

SECOND READING AND ADOPTION

ORDINANCE NO. _____

ORDINANCE OF THE CITY OF CHULA VISTA AMENDING
CHAPTER 3.50 OF THE CHULA VISTA MUNICIPAL CODE
(DEVELOPMENT IMPACT FEES TO PAY FOR VARIOUS
PUBLIC FACILITIES)

WHEREAS, the City of Chula Vista assesses the Public Facilities Development Impact Fee (PFDIF) on new development to fund the construction and acquisition of general government buildings and equipment, including, but not limited to, Fire Stations, Libraries, and Recreation Facilities; and

WHEREAS, January 8, 1991, the City Council adopted Ordinance No. 2432, establishing the PFDIF;

WHEREAS, the PFDIF is codified as Chapter 3.50 of the Chula Vista Municipal Code (CVMC); and

WHEREAS, amendments to Chapter 3.50 are recommended in order to ensure consistency between development impact fee programs, simplify and streamline administration, clarify application of the existing code, and improve readability; and

WHEREAS, updates to simplify the fee modification, waiver, and deferral process, including granting additional authority to the City to approve fee deferrals for projects which provide significant public benefit are also recommended; and

WHEREAS, the City recognizes the positive economic benefits of hotel/motel land uses and that such uses may not achieve stabilized operations until several years after construction is complete; and

WHEREAS, the City Council therefore desires to allow for deferral of the PFDIF for up to four years from Certificate of Occupancy for hotel/motel uses that do not receive any other economic subsidy from the City; and

WHEREAS, Senate Bill 13 (Accessory Dwelling Units) was signed into law on October 9, 2019, and will become effective January 1, 2020; and

WHEREAS, Senate Bill 13 prohibits local agencies, special districts, and water corporations from imposing impact fees upon the development of accessory dwelling units of less than 750 square feet; and

WHEREAS, Senate Bill 13 requires impact fees for accessory dwelling units of 750 square feet or more be charged proportionately in relation to the square footage of the primary dwelling unit; and

WHEREAS, on October 22, 2019, the City Council of the City of Chula Vista did conduct a duly-noticed public hearing for consideration of a revision to the PFDIF program; and

WHEREAS, the City's Development Services Director has reviewed the proposed activity for compliance with the California Environmental Quality Act (CEQA) and has determined that the activity is not a "Project" as defined under Section 15378 of the State CEQA Guidelines; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines, the activity is not subject to CEQA.

NOW THEREFORE the City Council of the City of Chula Vista does ordain as follows:

Section I. Substantive Action

Chapter 3.50 of the Chula Vista Municipal Code relating to development impact fees to pay for various public facilities is amended as follows:

- 3.50.010 General intent.**
- 3.50.020 Definitions.**
- 3.50.030 Public facilities to be financed by the Fee.**
- 3.50.040 Territory to which Fee applicable.**
- 3.50.050 Establishment of Fee.**
- 3.50.060 Determination of Fees by land use category.**
- 3.50.070 Time to determine amount due.**
- 3.50.080 Purpose and use of Fee.**
- 3.50.090 Amount of Fee.**
- 3.50.100 Development Projects exempt from the Fee.**
- 3.50.110 Authority for accounting and expenditures.**
- 3.50.120 Findings.**
- 3.50.130 Fee additional to other fees and charges.**
- 3.50.140 Developer construction of facilities.**
- 3.50.145 Mandatory oversizing of facility – Duty to tender reimbursement offer.**
- 3.50.150 Procedure for issuance of credits or tender of reimbursement offer.**

- 3.50.155 Developer transfer of credits.**
- 3.50.160 Procedure for fee modification or reduction.**
- 3.50.170 Fund loans.**
- 3.50.180 Effective date.**

3.50.010 General intent.

The City's General Plan land use and public facilities elements require that adequate public facilities be available to accommodate increased population created by new development within the City of Chula Vista.

The City Council of the City of Chula Vista has determined that new development will create adverse impacts on the City's existing public facilities which must be mitigated by the financing and construction of certain public facilities which are the subject of this chapter. New development contributes to the cumulative burden on these public facilities in direct relationship to the amount of population generated by the development or the gross acreage of the commercial or industrial land in the development.

