~~3. A feepayer may obtain credit against all or a portion of transportation impact fees otherwise due or to become due by offering to dedicate nonsite-related right-of-way improvements. This offer must specifically~~ the fee to recognize an existing or previous use on the subject real property. A reduction for existing or previous use shall be provided where an existing structure or structures with clearly established uses will be demolished in conjunction with a land development project, or a structure or structures have been demolished on the subject property within twenty (20) years of a land development project and where there is clear documentation of the previous existence and use. No reduction pursuant to this subsection shall result in a reduction of the fee to less than zero. No reduction pursuant to this subsection may be transferable to other projects on other properties. ~~The feepayer is responsible for submitting all documentation required by the city for consideration of an existing or previous use fee reduction. Any request~~ or provide for a transportation impact fee credit. Such construction for an existing or previous use reduction must be in accordance with city, county or state design standards, whichever is applicable. If the city engineer accepts such an offer, whether the acceptance is before or after the effective date of this chapter, the credit shall be determined made in writing and provided in the following manner:

~~a. Credit for the dedication of nonsite-related right-of-way shall be valued at (i) one hundred fifteen (115) percent of the most recent assessed value~~ amount determined ~~by the Tulare County Assessor, or (ii) by such other appropriate method as~~ city prior to the issuance of ~~the city council may have accepted prior to the effective date of this chapter for particular right-of-way dedications and/or roadway improvements, or (iii) at the option of the feepayer, by fair market value established by private appraisers acceptable to the city. Credit for the dedication of right-of-way shall be provided when the property has been conveyed at no charge to, and accepted by, the city in a manner satisfactory to the city council~~ applicable building permit or permit for mobile home installation. The amount of reduction shall be determined by the city engineer and shall be based on the amount fee that would be payable by the previous use with reference to the fee schedule in existence at the time of the new building permit.

~~b. Applicants for credit for construction of non-site-related street improvements shall~~

~~submit acceptable engineering drawings and specifications, and construction cost estimates to the city engineer. The city engineer shall determine credit for street construction based upon either these cost estimates or upon alternative engineering criteria and construction cost estimates if the city engineer determines that such estimates submitted by the applicant are either unreliable or inaccurate. The city engineer shall provide the applicant with a letter or certificate setting forth the dollar amount of the credit, the reason for the credit, and the legal description or other adequate description of the project or development to which the credit may be applied. The applicant must sign and date a duplicate copy of such letter or certificate indicating his agreement to the terms of the letter or certificate and return such signed document to the city engineer before credit will be given. The failure of the applicant to sign, date, and return such document within sixty (60) days shall nullify the credit.~~

~~_____ c. _____ Except as provided in subsection (B)(3)(d) of this section, credit against impact fees otherwise due will not be provided until:~~

~~_____ 1. _____ The construction is completed and accepted by the city;~~

~~_____ 2. _____ A suitable maintenance and warranty bond is received and approved by the city engineer, when applicable; and~~

~~_____ 3. _____ All design, construction, inspection, testing, bonding and acceptance procedures are in strict compliance with the then current city standards.~~

~~_____ d. _____ Credit may be provided before completion of specified roadway improvements if adequate assurances are given by the applicant that the standards set out in subsection (B)(3)(c) of this section will be met and if the feepayer posts security as provided below for the costs of such construction. Security in the form of a performance bond, irrevocable letter of credit or escrow agreement shall be posted with and approved by the city engineer in an amount determined by the city engineer consistent with the then current subdivision ordinance. If the street construction project will not be constructed within one year of the acceptance of the offer by the city engineer, the amount of the security shall be increased by ten percent compounded, for each year of the life of the security. The security shall be reviewed and approved by the city engineer prior to acceptance of the security by the city clerk. If the road construction project is not to be completed within five years of the date of the feepayer's offer, the city council must approve the road construction project and its scheduled completion date prior to the acceptance of the offer by the city engineer.~~

~~_____ 4. _____ Any claim for credit must be made no later than the time of application for a building permit or permit for mobile home installation. Any claim not so made shall be deemed waived.~~

~~_____ 5. _____ Credits shall not be transferable from one project or development to another without the~~

approval of the city engineer.

