

ORDINANCE NO. 3106

ORDINANCE OF THE CITY OF CHULA VISTA ACCEPTING THE WESTERN TRANSPORTATION DEVELOPMENT IMPACT FEE REPORT (TF-358) PREPARED BY STAFF AND ESTABLISHING A WESTERN TRANSPORTATION DEVELOPMENT IMPACT FEE PROGRAM TO MITIGATE TRANSPORTATION IMPACTS WITHIN WESTERN CHULA VISTA EXCLUDING PROJECTS - I-5-17, STM-361, RAS-15, BP-5, I-805-2, RAS-17, BP-4, BP-2, AND OR-4

WHEREAS, the adoption of the City's General plan indicated that future growth was going to occur in the City west of I-805; and

WHEREAS, the traffic studies for the City's General Plan and the Urban Core Specific Plan show the City's transportation network will be impacted by new development within the western portion of the City unless new transportation facilities are added to accommodate the new development; and

WHEREAS, since January 1988, the City has had a program in place for the collection of a transportation development impact fee for the financing of street improvements in the area east of I-805; and

WHEREAS, the Engineer's Report establishes that the transportation facilities necessitated by development within the western portion of the City comprise an integrated network; and

WHEREAS, the Western Transportation Development Impact Fee is solely based upon that portion of the project costs which are attributable to new development; and

WHEREAS, on March 4, 2008, the City Council of the City of Chula Vista held a duly noticed public hearing at which oral or written presentations regarding the Western Transportation Development Impact Fee could be made; and

WHEREAS, pursuant to the Municipal Code and California Government Code Sections 66000, et. seq., the City Council has accepted a report entitled "Engineer's Report for the Western Transportation Development Impact Fee" (Engineer's Report) dated February 2008 that analyzed the Western Transportation Development Impact Fee necessary to fund transportation facilities needed to serve future development within the western portion of the City; and

WHEREAS, the City's Environmental Review Coordinator 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; and

WHEREAS, the City Council of the City of Chula Vista is placing this ordinance on its first reading which will establish a development impact fee per equivalent dwelling unit (EDU) to finance transportation facilities within the western portion of the City of Chula Vista; and

WHEREAS, pursuant to Government Code Section 66017(a), the fees proposed by this ordinance will not become effective until sixty (60) days after its second reading.

NOW, THEREFORE, BE IT ORDAINED, that the City Council of the City of Chula Vista does hereby adopt Chapter 3.55 of the Chula Vista Municipal Code relating to transportation development impact fees to pay for various transportation facilities located on the west side of the City as follows:

**SECTION 1: Findings**

The City Council finds, after consideration of the evidence presented to it including the "Engineer's Report for the Western Transportation Development Impact Fee" dated February 2008, that the creation of a transportation development impact fee is necessary in order to assure that there are sufficient funds available to finance the transportation facilities necessary to serve development west of I-805; and

The City Council finds that new development within the western portion of the City of Chula Vista should be required to mitigate the burden created by development through the construction of transportation facilities; and

The City Council finds, based on the evidence presented at the public hearing, and consistent with the City's General Plan, and the various reports and information received by the City Council in the ordinary course of its business, that the imposition of traffic impact fees on all development within the western portion of the City of Chula Vista for which building permits have not been issued is necessary in order to protect the public health, safety and welfare by providing for the public transportation facilities to assure effective implementation of the City's General Plan; and

The City Council finds that the amount of the proposed fees levied by this ordinance does not exceed the estimated cost of providing the transportation facilities.

**SECTION 2:** Chapter 3.55 of the Chula Vista Municipal Code is hereby adopted and shall read as follows:

**3.55.010 General intent.**

The City's General Plan Land Use and Transportation Element requires that adequate public facilities be available to accommodate increased population created by new development within the City of Chula Vista.

The City Council has determined that new development will create adverse impacts on the City's existing public transportation facilities which must be mitigated by the financing and construction of certain public transportation facilities which are the subject of this chapter.