The City Council of the City of Chula Vista has determined that a reasonable means of financing the public facilities is to charge a fee on all developments in the City of Chula Vista. Imposition of the public facilities development impact fee on all new development for which building permits have not yet been issued is necessary in order to protect the public safety and welfare, thereby ensuring effective implementation of the City's General Plan. (Ord. 3050 § 2, 2006).

3.50.020 Definitions.

For the purposes of this chapter, the following words or phrases shall be construed as defined in this section, unless from the context it appears that a different meaning is intended:

- A. "Accessory Dwelling Unit" means an Accessory Dwelling Unit as defined in CVMC 19.58.022.
- B. "Building Permit" means a permit required by and issued pursuant to the Uniform Building Code, as adopted by reference by this City.
- C. "Developer" means the owner or applicant of a Development Project.
- D. "Development Permit" means any discretionary permit, entitlement or approval for a Development Project issued under any zoning or subdivision ordinance of the City.
- E. "Development Project" means any activity that results in a net increase in demand for service, as reasonably determined in the sole discretion of the City Manager, or designee, described as the following:

1. Any new residential dwelling unit, including any Accessory Dwelling Unit 750 square feet or larger, developed on vacant land;
2. Any new residential dwelling unit, including any Accessory Dwelling Unit 750 square feet or larger, developed on nonvacant land. The fees shall be based solely on the net increase in service demand;
3. Any physical conversion of an existing residential structure to create an Accessory Dwelling Unit 750 square feet or larger;
4. Any new nonresidential construction on, or enhancement to, vacant land;
5. Any expansion or intensification of nonresidential development on nonvacant land, if the result is a net increase in demand for service. The fee shall be based solely on the net increase in service demand;
6. Any new or expanding special land use project.

F. "Engineer's Report" means, collectively, the "Report on Supplemental Development Impact Fee for Public Facilities" prepared by City staff dated June 1989; the "Development Impact Fees for Public Facilities" report prepared by Willdan Associates dated December 12, 1990; the "Development Impact Fee for Public Facilities 1999 Update" report prepared by City staff dated April 2000; the "Public Facilities DIF 2002 Update" report prepared by City staff dated March 2002; the "Public Facilities DIF November 2002 Amendment" prepared by City staff; and the "Public Facilities Development Impact Fee March 2006 Update" report prepared by City staff, which are on file in the office of the City Clerk.

G. "Fee Component" means a portion of the Fee allocated to specific Public Facilities, which corresponds to the cost of the various Public Facilities, plus the cost of administering the Fee program. The Fee Components are as follows:

1. Civic Center;
2. Police Department Facilities;
3. Corporation Yard;
4. Library System;
5. Fire Suppression System;
6. Major Recreation Facilities;
7. Administration

H. “Fee Credit” means credit that Developers may receive for costs they incur designing and constructing the Public Facilities in accordance with CVMC 3.54.150.

I. “Fee(s)” means the Public Facilities Development Impact Fees established pursuant to CVMC 3.50.050 and assessed in accordance with the Mitigation Fee Act (Government Code Sections 66000 through 66025), as described in the Engineer’s Report.

J. “Nonprofit Community Purpose Facility” means a facility that is not operated for profit and that serves one of the following purposes:

1. Social and human service activities, including such services as Boy Scouts and Girl Scouts, Boys and Girls Club, Alcoholics Anonymous and services for the homeless;
2. Public schools (primary and secondary only);
3. Private schools (primary and secondary only);
4. Day care;
5. Senior care and recreation;
6. Worship, spiritual growth and development.

K. “Public Facility(ies)” or “Facilities” means the project or a portion of a project which involves the specified improvements authorized by CVMC 3.50.030.

L. “Special Land Use” means any nonresidential, noncommercial/office or nonindustrial Development Project (e.g., Chula Vista Elite Athlete Training Center, hospitals, utilities).

3.50.030 Public facilities to be financed by the Fee.

A. The Public Facilities which are the subject matter of the fee include (but are not limited to) buildings, amenities, equipment and related one-time start-up costs or portions thereof, as detailed in subsection (C) of this section and in the Engineer’s Report on file in the office of the City Clerk.