~~6. In the event fee schedules are subsequently changed to reflect increases or decreases in construction costs or other relevant factors, then a feepayer may request a recalculation of credits to fairly reflect such changed circumstances.~~

~~7. Except in the case of public agencies, in the event the actual cash expenditures, as determined by the city engineer, exceed the total transportation impact fee payable because of the development of any parcel of land, the city shall contract with the feepayer to reimburse such excess credits. Such reimbursement shall be subject to the following conditions and limitations:~~

~~a. Such reimbursements shall be paid to the feepayer from transportation impact fees received pursuant to subsequent development of other parcels of land within the area served by the transportation facilities for which such reimbursement is due.~~

~~b. In those areas in which more than one reimbursement contract is concurrently in existence, the order of reimbursement shall be based upon the date of receipt by the city of the submittals set forth in subsection (B)(7)(g) of this section. Reimbursement shall not be paid pursuant to a late reimbursement contract within an area until any previous reimbursement contract within said area is fully reimbursed.~~

~~c. The payment of such reimbursement is to be made semi-annually, in amounts determined by the city engineer.~~

~~d. Should there not be sufficient subsequent transportation impact fees available, or should the facilities required to provide the level of service prescribed by the circulation element not be available, by a date fifteen (15) years from the date of receipt by the city of the submittals set forth in subsection (B)(7)(g) of this section, the initial reimbursement period and any remaining obligation of the city to reimburse such excess credit shall expire; provided however, that the expiration of the city's reimbursement obligation shall be extended an additional five years in those cases in which the developer or divider has been reimbursed at least seventy-five (75) percent of the total excess credit during the initial reimbursement period.~~

~~e. The total reimbursement to be paid pursuant to this subsection (B) shall not exceed ninety-five (95) percent of the total excess credit; the city shall retain five percent from each reimbursement as an administrative records and service charge.~~

~~f. Nothing herein shall preclude the more frequent payment of reimbursement or the partial payment of reimbursements when sufficient funds are determined by the city engineer to be available and all other conditions of this subsection (B) of this section have been met.~~

~~g. The developer or divider shall submit to the city, within ninety (90) days of acceptance by the city of those facilities for which credit or excess credit is claimed, the reproducible as-built plans of said facilities, the project accounting reflecting final costs of the eligible items and any balance due of the final transportation impact fee determined pursuant to this chapter. Credits and reimbursement of excess credits shall not be granted pursuant to this section if the submissions required by this paragraph are not made.~~

~~8. Determinations made by the city engineer pursuant to the credit provisions of this section may be appealed to the city council by filing a written request with the city clerk within ten days of the city engineer's determination. (Prior code § 9525)~~

~~Section 16.44.150 — Exceptions.~~

~~A. The city council may, from time to time, authorize exceptions to the payment of the transportation impact fee required by Section 16.44.090.~~

Section 16.44.150 Reimbursements for private construction of planned transportation facilities.

A. It is the intent of the city that, whenever practicable, planned transportation facilities be constructed, and related right of way be dedicated, by developers in conjunction with land development projects, and that such construction and dedication be required as conditions of the development permit related to such projects pursuant to and consistent with the authority of various provisions the Municipal Code and statutes of the State of California. It is also the intent of the city that a portion of the cost for such construction and dedication of the planned transportation facilities and related right of way be reimbursed by the city, and that such reimbursements be among the assumptions made by the nexus study in establishing the fee schedule to be adopted pursuant to this Chapter. Consistent with this intent, developers who are required to construct planned transportation facilities and make right-of-way dedications are entitled to reimbursement for all such facilities, except that a developer shall not be reimbursed for the cost of site related improvements as defined in this chapter or for the value of right of way associated with site related improvements.

B. The city engineer is authorized to create and maintain a reimbursement policy manual setting forth the manner in which this section shall be implemented. Such reimbursement policy manual shall be consistent with the provisions of this section and with the assumptions and methodologies contained in the nexus study.

