

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Section 2: Chapter 16.44, Sections 16.44.010 through 16.44.180, of the Visalia Municipal Code is hereby repealed in its entirety and replaced with a new Chapter 16.44, Section 16.44.010 through 16.44.190 as indicated in Exhibit A, attached hereto and incorporated herein.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

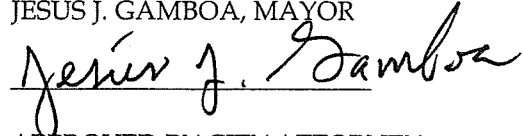
Section 5: Effective Date. This Ordinance shall take effect sixty days after its adoption.

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 J. GAMBOA, MAYOR

ATTEST:



STEVEN M. SALOMON, CITY CLERK

APPROVED BY CITY ATTORNEY

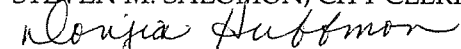


STATE OF CALIFORNIA)
COUNTY OF TULARE) ss.
CITY OF VISALIA)

I, Steven M. Salomon, City Clerk of the City of Visalia, certify the foregoing is the full and true Ordinance 2008-14 passed and adopted by the Council of the City of Visalia at a regular meeting held on December 1, 2008 and certify a summary of this ordinance has been published in the Visalia Times Delta.

Dated: *December 23, 2008*

STEVEN M. SALOMON, CITY CLERK



By Donja Huffmon, Chief Deputy

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 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 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)