B. The City Council of the City of Chula Vista may modify or amend the list of Public Facilities by resolution.

C. The Public Facilities are as follows:

1. Civic Center Expansion;

2. Police Department Facilities and Equipment;
3. Corporation Yard Relocation/Expansion;
4. Library System Expansion;
5. Fire Suppression System Expansion;
6. Major Recreation Facilities.

3.50.040 Territory to which Fee applicable.

The area of the City of Chula Vista to which the fee herein established shall be applicable shall be the territorial limits of the City of Chula Vista (“Territory”), as they may from time to time be amended.

3.50.050 Establishment of Fee.

A. A Public Facilities Development Impact Fee is hereby established to pay for the Public Facilities within the Territory. The Fee shall be paid no earlier than upon the issuance of Building Permits and no later than final inspection or certificate of occupancy, whichever occurs first, for each Development Project within the City of Chula Vista.

B. Notwithstanding subsection (A) of this section, the City Manager, in his or her sole discretion, may require payment of the Fees in advance of final inspection or certificate of occupancy upon the occurrence of any of the following events:

1. The change of ownership of the Development Project, or any portion or portions thereof;
2. Upon the Finance Director’s determination that the Fees are necessary based on the adopted Facilities program in accordance with California Government Code Section 66007(b)(1);
3. Upon determination of the Finance Director that there exists a risk associated with the collection of the Fees at a date later than permit issuance;
4. Upon entering into an agreement to prepay all or a portion of a Development Project’s Fees. Entering into such an agreement shall be solely at the City Manager’s discretion and shall require a minimum prepayment of \$5,000,000.

3.50.060 Determination of Fees by land use category.

For purposes of this Fee, single-family dwelling units shall include single-family detached homes and detached condominiums; multifamily dwelling units shall include attached condominiums, townhouses, duplexes, triplexes, and apartments. Accessory Dwelling Units 750 square feet or larger shall be charged proportionately in relation to the square footage of the primary dwelling unit on the lot. Commercial/office and industrial development projects shall be charged on a gross acre basis. Fees for single-family, multi-family, commercial and industrial land uses shall be based on the demand for service generated by that land use, for each Public Facility set forth in CVMC [3.50.030](#):

Public Facility	Service Demand Generated by Land Use			
	Single-Family Dwelling Unit	Multifamily Dwelling Unit	Commercial Acre	Industrial Acre
Civic Center Expansion	.169	.742	.058	.031
Police Department Facilities and Equipment	.150	.747	.075	.028
Corporation Yard Relocation/Expansion	.125	.465	.228	.182
Library System Expansion (residential only)	.178	.822	.000	.000
Fire Suppression System Expansion	.212	.707	.060	.020
Major Recreation Facilities (residential only)	.178	.822	.000	.000
Program Administration	.169	.742	.058	.031

The rate for each Special Land Use, as defined in CVMC [3.50.020](#), Development Project shall be equivalent to the commercial/office rate per gross acre of land. The Chula Vista Elite Athlete Training Center shall be equivalent to the industrial rate per gross acre of land. The charges shall be those outlined in CVMC [3.50.090.B](#). The Fee multiplied by the total number of dwelling units

or acres within a given Development Project represents a Developer's fair share fee obligation ("Fee Obligation") for that Development Project.

3.50.070 Time to determine amount due.

The Fees for each Development Project shall be calculated based on the rates in effect at the time of payment.

3.50.080 Purpose and use of Fee.

The Fee collected shall be used by the City for the following purposes, in such order and at such time as determined by the City Council:

- A. To pay for such of the Public Facilities that the City Council determines should be constructed, installed or purchased at that time, or to reimburse the City for Public Facilities funded by the City from other sources.
- B. To reimburse Developers who have been required or permitted by CVMC [3.50.140\(A\)](#) to construct, install or purchase approved Public Facilities listed in CVMC [3.50.030\(C\)](#), in such amounts as the Council deems appropriate.
- C. To repay any and all persons who have, pursuant to this chapter, advanced or otherwise loaned funds for the construction of a Public Facility identified herein.
- D. To repay the City for costs associated with administration of the Fee.