C. As may be more fully described in the reimbursement policy manual, reimbursements for planned transportation facilities shall be made on the basis of unit costs and right of way values as established by the schedules of costs and land values as contained in the nexus study and that serve as the basis for that study, as adjusted from time to time pursuant to this chapter, and shall not be made based on actual construction or land costs or market values.

D. No reimbursement shall be made except as provided in a written reimbursement agreement between the City and the developer entered into prior to commencement of construction of the subject planned transportation facilities. Among other things, such agreements shall provide for the following:

1. The reimbursement agreement shall set forth the agreed to unit costs and right of way values.

2. The reimbursement agreement shall set forth the timing and manner of reimbursement payments.

3. To the extent the total amount of reimbursement due to a developer is less than or equal to the total amount of fees that are anticipated to be paid by feepayers in relation to the subject land development project, the reimbursement agreement shall provide that such amount shall be paid as reimbursement only as such fees are received by the City, but in no event later than two years from the date of acceptance of the improvements, or as otherwise agreed to in the reimbursement agreement.

4. To the extent the reimbursement to be made to the developer exceeds the total amount of transportation impact fees that are to be paid by feepayers related to the subject land development project, the reimbursement agreement shall set forth the manner and timing of such reimbursement payments.

5. The reimbursement agreement shall require that the developer apply for reimbursement pursuant to the agreement no later than four (4) years after: (1) the construction of the public improvements, including planned transportation facilities, for a land development project are completed and accepted by the city or (2) the effective date of this ordinance; whichever date is later. The developer shall waive the right of reimbursement for construction costs payable under this section when the reimbursement is not applied for within said four (4) year limitation.

E. Reimbursement payments otherwise due to the developer will not be made until all of the following requirements are met:

1. Construction of the public improvements, including planned transportation facilities, for the land development project are completed and accepted by the city; and

2. A reimbursement request is submitted to the city per the requirements of the city's reimbursement policy manual; and

3. Thirty (30) days have past since acceptance by the city to ensure that no claims of nonpayment have been filed with the city by any contractor or subcontractor; and

4. Any further requirements of the city's reimbursement policy manual have been met.

F. No interest shall be paid by the city on any outstanding reimbursement amount set forth in a reimbursement agreement.

G. If the city enters into a reimbursement agreement authorized by this section, the agreement shall provide that:

1. The general fund of the city is not liable for payment of any obligations arising from the agreement;

2. The credit of the city is pledged for the payment of any obligations arising from the agreement solely from dedicated transportation funds;

3. The landowner shall not compel the exercise of the city taxing power or the forfeiture of any of its property to satisfy any obligations arising from the agreement; and

4. The obligation arising from the agreement is a debt of the city, payable from income, receipts, or revenues from the transportation impact fee trust fund and other dedicated transportation funds.

Section 16.44.160 Exceptions.

A. The city council may, from time to time, authorize exceptions to the payment of the transportation impact fee required by this Chapter.

B. If the city council determines to authorize exceptions pursuant to subsection (A) of this section, the city council shall adopt a resolution to that effect which shall:

1. State the findings made to support the decision to authorize exceptions to the payment of the transportation impact fee required by ~~Section 16.44.090~~this Chapter;

2. Determine which ~~classification(s) of land development activity generating traffic~~use

[categories](#) (residential, commercial, office or industrial) to which they will authorize exceptions to the payment of the transportation impact fee required by Section 16.44.090;

3. Determine the percentage of the transportation impact fee for each ~~classification of land development activity generating traffic~~[use category](#) to which they will authorize exceptions to the payment of the transportation impact fee required by Section 16.44.090;

4. Make a budget appropriation in the general fund, or such other discretionary fund, of a dollar amount equal to the estimated revenues which would have been collected had the city council determined not to authorize exceptions to the payment of the transportation impact fee required by Section 16.44.090;

5. Set a date upon which the resolution expires. In any event, the resolution shall expire at the end of the then current fiscal year.

