

ORDINANCE NO. 22-_____

AN ORDINANCE OF THE CITY OF HAYWARD ADDING ARTICLE 30 TO
CHAPTER 10 OF THE HAYWARD MUNICIPAL CODE REGARDING TRAFFIC
IMPACT FEES FOR PROPERTY DEVELOPERS

THE CITY COUNCIL OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. Article 30 is added to Chapter 10 of the Hayward Municipal Code to read in full as follows:

ARTICLE 30 – PROPERTY DEVELOPERS—TRAFFIC IMPACT FEES

SECTION 10-30.00 – AUTHORITY.

This article is enacted pursuant to Government Code section 66000 et seq., known as the Mitigation Fee Act, the City Charter and the Constitution of the State of California.

SECTION 10-30.01 – FINDINGS AND PURPOSE.

The City Council finds and declares that:

- (a) New development generates additional residents, employees, and structures, which in turn place an additional cumulative burden upon the local transportation system.
- (b) Improvements to the existing transportation system in the City are needed to mitigate the cumulative impacts of new development and to accommodate future development.
- (c) The Mitigation Fee Act (Government Code section 66000 et seq.) authorizes local agencies to impose fees on development projects for the purpose of defraying all or a portion of the cost of public facilities related to the development project
- (d) The Traffic Impact Fees (hereafter “TIF”) imposed pursuant to this Article are one-time fees imposed in connection with the approval of development projects to mitigate the transportation impacts of new development.

- (e) The TIF will charge new development the fair share cost of transportation improvements needed to mitigate the transportation impacts created by that development.
- (f) Public facilities funded by the TIF will provide a network of transportation infrastructure accessible to the additional residents and workers associated with new development, resulting in mobility and accessibility benefits to the new development.
- (g) Adequate transportation improvements are needed to promote the health, safety, and general welfare of the citizens, to facilitate transportation and to promote economic well-being within the City.
- (h) It is the intent of the City Council that the TIF shall be supplementary to the fees, exactions, dedications, or conditions imposed upon development pursuant to the provisions of the Subdivision Map Act, California Environmental Quality Act, and other state laws and city ordinances or policies which may authorize the imposition of fees, dedications, or conditions thereon.
- (i) The TIF is based upon the evidence that new development generates additional cumulative burden upon the local transportation system and should be expected to pay a share of the new facilities, as more fully described in the City of Hayward Final Report Multimodal Intersection Improvement Plan & Nexus Study, dated March 2022, prepared by traffic consultants TJKM (hereinafter “the Traffic Impact Fee Report”).
- (j) The Traffic Impact Fee Report is intended to satisfy the requirements of the Mitigation Fee Act, particularly Government Code sections 66001 and 66016.5.

SECTION 10-30.05 – DEFINITIONS

For the purposes of this Article, the following terms shall have the meanings indicated in this Section:

- (a) “Developer” means an individual or entity applying for issuance of a building permit or approval of a tentative subdivision map, parcel map, use permit, planned development, or site plan review.
- (b) “Development” means any new construction or use of land or buildings that requires issuance of a building permit or other use entitlement, including a tentative subdivision map, parcel map, use permit, planned development, or site plan review.

(c) "Land Use Category" means any of the following specific land uses:

- (i) "Distribution" or "e-commerce" means a building that is used primarily for the storage and/or consolidation of manufactured goods (and to a lesser extent, raw materials) prior to their distribution to retail locations, other warehouses, or elsewhere.
- (ii) "General industrial" means industrial or related facilities. It is typically characterized by a mix of manufacturing, service, and warehouse services.
- (iii) "Multi-family" means a dwelling unit where more than one unit exists on a parcel, whether or attached or detached. This includes duplexes, triplexes, four-plexes, condominiums, and apartments with five or more units. Other than townhomes, an attached dwelling unit where more than one vertical wall is shared with another dwelling unit is considered a multi-family residence.
- (iv) "Non-residential" means retail, office, general industrial, and distribution/e-commerce land use categories.
- (v) "Office" means a building where affairs of businesses commercial or industrial organizations, or professional persons or firms are conducted.
- (vi) "Residential" means single-family, townhomes, and multi-family land use categories.
- (vii) "Retail" means land used for the provision of goods and services. This category is for general sales and services that comprise most establishments typically associated with commercial land use.
- (viii) "Single-family" means a detached unit where no more than one unit exists on a parcel. A couplet or zero lot line dwelling unit where no more than one vertical wall is shared, and each couplet/zero lot line dwelling is located on its own parcel is considered a single-family residence.
- (ix) "Townhome" means any building, group of buildings, or portion thereof which includes two or more attached dwelling units, and for which there is a final map or parcel map. Townhome dwelling projects are usually governed by a Homeowners Association (HOA) with Covenants, Codes, and Restrictions (CC&R's) and may include private recreational facilities. Townhome ownership includes the building, the land beneath the

building and typically a patio or small yard adjacent to the structure. The remaining land within the development is under common ownership.