3.50.090 Amount of Fee.

A. The Fee shall be the amounts set forth in subsection [\(B\)](#) of this section. The Fee shall be adjusted, starting on October 1, 2020, and on each October 1st thereafter, based on the following two indexes:

- 1. For the Civic Center Expansion, Library System Expansion, Fire Suppression System Expansion, and Major Recreation Facilities Fee Components: The Engineering News Record, Building Construction Cost Index for the Los Angeles Area.
- 2. For the Police Department Facilities and Equipment, Corporation Yard Relocation/Expansion, and Administration Fee Components: The U.S. Department of Labor, Bureau of Labor Statistics (San Diego Metropolitan Statistical Area).

Adjustments of the Fee based upon annual changes to these two indexes shall be automatic, shall not require further action by the City Council, and shall be published in the City's Master Fee Schedule.

The Fee may also be reviewed and amended by the City Council as necessary based on changes in the type, size, location or cost of the Public Facilities to be financed by the Fee; changes in land use designation in the City’s General Plan; or upon other sound engineering, financing and planning information.

B. The Fees, as of October 1, 2019 are as follow, depending on the land use, and will be amended annually and from time-to-time, as provided in subsection A., above:

Land Use	Fee
Residential – Single-family dwellings	\$11,175/DU
Residential – Multifamily dwellings	\$10,569/DU
Commercial/Office	\$34,560/acre
Industrial	\$10,871/acre
Special Land Use	\$34,560/acre
Chula Vista Elite Athlete Training Center	\$10,871/acre
Public Purpose	Exempt
Nonprofit Community Purpose Facility	Exempt

3.50.100 Development projects exempt from the Fee.

A. Development Projects by public agencies shall be exempt from the provisions of the Fee if those Projects are designed to provide the public service for which the agency is charged (“Public Purpose”).

B. Nonprofit Community Purpose Facilities are also exempt inasmuch as these institutions provide benefit to the community as a whole, including all land use categories which are the subject matter of the Fee. The City Council hereby determines that it is appropriate to spread any impact such Nonprofit Community Purpose Facilities might have to the other land use categories subject to the Fee. In the event that a court determines that the exemption herein extended to Nonprofit Community Purpose Facilities shall for any reason be invalid, the City Council hereby allocates the Nonprofit Community Purpose Facilities’ fair share to the City of Chula Vista and not to any of the land use categories which are the subject matter of the development impact land use categories.

C. Development Projects which are additions or expansions to existing dwelling units or additions, expansions, or changes of nonresidential uses shall be exempt if the addition, expansion or change of use does not result in a net increase in dwelling units or nonresidential intensity. The Fee shall be assessed on any net additional dwelling units or nonresidential intensity. Any net reduction in dwelling units or nonresidential intensity shall not be entitled to a refund, but the property shall retain credit based on the former number of dwelling units or nonresidential intensity.

D. Accessory Dwelling Units smaller than 750 square feet are exempt from the provisions of the Fee, pursuant to California Government Code Section 65852.2(f)(3)(A).

3.50.110 Authority for accounting and expenditures.

The Fees collected shall be deposited into a public facility financing fund (the “Public Facilities Development Impact Fee Fund,” or alternatively herein the “Fund”), as established by the Director of Finance and shall be expended only for the purposes identified herein.

The Director of Finance is authorized to establish a single Fund for deposit of the Fees collected for the various Public Facilities identified in this chapter and to periodically make expenditures from the Fund for the purposes set forth herein.

3.50.120 Findings.

The City Council finds that collection of the Fee established by this chapter is necessary to provide funds for the Public Facilities and to ensure certainty in capital facilities budgeting for growth-impacted Public Facilities.

3.50.130 Fee additional to other fees and charges.

This Fee is in addition to the requirements imposed by other City laws, policies or regulations relating to the construction or the financing of the construction of public improvements within subdivisions or Development Projects.