C. Upon the issuance of a building permit for a land ~~development activity generating traffic classification~~[use category](#) which has been determined to be excepted from [the](#) payment of the transportation impact fee pursuant to this section, the finance director shall transfer from the general fund, or such other discretionary fund as deemed appropriate by the city council, to the transportation impact fee fund an amount equal to the excepted portion of the transportation impact fee.

D. The city council may, by the adoption of a resolution, amend any exceptions or approvals granted pursuant to any resolution adopted consistent with subsection (B) of this section.

E. It is the intent of this section to provide the city council with a tool to promote the economic development of the city, while at the same time insuring sufficient revenue in the transportation impact fee fund to fund the projects that have been identified as a result of growth and development in the community. It is not the intent of this section to exempt the feepayer from having to construct or pay for site-~~u~~related improvements. (Prior code § 9530)

Section 16.44.~~160~~170 [Appeal process.](#)

[Determinations made by the city engineer pursuant to this chapter may be appealed by filing a written request to the city manager within fourteen \(14\) days of the city engineer's decision. The city manager will consider the written appeal and issue a final decision.](#)

[Section 16.44.180](#) [Penalty provisions.](#)

A violation of this chapter shall be prosecuted in the same manner as misdemeanors are prosecuted and upon conviction, the violator shall be punishable according to law; however, in

addition to or in lieu of any criminal prosecution the city shall have the power to sue in civil court to enforce the provisions of this chapter. (Prior code § 9535)

Section 16.44.170190 Severability.

If any section, phrase, sentence or portion of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof. (Prior code § 9540)

Resolution No. 2008-58

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VISALIA ADOPTING A SCHEDULE OF TRANSPORTATION IMPACT FEES

WHEREAS, the City Council of Visalia has a Transportation Impact Fee program to fund transportation improvements based on a planned street system described in the Circulation Element of the City of Visalia General Plan; and

WHEREAS, the City Council of the City of Visalia adopted Resolution 2004-117 to establish a revised Transportation Impact Fee; and

WHEREAS, the City Council of the City of Visalia adopted Resolution 2005-030 to suspend a portion of the fee schedule; and

WHEREAS, The Transportation Impact Fee program needed to be changed to better match the new Transportation Impact Fee program and to generate sufficient revenue to improve and construct a safe and efficient traffic circulation system; and

WHEREAS, the City Council, on December 1, 2008, adopted changes to Visalia Municipal Code Chapter 16.44 to revise the Transportation Impact Fee program.

WHEREAS, for development projects that have a signed reimbursement agreement with the City, a signed subdivision improvement agreement with the City, a vesting tentative map, a final subdivision map, a final parcel map, or that have been issued a building permit before the effective date of the fee schedule contained in this Resolution, it is reasonable to apply the traffic impact fees calculated under the prior fee program; and

WHEREAS, the revised fee program, including a description of the facilities that the City plans to build using the funds from the fee program, is described in the report titled "Traffic Impact Fee Update Nexus Study", ("Nexus Study") prepared by Willdan Financial Services, dated November 13, 2008. The Nexus Study calculates a schedule of fees attached as "Exhibit A" containing the revised Transportation Impact Fees for new development. The Nexus Study is attached as Exhibit "B"; and

WHEREAS, prior to the City Council's review the Nexus Study, the proposed fee schedule, and the Ordinance implementing the revisions to the Transportation Impact Fee program, the City published notice of public hearing pursuant to the Mitigation Fee Act, California Government Code, Sections 66000 et seq.; and

WHEREAS, the City Council of the City of Visalia conducted a public hearing on the ordinance revisions implementing the proposed Transportation Impact Fee program, the proposed fee schedule and the Nexus Study; and

WHEREAS, the Nexus Study establishes the basis for the fee schedule calculated to provide the sum of money necessary to fund the portion of the total cost of the planned transportation facilities allocated to new development; and

WHEREAS, in instances where a fee cannot be determined from the schedule, the applicable fee is intended to be determined using the formula contained in the Nexus Study. The trip demand for this type of development will be determined and then the fee rate calculation described in the Nexus Study will be applied to the trip demand; and