SECTION 10-30.10 – ESTABLISHMENT OF FEE AND APPLICABILITY

- (a) A Traffic Impact Fee (TIF) is hereby established to carry out the purposes of this Article.
- (b) The TIF shall be imposed as a condition of approval upon each development project within the City involving issuance of a building permit or approval of a tentative subdivision map, parcel map, use permit, planned development, or site plan review.
- (c) If an application for a development project involving issuance of a building permit or approval of a tentative subdivision map, parcel map, use permit, planned development, or site plan review has been deemed complete by the Planning Department – Development Services Division on or after the effective date of the ordinance codified in this Article, the TIF shall apply to such development
- (d) Fees for residential development shall be charged for each new dwelling unit. No fee is applicable for remodeling or for an addition to an existing unit not resulting in a new dwelling unit.
- (e) Fees for non-residential development shall be charged on a per thousand square foot basis for all new gross floor area, including additions where floor area is increased. No fee is applicable for remodeling or restoration only, where the floor area is improved or replaced but not increased.
- (f) Fees shall be charged for changes in use that requires city approval, including issuance of a building permit, which results in an increase in traffic impacts based upon the incremental difference between the fee calculated for the floor area or number of units of a prior legal use and the fee calculated for the floor area or number of units of the proposed new use.

SECTION 10-30.15 – EXEMPTION FROM REQUIREMENTS

The following types of development projects(s) shall be exempt from the provisions of this article:

- (a) Development projects for the construction of public buildings or facilities.

- (b) Rental housing owned by a for-profit corporation with rents which on the average remain affordable, for a period of at least thirty (30) years, to households with incomes of no more than one hundred twenty (120) percent of area median income, adjusted for household size, as defined by the State of California Department of Housing and Community Development. Developers of such housing shall record against the property an Affordable Housing Agreement per HMC Sec. 10-17.515 and Section 10-17.525 that is approved by the City and enter into a regulatory agreement with the City, which shall guarantee the term of affordability.
- (c) Ownership housing developed by a private developer which is affordable in perpetuity to first-time homebuyers with incomes of no more than one hundred twenty (120) percent of area median income, adjusted for household size, as defined by the State of California Department of Housing and Community Development. Developers of such housing shall record against the property an Affordable Housing Agreement per HMC Sec. 10-17.515 and Section 10-17.525 that is approved by the City and enter into a regulatory agreement with the City, which shall guarantee the term of affordability. Owners within such ownership developments shall be required to provide a right of first refusal to the City or its designee to purchase the units upon resale.
- (d) Affordable units, as defined and required by the Hayward Affordable Housing Ordinance, Chapter 10, Article 17 of the Hayward Municipal Code.
- (e) Any affordable units otherwise restricted for a minimum of 30 years by a governmental agency pursuant to state or federal law.
- (f) Development projects for which the imposition of the fee imposed by this Article would be in violation of state or federal law.
- (g) Development projects that have submitted an application that has been deemed complete by the Planning Department – Development Services Division prior to the effective date of this Article.
- (h) No fee is applicable for remodeling, adding to an existing unit, or adding an accessory dwelling unit (ADU) for residential development.

SECTION 10-30.20 – AMOUNT OF FEE

- (a) AMOUNT OF FEE. The amount of the TIF may be established by resolution or ordinance of the City Council based on the analysis contained in the Traffic Impact Fee Report and shall be included in the Master Fee Schedule, which may be amended by the City Council from time to time. Development projects subject to this

Article shall be subject to the impact fee schedule in effect at the time the application is deemed complete by the Planning Department – Development Services Division. If a project is developed in phases, each phase shall be subject to the fee schedule in effect at the time of building permit issuance for that phase.

- (b) ANNUAL ADJUSTMENT. The TIF shall be automatically adjusted annually on the first of the fiscal year based on the preceding calendar year average California Construction Cost Index for the San Francisco Bay Area published by the Engineering News Record (ENR). In no event shall the annual adjustment result in a fee that exceeds the maximum fee rate previously adopted by the City Council.
- (c) CITY COUNCIL DISCRETION REGARDING RATE. In any given Fiscal Year, the City Council may, by resolution, levy the fee adopted pursuant to this Article at a lower rate. No action by the City Council under this subsection to reduce the fee rate will prevent it from subsequently increasing the fee rate up to the maximum rate previously adopted pursuant to this Article.