3.50.140 Developer construction of facilities.

Developer may construct or finance a Public Facility in accordance with the following:

A. Any Developer of a Development Project required by application of City ordinance, regulation, or policy, as a condition of approval of a Development Permit to design, construct or finance a Public Facility, or any Developer that proposes to design, construct, or finance a Public Facility in conjunction with the prosecution of a Development Project within the Territory, shall follow the procedure for doing same as set forth in this chapter and in CVMC 2.56.160(H).

B. If the cost of the Public Facility, incurred by the Developer and acceptable to the City, is less than or equal to that portion of the Developer's Fee Obligation related to the Fee Component for that Public Facility, the City may only give a Fee Credit against that portion of the Developer's Fee Obligation related to the Fee Component for that Public Facility.

C. If the cost of the facility, incurred by the Developer and acceptable to the City, is greater than that portion of the Developer's Fee Obligation related to the Fee Component for that Public Facility, but less than or equal to the Developer's total Fee Obligation, the City may give a credit, which credit shall first be applied against that portion of the Fee Obligation related to the Fee Component for that Public Facility, and the excess costs for the Public Facility shall then be applied as Fee Credits against such other Fee Components of the Developer's total Fee Obligation as the City Manager, in his or her sole and unfettered discretion, shall determine; or

If the cost of the facility, incurred by the Developer and acceptable to the City, is greater than the Developer's total Fee Obligation, the City may give a Fee Credit against the Developer's total Fee Obligation as the City Manager, in his or her sole and unfettered discretion, shall determine; and/or the City may tender to the Developer a reimbursement agreement to reimburse said Developer only from the Fund as moneys are available, over time, with interest at the fair market value of money, at the option of the City.

D. Unless otherwise stated herein, all Fee Credits shall be calculated on a dollar basis to be applied toward payment of the assessed Fee at the time Fees are due, based on the then-current Fee.

E. The requirements of CVMC 3.50.145, 3.50.150, and 3.50.155 may, in the City's discretion, be modified through an agreement between the Developer and the City, as approved by resolution of the City Council.

3.50.145 Mandatory oversizing of facility – Duty to tender reimbursement offer.

Whenever a Developer of a Development Project is required as a condition of approval of a Development Permit to cause a Public Facility to be built to accommodate the demands created by the Development Project, the City may require the Developer to install, purchase or construct the Public Facility according to design specifications approved by the City, that being with such supplemental size or capacity required by the City ("Oversized Capacity Requirement"). If such an Oversized Capacity Requirement is imposed, the City shall tender to the Developer a reimbursement agreement for City-approved costs associated with the Oversized Capacity Requirement, to be paid in cash when funds are available, as determined by the City Manager, or designee. The City may, in its discretion, enter into an agreement with the Developer to issue Fee Credits in lieu of a reimbursement agreement for costs associated with the Oversized Capacity Requirement, or some combination thereof. This duty to offer reimbursement shall be independent of the Developer's obligation to pay the fee.

3.50.150 Procedure for issuance of credits or tender of reimbursement offer.

The City's extension of Fee Credits or tender of a reimbursement offer to a Developer pursuant to CVMC [3.50.140](#) shall be conditioned on the Developer complying with the terms and conditions of this section:

A. Developer shall comply with the procedures described in CVMC 2.56.160(H), except that approval to proceed and change order approvals for Developer-constructed Public Facilities to be constructed for Fee Credit shall be granted by the City Manager, or designee, and shall not require action of the City Council.

B. Written authorization shall be requested by the developer from the City and issued by the City Council by written resolution, or the City Manager for Public Facilities to be constructed for Fee Credit, before Developer may incur any costs eligible for reimbursement relating to the Public Facility.

C. The request for authorization shall contain the information listed in this section and such other information as may from time to time be requested by the City. In addition to the requirements of CVMC 2.56.160(H), Developer shall perform the following:

1. Developer shall prepare all plans and specifications and submit same for approval by the City;
2. Developer shall secure land and dedicate any right-of-way required to provide access to the Public Facility;
3. Developer shall secure all required permits and environmental clearances necessary for construction of the Public Facility;
3. Developer shall provide a detailed cost estimate that itemizes those costs of the construction attributable to the Public Facility and excludes any work attributable to a specific subdivision project. The estimate shall be preliminary, and the final amount of the reimbursement or Fee Credit shall be subject to final determination of the City Manager, or designee, upon completion of the Public Facility;
4. Developer shall provide performance bonds in a form and amount and with a surety satisfactory to the City (where the developer intends to utilize provisions for immediate credit, the performance bond shall be for 100 percent of the estimated cost of the Public Facility, pursuant to subsection (B)(4) of this section);
5. Developer shall pay all City fees and costs;

6. The City shall be held harmless and indemnified, and upon tender by the City, defended by the Developer for any of the costs and liabilities associated with the construction of the Public Facility;
7. The City will not be responsible for any of the costs of constructing the Public Facility. The Developer shall advance all necessary funds to construct the Public Facility;
8. Any claims for additional payment for extra work or charges during construction shall be justified and shall be documented to the satisfaction of the City Manager, or designee;
9. Developer shall be entitled to immediate Fee Credit equal to 50 percent of the estimated cost of the Public Facility upon City acceptance of the estimate provided pursuant to subsection (B)(4) of this section and the provision of performance bonds pursuant to subsection (B)(5) of this section;
10. Following receipt of valid bids for the Public Facility which comply with all applicable requirements, entering into binding contracts for the construction of the Public Facility, and meeting all requirements and conditions set forth above, as approved by the City Manager or designee, the Developer shall be entitled to additional Fee Credits, increasing the cumulative immediate Fee Credit award to 75 percent of the bid amount attributable to the Public Facility, thereby retaining 25 percent of such Fee Credits until issuance by the City of a final expenditure determination;
11. If the Developer uses all of the immediate Fee Credit before final completion of the Public Facility project, then the Developer may defer payment of the Fees for other Building Permits by providing to the City liquid security such as cash or an irrevocable letter of credit, but not bonds or set-aside letters, in an amount equal to the remaining amount of the estimated cost of the Public Facility project;
12. When all Public Facility construction work has been completed to the satisfaction of the City Manager or designee, Developer shall submit to the City verification of payments made for the construction of the Public Facility. City Manager or designee shall make the final determination of which expenditures are eligible for Fee Credit or reimbursement. The Developer shall receive additional Fee Credit in an amount equal to the difference between the final expenditure determination and the 75 percent immediate Fee Credit issued pursuant to subsection (B)(11) of this section. If the amount of the final Fee Credit award is less than the deferred obligation pursuant to subsection (B)(12) of this section, then the Developer shall have 30 calendar days to pay the deferred Fee. If the deferred Fees are not paid within this period, the City may make a demand against the liquid security and apply the proceeds to the Fee Obligation.

3.50.155 Developer transfer of credits.

A. A Developer who, in accordance with the provisions of CVMC [3.50.140](#), 3.50.145, and [3.50.150](#), receives Fee Credits against future payments of the Fee for one or more Fee Components may transfer those Fee Credits as provided herein to another Developer (“Credit Transfer”). If the Developer complies with all conditions of this section, the City shall permit and execute the Credit Transfer. Fee Credits associated with Facilities acquired or financed by assessment districts or special tax districts are not eligible for Credit Transfer beyond the boundaries of said district(s).

B. The Developer shall provide the City with written request for Credit Transfer no later than three business days prior to the desired effective date of the Credit Transfer. The request shall provide the following information:

1. The name of the Developer receiving the Credit Transfer;
2. The dollar value of the transferred Fee Credits; and
3. The Fee Component(s) against which the Fee Credits will be applied.

3.50.160 Procedure for Fee modification or reduction.

A. Any Developer who, because of the nature or type of uses proposed for a Development Project, contends that application of this Fee is unconstitutional or unrelated to mitigation of the burdens of the Development Project may apply to the City Manager, in writing, for a modification or reduction of the Fee. The application shall state in detail the factual basis for the claim of modification or reduction. The City Manager shall issue a decision within 10 business days of receipt of the application for Fee modification or reduction. The requested modification or reduction shall be considered denied by the City Manager if a decision is not issued within 10 business days. The decision of the City Manager may be appealed to the City Council. Unless the requirement for timely filing is waived by the City, the appeal shall be made in writing and filed with the City Clerk not later than 10 business days after issuance of the City Manager’s decision. The appeal shall state in detail the factual basis for the claim of modification or reduction. The City Council shall consider the application at a public hearing on same, notice of which shall be provided directly to the appellant, but need not be published other than by description on the agenda of the meeting at which the public hearing is held. The City Council shall make reasonable efforts to hold the public hearing within 60 days of the filing of the appeal. The decision of the City Council shall be final. If a reduction or modification is granted, any change in use within the Development Project shall subject the Developer to payment of the Fee for the new use. The procedure provided by this section is additional to any other procedure authorized by law for protesting or challenging the Fee imposed by this chapter.

B. A Development Project, which is designated and intended as a temporary use (10 years or less) and which is conducted in facilities which are, by their natures, short-term interim facilities such as a portable or modular building (including mobile homes, trailers, etc.) may qualify for a waiver or reduction, as determined by the City Manager or designee. The City Manager's or designee's determination may be appealed to the City Council pursuant to Subsection (A) of this section.

C. A deferral of the Fee may be granted if the City Manager, or designee, reasonably determines in his or her sole discretion that one of the following circumstances exists: (i) the Developer has demonstrated an economic hardship or funding sequencing challenge; or (ii) the Project offers a public benefit. The deferral shall only be granted if the City Manager or designee determines that: (i) the amount deferred will bear interest at a fair market rate, such that the City will receive an amount that is equal to, or greater than, the total amount of Fees owed prior to the deferral; and (ii) the amount deferred is adequately secured by a written agreement with the applicant, the terms of which shall be subject to approval of the City Manager.

D. Any Developer who proposes the construction of a new hotel/motel, which does not otherwise receive an economic subsidy from the City, may apply to the City for a deferral and/or reduction of the Fee based on the nature of the hotel/motel.

A deferral pursuant to this subsection may be granted for a period of up to four years from the certificate of occupancy for the Development Project. The deferral period shall begin upon the issuance of a temporary certificate of occupancy, as applicable. The total amount deferred shall be secured through a written agreement between the City and the Developer, the terms of which shall be subject to approval of the City Manager.

E. At a minimum, deferral agreements pursuant to subsection (C) and (D) of this section shall require the following:

1. The Fee obligation be secured through a promissory note and a recorded lien, deed of trust, or other security instrument in real property, in a form acceptable to the City Manager or designee, of at least equivalent value to the Fees due pursuant to CVMC 3.50.090, to be located within the City of Chula Vista.

2. Any sale or transfer of the Development Project property shall require the new owner to assume all obligations of the transferring party, including, without limitation, full responsibility for the outstanding deferred balance and the provision of appropriate security acceptable to the City Manager or designee. The City of Chula Vista shall be provided with notice of the transfer and documentation satisfactory to the City Manager or designee demonstrating that the new owner has fully assumed all obligations of the

transferring party. Failure to provide such notice shall cause the outstanding deferred Fee balance to become immediately due and payable.

3.50.170 Fund loans.

A. *Loans by the City.* The City may loan funds to the Fund to pay for Public Facilities should the Fund have insufficient funds to cover the cost of planned facilities. Said loans, if granted, shall be approved by resolution of the City Council and shall carry interest rates pursuant to City Council Policy 220-06 (Interfund Loan Policy) or such other policies as may be subsequently adopted.

B. *Developer Loans.* A developer may loan funds to the City as outlined in CVMC [3.50.140](#) and [3.50.150](#). The City may repay said developer loans with interest, under the terms listed in subsection [\(A\)](#) of this section.

3.50.180 Effective date.

This chapter shall become effective December 5, 2019.

Section II. Severability

If any portion of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or circumstance. The City Council of the City of Chula Vista hereby declares that it would have adopted each section, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.

Section III. Construction

The City Council of the City of Chula Vista 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 IV. Effective Date

This Ordinance shall take effect and be in force on the thirtieth day after its final passage.

Section V. Publication

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.

Presented by

Approved as to form by

Kelly G. Broughton, FASLA
Director of Development Services

Glen R. Googins
City Attorney