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Visalia, on the basis of the record, makes the following findings:

1. The planned transportation facilities described in the Nexus Study are in conformity with the circulation element of the general plan of the City; and

2. As described in the Nexus Study, land development within the City will require construction or acquisition of the transportation facilities planned for in the circulation element. The proposed schedule of fees, as demonstrated in the Nexus Study, are fairly apportioned on the basis of benefits conferred on property to be developed, and on the need for planned transportation facilities created by proposed development of property;

3. The planned transportation facilities described in the Nexus Study are in addition to any existing transportation facilities serving the city at the time of adoption of the circulation element of the general plan and are necessary to complete the planned transportation facilities.

4. The evidence indicates the imposition of the impact fees will provide a method to ensure that new development bears a proportionate share of the cost of capital facilities, including traffic improvements, which are necessary to accommodate such development. This must be done in order to promote and protect the public health, safety and welfare within the City; and

5. The proposed Transportation Impact Fee program will either fund construction of the improvements described in the Nexus Study by the City or to reimburse a private developer that construct the improvements to the satisfaction of the City; and

6. The Nexus Study identifies the facilities that will be financed, including the facilities listed in the circulation element to the general plan of the City; and

7. There is a reasonable relationship between using the fees generated by the proposed fees to pay for transportation improvements, and imposing the fee on new development within the City. The City must expand its street system in order to maintain current levels of service if new development is to be accommodated without decreasing current levels of service. The City has determined that the improvements described in the Nexus Study, including the improvements described in the circulation element to the general plan of the City are necessary to support projected development. The planned facilities will avoid unacceptable levels of traffic congestion and improve connectivity within the transportation system. This must be done in order to promote and protect the public health, safety and welfare within the City; and

8. The evidence shows there is a reasonable relationship between the need for the transportation improvements to be funded by the fee and imposing the fee on each type of new development within the City. As indicated in the Nexus Study, each type of new development generates additional demand on transportation facilities. The fee schedule is based on the impact of additional trip demands from each type of new development as well as the City's needs concerning the design of a transportation system to serve new growth areas. The scope of improvements included in the fee program has been reviewed and is being set to accommodate anticipated development; and

9. The City Council desires to use some dedicated transportation revenues from State and Federal sources as an off-set to the industrial, office and hotel fees in order to encourage economic development in these areas and limit these new fees to pragmatically acceptable levels. These offsets are described in the rate calculation contained in the Nexus Study and result in the rates listed in the fee schedule; and

10. The amount of the fee and cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed is reasonably related. The rate calculation contained in the Nexus Study is based on dividing the cost of the facilities, after applicable offsets by the estimated number of trips generated by new development. The fee the City charges to fund improvement projects to offset traffic impacts is directly related to the amount of trip demands that the project is estimated to generate. Development projects that will generate high trip demands will pay a higher fee and pay for more of the traffic improvements.

BE IT FURTHER RESOLVED, that the City Council of the City of Visalia determine the following:

1. The schedule of Transportation Impact Fees listed in Exhibit "A" is adopted as the Transportation Impact Fee rates. This fee schedule shall be effective sixty calendar days after the approval of this resolution.

2. The Nexus Study attached as Exhibit "B" is hereby adopted as the basis for the Transportation Impact Fee.

3. Impact fees for development projects that have a signed reimbursement agreement with the City, a signed subdivision improvement agreement with the City, a final subdivision map, a final parcel map, or that have been issued a building permit before the effective date of the revised Transportation Impact Fee schedule contained in this Resolution, shall be calculated under the prior fee program (as established by Council Resolution 2004-117 and Council Resolution 2005-030).

4. The fee schedule is being adopted pursuant to Visalia Municipal Code Chapter 16.44 as revised on December 1, 2008 and may be reviewed and modified pursuant to Section 16.44.070.

5. In instances where a fee cannot be determined from the schedule, the applicable fee will be determined using the formula contained in the Nexus Study. The trip demand for this type of development will be determined and then the fee rate calculation described in the Nexus Study will be applied to the trip demand.