New development contributes to the cumulative burden on these public transportation facilities in direct relationship to the amount of vehicular traffic and population generated by the development or the gross acreage of the commercial or industrial land in the development.

The City Council has determined that a reasonable means of financing the public transportation facilities is to charge a fee on all developments within the western portion of the City. Imposition of the Western Transportation Development Impact Fee on all new development for which building permits have not yet been issued is necessary in order to protect the public health, safety and welfare, thereby ensuring effective implementation of the City's General Plan.

### **3.55.020 Definitions.**

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

- A. "Building permit" means a permit required by and issued pursuant to the Uniform Building Code.
- B. "City Engineer" means the City Engineer, the City Engineer's designee or the City Manager's designee.
- C. "Density" means dwelling units per gross acre identified for each planning area shown on the approved tentative map or approved tentative parcel map or as determined by the City Manager's designee.
- D. "Developer" means the owner or developer of a development.
- E. "Development permit" means any discretionary permit, entitlement or approval for a development project issued under any zoning or subdivision ordinance of the City.
- F. "Development project" or "development" means any activity described as the following:
  - 1. Any new residential dwelling unit developed on vacant land;
  - 2. Any new commercial/office or industrial development constructed on vacant land;
  - 3. Any expansions to established developments or new developments on non-vacant land in those land use categories listed in subsections (F)(1) and (2) of this section, if the result is a net increase in dwelling units. The fee shall be based solely on this net dwelling unit increase;
  - 4. Any new or expanding special land use project;
  - 5. Any special purpose project developed on vacant land or non-vacant land, or expanded within a pre-existing site, if the result is a net increase in dwelling units. The fee shall be based solely on this net dwelling unit increase;
  - 6. Any other development project not listed above but described in Section 65927 and 65928 of the State Government Code.

"Community purpose facility" means a facility which serves one of the following purposes:

- 1. Social 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;
- 3. Private schools;
- 4. Day care;

5. Senior care and recreation;
6. Worship, spiritual growth and development.
  - G. "Western portion of the City of Chula Vista" generally means that area of the City located between the City boundary on the west, Interstate 805 on the east, the City boundary on the north and the City's boundary on the south, as shown on the map entitled "Figure 1" of the Engineering study.
  - H. "Engineering study" and "Engineer's Report" means the Engineer's Report for the Western Transportation Development Impact Fee dated February, 2008 and prepared by City staff on file in the Office of the City Clerk.
  - I. "Regional Arterial System" (RAS) RAS roadways are generally described as those facilities that act as a critical link in providing direct connections between communities ensuring system continuity and congestion relief in high volume corridors. They are roadways that are listed in the most recent edition of SANDAG's Regional Transportation Plan
  - J. "Special land use" means any nonresidential, non-commercial/office or non-industrial development project (e.g., Olympic Training Center, hospitals, utilities), or non-special purpose project.
  - K. "Special purpose project" means any for-profit community purpose facility (e.g., day care).

**3.55.030 Public transportation facilities to be financed by the fee.**

- A. The public transportation facilities (facilities) which are the subject matter of the fee, are listed below 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 may modify or amend the list of projects in order to maintain compliance with the circulation element of the City's General Plan.
- C. The facilities are as follows:
  1. (I-5-1) I-5/E Street NB off-ramp re-striping add lane
  2. (I-5-2) I-5/E Street/Bay Blvd SB off-ramp re-striping add lane
  3. (I-5-3) I-5/NB ramp widening at E, H, J, Ind., Palomar & Main Sts
  4. (I-5-4) E Street bridge widening over I-5
  5. (I-5-5) F Street bridge widening over I-5
  6. (I-5-6) I-5/H Street NB off-ramp re-striping add lane
  7. (I-5-7) I-5/H Street SB off-ramp re-striping add lane
  8. (I-5-8) H Street bridge widening over I-5

9. (I-5-9) I-5/J Street NB off-ramp re-striping add lane
10. (I-5-10) I-5/J Street under-crossing widening add EB-NB
11. (I-5-11) L Street bridge widening over I-5 (S/W for peds)
12. (I-5-12) I-5/Bay Blvd (south of L St.) SB on/off ramps traffic signal
13. (I-5-13) I-5/Industrial Blvd NB on/off ramps traffic signal
14. (I-5-14) I-5/Palomar Street bridge widening
15. (I-5-15) I-5/Main Street NB on/off ramps traffic signal
16. (I-5-16) I-5/Main Street bridge widening

#### **Interstate-805 Improvements**

17. (I-805-1) NB on-ramp widening & metering at Bonita, East H St (EB-NB), Telegraph Canyon Road (Project I-805-1 is 100% funded in 2006 RTIP with State funds.)

#### **State Route 54 Improvements**

18. (SR-54-1) SR-54 WB off-ramp re-stripe at Broadway
19. (SR-54-2) SR-54 EB off-ramp at N. Fourth Avenue - add ramp lane

#### **Regional Arterial System (RAS) Projects**

20. (RAS-1) Bonita Road from First Avenue to I-805
21. (RAS-2) Broadway from C Street to south of Main Street (City Limits)
22. (RAS-3) E Street improvements - First Ave to Bonita Road/E. Flower St
23. (RAS-4) E Street improvements, I-5 to 300' east of NB ramp
24. (RAS-5) E Street LRT grade separation (underpass LRT option)
25. (RAS-6) H Street LRT grade separation (underpass LRT option)
26. (RAS-7) H Street at Broadway EB queue jumper lane & traffic signal modifications
27. (RAS-8) H Street 14'-wide median & street light improvements
28. (RAS-9) H Street widening to 6-lanes from Interstate-5 to Broadway

29. (RAS-10) H Street improvements from Second Ave to Hilltop Drive
30. (RAS-11) East H St. north side improvements from Hilltop Dr. to I-805
31. (RAS-12) L Street/Bay Blvd traffic signal & add turn lanes
32. (RAS-13) L Street improvements south side west of Industrial Blvd
33. (RAS-14) Telegraph Canyon Road at I-805 south side sidewalk
34. (RAS-16) Palomar Street improvements from I-5 to I-805
35. (RAS-18) H St/4th Ave add WB-NB & EB-SB right turn lanes
36. (RAS-19) H St/4th Ave add WB-NB & EB-SB right turn lanes

#### **General Plan Impacts and Mitigations**

37. (GP-1) E. St. from Marina Parkway to I-5
38. (GP-2) Marina Parkway from E St. to J St.
39. (GP-3) L St. from Hilltop Drive to I-805
40. Parkway (GP-4) Main St. from I-5 to Broadway
41. (GP-5) Main St. from Broadway to Hilltop Dr.
42. (GP-6) Third Avenue from L St. to Palomar St.
43. (GP-7) H St. from Marina Parkway to I-5
44. (GP-8) J St. from Marina Parkway to I-5

#### **Bicycle & Pedestrian Facilities Improvements (21% WTDIF share per GPU)**

45. (BP-1) Bayshore Bikeway (bike path) between E Street & F Streets
46. (BP-3) Industrial Blvd improvements & bike lanes from L St. to Main Street
47. (BP-6) Develop bicycle paths & pedestrian access to Third Avenue

#### **Midbayfront Local Coastal Program Roadways**

48. (Mid-1) E Street re-stripe to add EB-NB dual left turn to NB I-5 on-ramp.
49. (Mid-2) I-5/E St. SB off-ramp widening to add fourth lane
50. (Mid-3) Bay Blvd 15' widening along Westerly Curb Line at E St. approach for 1SB/3NB

51. (Mid-4) I-5/E St. NB widen off-ramp to add 3rd lane for Right Turn only lane
52. (Mid-5) E St revisions to median and North Curb Line east of I-5 to add 3rd WB lane.
53. (Mid-6) Marina Parkway 4-lane from E St. to J St.
54. (Mid-7) E St./Woodlawn Ave EB-SB RT lane plus a Traffic Signal
55. (Mid-8) E St. at Broadway add WB & EB LT lane + WB & EB RT only lane plus a Traffic Signal & No R/W costs.
56. (Mid-9) F St/Broadway re-striping to provide EB-SB & WB-NB RT lane
57. (Mid-10) H Street widening at Broadway for WB Thru & EB Thru & RT only.

#### **Other Roadways**

58. (OR-1) N. 4<sup>th</sup> Avenue/Brisbane Ave traffic signal modifications
59. (OR-2) Second Avenue/D Street all-way stop installation

#### **3.55.040 Territory to which fee applicable.**

The area of the City of Chula Vista to which the fee herein established shall be applicable is the territorial limits of the western portion of the City of Chula Vista (territory) as defined above, as they may from time to time be amended.

#### **3.55.050 Establishment of a fee.**

A development impact fee (fee) is hereby established to pay for the facilities within the territory. The fee shall be paid upon the issuance of building permits for each development project within the western portion of the City of Chula Vista. The WTDIF fee in the amounts set forth in CVMC 3.55.030 is hereby established to pay for transportation improvements and facilities within the western portion of the City of Chula Vista.

#### **3.55.060 Determination of fees by land use category.**

- A. 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. The density of the development type shall be based on the number of dwelling units per gross acre for single-family or multifamily residential and shall be based upon the densities identified on the approved tentative map or approved tentative parcel map entitling the development unless otherwise approved in writing by the City Manager's designee.
- B. Commercial/office and industrial development projects shall be charged on a per acre or per square footage basis. For purposes of

this fee, gross acreage and/or square footage as it applies to the commercial, industrial and office development types, means all land area that the City Manager's designee deems necessary within the boundary of the parcel or parcels of the development project for which building permits are being requested.

- C. The fee multiplied by the total number of dwelling units, square footage or acres within a given development project represents a developer's fair share ("fair share") for that development project.

**3.55.070 Time to determine amount due.**

The fee for each development shall be calculated at the time of building permit issuance and shall be the amount as indicated at that time, and not when the tentative map or final map were granted or applied for, or when the building permit plan check was conducted, or when application was made for the building permit. No building permit shall be issued unless the development impact fee is paid. The fees shall be deposited into a WTDIF fund, which is hereby created, and shall be expended only for the purposes set forth in this chapter. The Director of Finance is authorized to establish various accounts within the fund for the various improvements and facilities identified in this chapter and to periodically make expenditures from the fund for the purposes set forth herein in accordance with the facilities phasing plan or capital improvement plan adopted by the City Council. The City Council finds that collection of the fees established by this chapter at the time of the building permit is necessary to ensure that funds will be available for the construction of facilities concurrent with the need for those facilities and to ensure certainty in the capital facilities budgeting for the western part of the City.

**3.55.080 Purpose and use of fee.**

The fees collected shall be used by the City for the following purposes as determined by the City Council:

1. To pay for the construction of facilities by the City, or to reimburse the City for facilities installed by the City with funds from other sources.
2. To reimburse developers who have been required by CVMC 3.55.150 A to install improvements that are major streets and are listed in CVMC 3.55.030.
3. To reimburse developers who have been permitted to install improvements pursuant to CVMC 3.55.150 B.

**3.55.090 Amount of fee.**

- A. The fee shall be the amounts as set forth below in Table 1. The fee shall be adjusted on July 1 of each year beginning in 2009. The annual inflation adjustment will be 2 % or based on Caltrans highway construction cost index, whichever is higher. The program collects 2% of the total improvement cost estimate for staff administration and an additional 1% for SANDAG Administrative costs.
- B. Adjustments of the fee based upon the annual inflation adjustment or the Caltrans Highway Construction Cost Index shall be automatic and shall not require further action by the City Council. The WTDIF may also be reviewed and amended by the City Council as necessary based on changes in the type, size, location or cost of the facilities to be financed by the fee; changes in land use designation in the City's General Plan; and upon other sound engineering, financing and planning information.

**Table 1**



**PROPOSED WTDIF FEE PER LAND USE CLASSIFICATION**

Proposed TDIF Fee per EDU:		<b>\$3,243.00</b>	
<b>Land Use Classification</b>		<b>EDUs</b>	<b>TDIF Rate</b>
<b>RESIDENTIAL</b>			
Residential (LOW)	0-6 dwelling units per acre	1 per EDU	<b>\$3,243 / DU</b>
Residential (MED)	6.1 To 20 dwelling units per acre	.8 per EDU	<b>\$2,594 / DU</b>
Residential (HIGH)	Over 20 dwelling units per acre	.6 per EDU	<b>\$1,946 / DU</b>
Mobile Home		.5 per EDU	<b>\$1,622 / DU</b>
<b>COMMERCIAL</b>			
Regional Commercial	Contain 1-5 major dept. stores & usually have more than 50 tenants. Typically larger than 40 acres.	20 EDU/Acre	<b>\$64,860 /Acre</b>
Community Commercial	Smaller in that size than regional. Contain junior Dept. Store or variety Store,( i.e. Target Center with other commercial stores)as a major tenant and have 15 to 50 other tenants. Smaller in size, 8-20 acres.	28 EDU/Acre	<b>\$90,804 /Acre</b>
Neighborhood Commercial	Less than 10 acres. Includes supermarket and drug store. May include office spaces.	48 EDU/Acre	<b>\$155,664 /Acre</b>
Neighborhood Commercial	Same as above but in Square Footage	4.8 EDU/KSF	<b>\$15,664 /KSF</b>
Street Front Commercial	Commercial activities found along major streets, not in a planned center with limited on-site parking.	16 EDU/Acre	<b>\$51,888 /Acre</b>
Retail Commercial	Specialty Retail/Strip Commercial	16 EDU/Acre	<b>\$51,888 /KSF</b>
Wholesale Trade	Usually located near transportation facilities. Structures are usually large and cover majority of the parcel. Examples are clothing and supply, also includes swap meet areas.	24 EDU/Acre	<b>\$77,832 /Acre</b>
<b>OFFICE</b>			
High Rise Office	More than 100,000 S.F. and 6+ Stories	60 EDU/Acre	<b>\$194,580 /Acre</b>
Low Rise Office	< 6 Stories	30 EDU/Acre	<b>\$97,290 /Acre</b>
Low Rise Office (in thousands of square feet)	< 6 Stories	2 EDU/KSF	<b>\$6,486 / KSF</b>
Medical Office	Medical and Dental Facilities	50 EDU/Acre	<b>\$162,150 / Acre</b>
<b>LODGING</b>			
Low Rise Hotel/Motel	< 4 Stories	20 EDU/Acre	<b>\$64,860 /Acre</b>
Low Rise Hotel or Motel	< 4 Stories	1 EDU/Room	<b>\$3,243 / Room</b>
High Rise Hotel	>=4 Stories	30 /EDU/Acre	<b>\$97,290 /Acre</b>
<b>INDUSTRY</b>			
Heavy Industry	Shipbuilding, airframe, and aircraft manufacturing. Usually located next to transportation facilities and commercial areas. Parcels are typically 20-50 Acre.	12 EDU/Acre	<b>\$38,916 /Acre</b>
Warehouse /Storage	Usually large buildings located near freeways, industrial or strip commercial areas.	6 EDU/Acre	<b>\$19,458 /Acre</b>
Industrial Park	Office/industrial uses clustered into a center. The primary uses are industrial by may include high percentages of other uses in service or retail activities.	9 EDU/Acre	<b>\$29,187 /Acre</b>
Light Industrial	All other industrial uses and manufacturing not included in categories above.	20 EDU/Acre	<b>\$64,860 /Acre</b>

**3.55.100 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. Community purpose facilities which are not operated for profit (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 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 businesses, except special land use projects, shall be exempt if the addition or expansion does not result in a net increase in dwelling units or commercial/industrial acreage.

**3.55.110 Authority for accounting and expenditures.**

- A. The fees collected shall be deposited into a Western Transportation Development Impact Fee financing fund (WTDIF fee fund, or fund), which is hereby created and shall be expended only for the purposes set forth in this chapter.
- B. The director of finance is authorized to establish a single fund for the various facilities identified in this chapter and to periodically make expenditures from the fund for the purposes set forth herein.

**3.55.120 Findings.**

The City Council finds that:

- A. Collection of the fee established by this chapter at the time of the building permit issuance is necessary to provide funds for the transportation facilities identified in CVMC 3.55.030 and to ensure certainty in the capital facilities budgeting for growth impacted public transportation facilities; and
- B. The purpose of the Fees hereby enacted prevents new development from reducing the quality and availability of public transportation infrastructure facilities provided to residents of the City by requiring new development to contribute to the cost of additional capital transportation infrastructure improvements needed to meet the growth generated by such development; and
- C. The revenue from the fees hereby enacted will be used to construct public facilities and infrastructure and pay for other capital expenditures needed to serve new development as identified in the Engineer's Report dated February, 2008; and
- D. Based on analysis presented in the Engineer's Report there is a reasonable relationship between
  - 1. The use of the fees and the types of development projects on which they are imposed and
  - 2. The need for facilities and the types of development projects on which the fees are imposed.

3. The amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.

**3.55.130 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 developments

**3.55.150 Developer construction of transportation facilities.**

- A. Whenever a developer of a development project would be required by application of City law or policy, as a condition of approval of a development permit to construct or finance the construction of a portion of a transportation facility identified in Section 3.55.030 the City Council may impose an additional requirement that the developer install the improvements with supplemental size, length or capacity in order to ensure efficient and timely construction of the transportation facilities network. If such a requirement is imposed, the City Council shall, in its discretion, enter into a reimbursement agreement with the developer, or give a credit against the fee otherwise levied by this chapter on the development project, or some combination thereof.
- B. Whenever a developer requests reimbursement, or a credit against fees, for work to be done or paid for by the developer under subsection (A) of this section, the request shall be submitted in writing to the City Manager's designee.
  1. The request shall contain a description of the project with a detailed cost estimate which itemizes those costs of the construction attributable to the transportation facility project and excludes any work attributable to a specific subdivision project. The estimate is preliminary and the amount of reimbursement or credit against fees is subject to final determination by the City Manager's designee. Additional information shall be provided to the City by the developer upon request of the City.
  2. Such reimbursement or credit against fees shall be subject to the following conditions:
    - a. Requirements of Developer.
      - i. Preparation of plans and specifications for approval by the City;
      - ii. Secure and dedicate any right-of-way required for the transportation facility project;
      - iii. Secure all required permits and environmental clearances necessary for the transportation facility project;
      - iv. Provision of performance bonds (where the developer intends to utilize provisions for immediate credit, the performance bond shall be for 100 percent of the value of the transportation facility project);
      - v. Payment of all City fees and costs.
    - b. The City will not be responsible for any of the costs of constructing the transportation facility project. The developer shall advance all necessary funds to construct the transportation facility project.
    - c. The developer shall secure at least three qualified bids for work to be done and shall award the construction contract to the lowest qualified bidder. The developer may combine the construction of the transportation facility project with other development-

related work and award one construction contract for the combined work based on a clearly identified process for determining the low bidder, all as approved by the City Manager's designee. Should the construction contract be awarded to a qualified bidder who did not submit the lowest bid for the transportation facility project portion of the contract, the developer will only receive transportation development impact fee credit based on the lowest bid for the transportation facility portion of the contract. Any claims for additional payment for extra work or charges shall be justified, shall be documented to the satisfaction of the City Manager's designee and shall only be reimbursed at the prices for similar work included in the lowest bid for the transportation facility portion of the contract.

d. Upon complying with the conditions set forth in subsections (B)(1) and (B)(2)(a) of this section as determined by the City and upon approval of the estimated cost by the City Manager's designee, the developer shall be entitled to immediate credit for 50 percent of the estimated cost of the construction attributable to the transportation facility project. Once the developer has received valid bids for the project which comply with subsection (B)(2)(c) of this section, entered into binding contracts for the construction of the project, and met the conditions set forth in subsections (B)(1) and (B)(2)(a) of this section as determined by the City, all of which have been approved by the City Manager's designee, the amount of the immediate credit shall be increased to 75 percent of the bid amount attributable to the transportation facility project. The immediate credits shall be applied to the developer's obligation to pay transportation development impact fees for building permits issued after the establishment of the credit. The developer shall specify these building permits to which the credit is to be applied at the time the developer submits the building permit applications.

e. If the developer uses all of the immediate credit before final completion of the transportation facility project, then the developer may defer payment of development impact 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 transportation facility project.

f. When all work has been completed to the satisfaction of the City, the developer shall submit verification of payments made for the construction of the transportation facility project to the City. The City Manager's designee shall make the final determination on expenditures which are eligible for credit or cash reimbursement.

g. After final determination of eligible expenditures has been made by the City Manager's designee and the developer has complied with the conditions set forth in subsection (B) of this section, the final amount of transportation development impact fee credits shall be determined by the City Manager's designee. The developer shall receive credit against the deferred fee obligation in an amount equal to the difference between the final expenditure determination and the amount of the 75 percent immediate credit used, if any. The City shall notify the developer of the final deferred fee obligation, and of the amount of the applicable credit. If the amount of the applicable credit is less than the deferred fee obligation, then the developer shall have 30 days to pay the deferred fee. If the deferred fees are not paid within the 30-day period, the City may make a demand against the liquid security and apply the proceeds to the fee obligation.

h. At the time building permits are issued for the developer's project, the City will incrementally apply credit which the developer has accrued in lieu of collecting the

required transportation development impact fees. The amount of the credit to be applied to each building permit shall be based upon the fee schedule in effect at the time of the building permit issuance. The City Manager's designee shall convert such credit to an EDU basis for residential development and/or a gross acre basis for commercial or industrial development for purposes of determining the amount of credit to be applied to each building permit.

i. If the total eligible construction cost for the transportation facility project is more than the total transportation development impact fees which will be required for the developer's project, then the amount in excess of development impact fees will be paid in cash when funds are available as determined by the City Manager; a reimbursement agreement will be executed; or the developer may waive reimbursement and use the excess as credit against future transportation development impact fee obligations. The City may, in its discretion, enter into an agreement with the developer to convert excess credit into EDU and/or gross acre credits for use against future development impact fee obligations at the fee rate in effect on the date of the agreement.

j. The requirements of this subsection (B) of this section may, in the City's discretion, be modified through an agreement between the developer and the City and approved by City Council.

C. Whenever a transportation development impact fee credit is generated by constructing a transportation facility using assessment district or community facilities district financing, the credit shall only be applied to the transportation development impact fee obligations within that district.

### **3.55.160 Procedure for fee waiver or reduction.**

A. Any developer who, because of the nature or type of uses proposed for a development project, contends that application of the fee imposed by this chapter is unconstitutional, or unrelated to mitigation of the traffic needs or burdens of the development, may apply to the City Council for a waiver, reduction, or deferral of the fee. A development which is designed and intended as a temporary use (10 years or less) and which is conducted in facilities which are, by their nature, short-term interim facilities such as a portable or modular building (including mobile homes, trailers, etc.) may qualify for a waiver, reduction, or deferral. In addition, a deferral may be granted on the basis of demonstrated economic hardship on the condition that: (1) the use offers a significant public benefit; (2) the amount deferred bears interest at a fair market rate so as to constitute an approximate value equivalent to a cash payment; and (3) the amount deferred is adequately secured by agreement with the applicant. Unless the requirement for timely filing is waived by the City, the application shall be made in writing and filed with the City Clerk not later than 10 days after notice of the public hearing on the development permit application or the project is given, or if no development permit is required, at the time of the filing of the

building permit application. The application shall state in detail the factual basis for the claim of waiver or reduction.

- B. The City Council shall consider the application at a public hearing on same, notice of which need not be published other than by description on the agenda of the meeting at which the public hearing is held. Said public hearing should be held within 60 days after its filing. The decision of the City Council shall be final. If a deferral, reduction or waiver is granted, it should be granted pursuant to an agreement with the applicant, and the property owner, if different from the applicant, providing that any change in use within the project shall subject the development to payment of the full fee. 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.

**3.55.170 Assessment districts.**

If any assessment or special taxing district is established for any or all of the facilities listed in Section 3.55.030 the owner or developer of a project may apply to the City Council for a credit against the fee in an amount equal to the development's attributable portion of the cost of the authorized improvements as determined by the City Manager's designee, plus incidental costs normally occurring with a construction project, but excluding costs associated with assessment district proceedings or financing.

**3.55.180 Economic incentive credit.**

The City Council may authorize the City to participate in the financing of transportation facility projects or portions of transportation facility projects as defined in Section 3.55.030 at the time of the appropriation of funds by City Council for the construction of an eligible transportation facility, the City shall be eligible to receive a credit known hereafter as an economic incentive credit. Such economic incentive credit may be applied to development impact fee obligations for those projects which the City Council determines, in its sole discretion, to be beneficial to the City. The use of the economic incentive credit may be subject to conditions which shall be set forth in a written agreement between the developer of the project and the City and approved by City Council.

The City may receive economic incentive credit only for those eligible projects identified in Section 3.55.030 for amounts of funding not identified in the financial and engineering study "Western Transportation Development Impact Fee" report dated February 2008.

**3.55.190 Fund loans.**

- A. Loans by the City. The City may loan funds to the fund to pay for facilities should the fund have insufficient funds to cover the cost of said facility. Said loans, if granted, shall be approved upon the adoption of the annual City budget or upon resolution of the City Council and shall carry interest rates as set by the City Council

- for each fiscal year. A schedule for repayment of said loans shall be established at the time they are made and approved by the Council, with a maximum term not to exceed the life of the fund.
- B. Developer Loans. A developer may loan funds to the City as outlined in CVMC 3.55.150. The City may repay said developer loans with interest, under the terms listed in subsection (A) of this section.

**3.55.200 Effective date.**

This chapter shall become effective May 17, 2008.

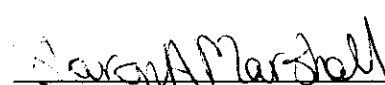
**SECTION 3: Effective Date**

This Ordinance shall become effective 60 days after its second reading and adoption.

Presented by

Approved as to form by

  
\_\_\_\_\_  
Jack Griffin  
Engineering and General Services Director

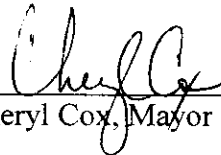
  
\_\_\_\_\_  
Ann Moore  
City Attorney

PASSED, APPROVED, and ADOPTED by the City Council of the City of Chula Vista, California, this 18th day of March 2008, by the following vote:

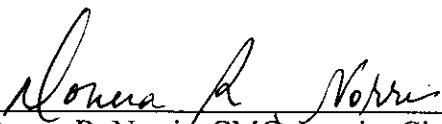
AYES: Councilmembers: Castaneda, Ramirez, Rindone, and Cox

NAYS: Councilmembers: McCann

ABSENT: Councilmembers: None

  
\_\_\_\_\_  
Cheryl Cox, Mayor

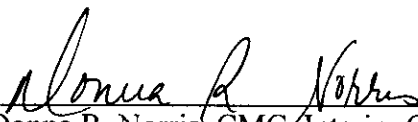
ATTEST:

  
\_\_\_\_\_  
Donna R. Norris, CMC, Interim City Clerk

STATE OF CALIFORNIA     )  
COUNTY OF SAN DIEGO    )  
CITY OF CHULA VISTA     )

I, Donna R. Norris, Interim City Clerk of Chula Vista, California, do hereby certify that the foregoing Ordinance No. 3106 had its first reading at a regular meeting held on the 4th day of March 2008 and its second reading and adoption at a regular meeting of said City Council held on the 18th day of March 2008; and was duly published in summary form in accordance with the requirements of state law and the City Charter.

Executed this 18th day of March 2008.

  
\_\_\_\_\_  
Donna R. Norris, CMC, Interim City Clerk