SECTION 10-30.25 – COMPUTATION OF FEE

The provisions set forth below shall govern the computation of the fee:

- (a) Residential development is calculated per dwelling unit and non-residential development is computed per gross floor area in thousand square feet (KSF).
- (b) The computation of development will use the following formula:
 - (i) *Traffic Impact Fee for residential = (Units) x (Fee per Unit)*
 - (ii) *Traffic Impact Fee for non-residential = (KSF) x (Fee per KSF)*
- (c) For changes in use pursuant to section 10-30.10(f), fees shall be charged upon the incremental difference between the fee calculated for the floor area or number of units of a prior legal use and the fee calculated for the floor area or number of units of the proposed new use. However, should the change of use, redevelopment, or modification result in a net decrease, no refunds or credits for past traffic fees shall be refunded or credited.
- (d) When more than one (1) land use type is proposed within the same development, such as a mixed-use development, each land use type will be calculated separately, and the total of the various uses will be assessed.

(e) Pursuant to Government Code section 66005.1, a ten percent (10%) reduction in the total computed traffic impact fee is applicable for residential projects that meet all the following criteria:

- (i) The housing development is located within one-half mile of a transit station and there is direct access between the housing development and the transit station along a barrier-free walkable pathway not exceeding one-half mile in length.
- (ii) The housing development is located within one-half mile of convenience retail uses, including a store that sells food.
- (iii) The housing development provides either the minimum number of parking spaces required by the local ordinance, or no more than one onsite parking space for zero- to two-bedroom units, and two onsite parking spaces for three or more-bedroom units, whichever is less.

SECTION 10-30.30 GENERAL PROVISIONS

- (a) PAYMENT OF IMPACT FEES. Fees shall be paid to the Department of Public Works – Transportation Division prior to the date of final inspection or the date of issuance of a certificate of occupancy for a development project, whichever occurs first. For phased development projects, including residential development projects with more than one dwelling unit, fees shall be paid on a pro rata basis for each dwelling unit or structure prior to the date of final inspection or the date the certificate of occupancy for each said dwelling unit or structure, whichever occurs first.
- (b) USE OF IMPACT FEES. The fees collected hereunder, including accrued interest, shall be used only for the purpose of mitigating cumulative transportation impacts of new development. The transportation mitigation improvements for which the fee will be used are identified in the Traffic Impact Fee Report, specifically *Chapter 5 – Multimodal Improvement Projects and Action Plan* Table 18: Bicycle Improvement Projects, Table 19: Pedestrian Improvement Projects, Table 20: Transit Improvement Projects, and Table 21: Vehicular Improvement Projects.
- (c) DISPOSITION OF FEES. Fees paid to the City pursuant to this Article shall be deposited into a special transportation fund designated solely for specific cumulative traffic mitigation projects identified in the Traffic Impact Fee Report.

(d) REFUND OF FEE.

(i) If a building permit or use permit expires, is canceled, or is voided and any fees paid pursuant to this chapter have not been expended, no construction has taken place, and the use has never occupied the site, the Director of Public Works may, upon the written request of the applicant, order return of the fee and the interest earned on it, less administrative costs.

(ii) City Council shall adopt a resolution authorizing refund of unexpended fees under the circumstances described in Government Code section 66001(e).

SECTION 10.-30.35 APPEALS

The developer of a project subject to this Article may appeal the imposition and/or calculation of the fee. Any development applicant aggrieved by any decision of the Public Works – Transportation Division with respect to the amount of such fee, interest, and imposition, if any, may appeal to the City Manager or their designee, or if applicable to the City Council.

- (a) An applicant must file a notice of appeal with the City Clerk within fifteen (15) days of the serving or mailing of the determination of imposition or calculation or prior to the effective date of the decision being appealed, whichever occurs first.
- (b) Appeal must be in writing and must set forth the specific action appealed from, the specific grounds of the appeal, and the relief or action sought. The written appeal must be accompanied by a fee, as established by resolution of the City Council.
- (c) The City Clerk shall fix a time and place for hearing such appeal and give notice in writing to such applicant at their last known place of address. The findings of the City Manager or their designee, or if applicable the City Council, shall be final and conclusive and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.
- (d) If an application is approved, an appeal may be filed by the applicant.
- (e) The City Manager or their designee, or if applicable the City Council, may approve, conditionally approve, or disapprove the appeal based upon the relevant information and findings.

- (f) Appeal shall be to the City Council when the decision being appealed is made by the Planning Commission. All other appeals shall be to the City Manager or their designee.

SECTION 10-30.40 – EFFECTIVE DATE OF ARTICLE

The effective date of this Article shall be thirty (30) days after its adoption by the City Council.

SECTION 10-30.45 - EFFECTIVE DATE OF FEE

Pursuant to Government Code sections 66017 and 66019 the effective date of the fees established by this Article shall be no sooner than sixty (60) days following adoption of the fees by the City Council.

SECTION 10-30.50 - SEVERABILITY

If any section, subsection, paragraph, or sentence of this Ordinance, or any part thereof, is for any reason found to be unconstitutional, invalid, or beyond the authority of the City of Hayward by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the _____ day of _____ 2022, by Council Member _____

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the _____ day of _____ 2022, by the following votes of said City Council.

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward