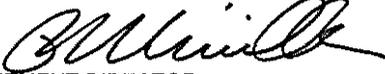


AGENDA ITEM NO. 2F
COUNCIL MEETING 02/28/13
APPROVED BY


DEPARTMENT DIRECTOR

CITY MANAGER 

February 28, 2013

FROM: PATRICK N. WIEMILLER, Director
Public Works Department

BY: SCOTT L. MOZIER, PE, City Engineer / Assistant Director
Public Works Department 

SUBJECT: ADOPT A RESOLUTION AMENDING THE IMPLEMENTING POLICIES FOR THE CITYWIDE REGIONAL STREET AND NEW GROWTH AREA MAJOR STREET IMPACT FEES AS PREVIOUSLY ADOPTED BY RESOLUTION NO. 2007-291 AND AS AMENDED BY RESOLUTION NOS. 2007-347, 2007-348, 2008-278, AND 2008-349

RECOMMENDATION

Staff recommends that the Council adopt a resolution amending the Implementing Policies for the Citywide Regional Street and New Growth Area Major Street Impact Fees, as previously adopted by Resolution No. 2007-291 and as amended by Resolution Nos. 2007-347, 2007-348, 2008-278 and 2008-349.

EXECUTIVE SUMMARY

In 2007, the Council adopted the Citywide Regional Street Impact Fee and New Growth Area Street Impact Fee to replace the outdated Urban Growth Management (UGM) major street, major bridge and at-grade railroad crossing fees. As part of the new fee program, the Council adopted a set of Implementing Policies to establish the rules and procedures by which the new fees would be implemented for various types of development projects. Two minor amendments have been previously approved by the Council via Resolutions No. 2008-278 and 2008-349 to deal with credits provided to final maps which began developing under the UGM program but subsequently lost vesting protections. In consultation with the Building Industry Association (BIA) and other stakeholders in the development community, staff is currently recommending a fifth amendment to the Implementing Policies to provide four key modifications to the program: (1) restoring a pre-2009 provision for non-residential developments that allowed for fee payment based upon the building square footage and portion of the property actually being developed, as opposed to fees being due on entire parcels; (2) formally postponing the previously planned fee increase on commercial office, retail and multi-family developments until July 1, 2015, so as to allow for a fee program update to reflect the final 2035 General Plan Update; (3) removing any restrictions on deferral of fee payment from building permit to occupancy, where otherwise allowed by the Fresno Municipal Code and Council actions, so as to be consistent with other development impact fees; and (4) dissolving the Street Impact Fee Appeals Board and granting that same authority to the Public Works Director, with Council to remain as the final decision-making body in situations where the Director's decision is appealed. These changes will become effective immediately upon Council's adoption of the resolution.

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BACKGROUND

In 2006 and 2007, staff met regularly with various stakeholders in the development community to reach consensus on an updated major street impact fee program to replace the outdated UGM major street impact fees. The previous UGM system only funded a single travel lane in each direction on the planned major street system and due to a long-standing lack of fee updates, was underfunded in many service areas from a developer reimbursement perspective. The stakeholder group worked with staff on all details associated with the updated fee program. On April 24, 2007, the Council held a hearing and adopted the new impact fees in Resolutions No. 2007-165 and 2007-166. Significant aspects of the new fees were the inclusion of the outside travel lanes on the expressways, super-arterials and arterial roadways so as to avoid and alleviate traffic bottlenecks, the addition of right-of-way acquisition costs for these traffic bottlenecks and fees sufficient to cover the full cost of the planned street capacity improvement projects, less the City's required funding of existing deficiencies. The new fee program would consist of a Citywide Regional Street Impact Fee and a New Growth Area Street Impact Fee which created a tiered system of fees for the core and growth area. The Council adopted the ordinance to collect the fees on June 12, 2007 and finally adopted a set of Implementing Policies on August 28, 2007 through Resolution No. 2007-291. The fees did not become effective until the Implementing Policies were finally adopted. The policies cover all aspects of the fee program, including when fees are due, how they are calculated on complex projects, how credits are applied on development projects, timing of developer reimbursements, use of the fee revenue by the City to undertake capital projects and provision for appeals by the developer.

The Council adopted two amendments to the Implementing Policies in 2008 which were relatively minor in nature, both of which dealt with final maps which were partially built out under the UGM system and then lost vesting protections due to the passage of time. The amendments, under Resolutions No. 2008-278 and 2008-349, allowed for final maps which had satisfied their UGM major street and major bridge fee obligations through construction, or bonding for construction work, to be relieved of any new street impact fee obligations through June 30, 2009, which was then extended through December 31, 2010. These two minor amendments allowed for a smoother transition from UGM to the new fee program.

During the August 28, 2007 consideration and adoption of the Implementing Policies, the Council provided direction to staff to work with the development community and monitor the program for any unintended consequences. Staff is now returning to Council with approximate five years of fee program implementation experience, and is recommending four minor changes to the overall program:

1. Restoring a pre-2009 provision for non-residential developments that allowed for fee payment based upon the building square footage and portion of the property actually being developed, as opposed to fees being due on entire parcels: Currently, Sections 3 and 4 of the Implementing Policies require that the fee be paid on the entire parcel being developed. This provision continues to work adequately in situations where either the full property is being developed, or where a developer subdivides the property into individual lots. However, in situations where a developer wishes to develop only a portion of a large parcel without first subdividing the property, this provision of the Implementing Policies requires the developer to pay the fee on the entire large parcel. Prior to July 1, 2009, developers were able to pay the fee calculated based upon the building square footage divided by the floor-area ratio (FAR). Staff is recommending a change to restore the developers' ability to utilize the pre-2009 FAR calculations, so as to collect a fee consistent with the actual impact being created on these types of non-residential developments.
2. Formally postponing the previously planned increase on commercial office, retail and multi-family developments until July 1, 2015: As part of the adoption of the Implementing Policies in August 28, 2007, the Council chose not to adopt the full amount of the fees on commercial office, retail and multi-family

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developments, but instead adopted a three-year phase-in plan. Fees for these three categories were initially set at the same amounts per acre as single-family residential, with fees scheduled to be increased on July 1, 2008 and July 1, 2009. However, only the second year of the phase-in plan was implemented due to economic conditions in early 2009. Considering the continued slow pace of new development in the local area as well as the 2035 General Plan Update, staff recommends the Implementing Policies be amended to formally reflect not implementing the full amount of the fees on commercial office, retail and multi-family developments until July 1, 2015. Staff would further recommend that the nexus study be updated to reflect the proposed land uses and circulation element associated with the 2035 General Plan Update, in order to be consistent with the new General Plan.

3. Removing any restrictions against deferral of fees to occupancy that are particular to this fee: Currently the Implementing Policies require payment of the fee at time of building permit without ability to defer to occupancy. By removing this fee-specific restriction, the time of payment requirements would instead be governed by the Fresno Municipal Code (FMC) and any other policies the Council may choose to adopt. Currently the FMC allows deferral of fees to occupancy by an agreement, such that with approval of this amendment by the Council, a developer could defer these fees in addition to the other impact fees for traffic signals, park, fire and police facilities.
4. Dissolving the Street Impact Fee Appeals Board and granting that same authority to the Public Works Director, with Council to remain as the final decision-making body in situations where the Director's decision is appealed: In 2007, the Council formed the Major Street Impact Fee Appeals Board at the request of the development community in order to hear appeals related to the new fee program. One member was to be appointed by the Mayor, one by the Council, one by the Chamber of Commerce and one by the BIA, with those four to reach consensus on a fifth at-large Board member. None of the members could be employees of the City of Fresno. The Board has only heard a handful of appeals over its five years of existence and in each instance has accepted the staff recommendation for granting or denial of the appeal. In all situations but one, staff supported the developer's request for a lower fee than set forth by the adopted Master Fee Schedule. In that one other situation, the developer requested a complete waiver from the fee and staff recommended denial, which was supported by the Board. At the present time, the Board lacks enough seated members to form a quorum and therefore cannot hear appeals. Often more than a year passes between any activity requiring a meeting. In an effort to streamline the appeals process for developers, staff recommends that the Council adopt the attached amended policies granting the Public Works Director the same authority as the Board. The developer would retain the same rights to appeal to the Council as currently exists.

FISCAL IMPACT

The recommended action would not have any impact on the General Fund.

Attachments:

- Resolution
- Attachment "A", Implementing Policies (Amended)

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RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO, CALIFORNIA, AMENDING THE IMPLEMENTING POLICIES FOR THE CITYWIDE REGIONAL STREET AND NEW GROWTH AREA MAJOR STREET IMPACT FEES AS PREVIOUSLY ADOPTED BY RESOLUTION NO. 2007-291 AND AS AMENDED BY RESOLUTION NOS. 2007-347, 2007-348, 2008-278 AND 2008-349

WHEREAS, on April 24, 2007, Council held a hearing and adopted new impact fees for major streets in the City ("Major Street Fees") in Resolution Nos. 2007-165 and 2007-166; and

WHEREAS, on June 12, 2007, Council adopted Ordinance No. 2007-50 adding Article 4.10 to Chapter 12 in the Fresno Municipal Code to impose the Major Street Fees on development in the City; and

WHEREAS, Fresno Municipal Code ("FMC") Section 12-4.1006 of the Major Street Fee Ordinance provided that the Council shall, by resolution, adopt administrative guidelines to provide procedures for the calculation and payment of the Citywide Regional Street Impact Fee and/or the New Growth Area Major Street Impact Fee; reimbursement, credit, or deferred payment of the Citywide Regional Street Impact Fee and/or the New Growth Area Major Street Impact Fee; requirements on when a developer shall construct facilities to be financed by the Citywide Regional Street Impact Fee and/or the New Growth Area Major Street Impact Fee; and any other policies, not limited by the above, related to the administration of the Major Street Impact Fee Program; and

WHEREAS, on August 28, 2007, Council adopted Resolution No. 2007-291, to adopt Implementing Policies for the Citywide Regional Street and New Growth Area Major Street

Date Adopted:

Date Approved:

Effective Date:

City Attorney Approval:



Impact Fees (“Implementing Policies”) pursuant to FMC Section 12-4.1006, having been drafted by City staff and the City Attorney’s Office, working with the development community and other interested stakeholders, to implement the Major Street Impact Fees pursuant to FMC Section 12-4.1006; and

WHEREAS, on October 7, 2008, Council adopted Resolution No. 2008-278 to amend the Implementing Policies to provide additional credits related to subdivision maps which had been initiated under the older Urban Growth Management (UGM) fee structure, lost vesting protection under the Subdivision Map Act and were faced with current fees; and

WHEREAS, on December 16, 2008, the Council adopted Resolution No. 2008-349 to amend the Implementing Policies, in order to extend the expiration of the exemption from the Citywide Regional Street Impact Fee, for final maps initiated under UGM, from June 30, 2009 to December 31, 2010; and

WHEREAS, during the original August 2007 adoption of the Implementing Policies, the Council directed City staff to monitor the program for unintended consequences and to return to Council with any procedural updates that may be necessary to improve the program; and

WHEREAS, as a result of regular discussions with City staff, key stakeholders including local developers and the Building Industry Association (“BIA”), a proposed amendment to the Implementing Policies, included herein as Exhibit “A”, has been prepared for Council consideration and approval; and

WHEREAS, the proposed amendment to the Implementing Policies to clearly articulate that left turn and right turn pocket paving is considered an eligible street improvement, as detailed in the attached amended Implementing Policies, will not affect the assumptions of the nexus study nor require any change in the necessary amount of the fee to be charged upon new development;

and

WHEREAS, the proposed amendment to the Implementing Policies to allow for partial development of a particular parcel of land with a fee calculated commensurate with the developed area, rather than the previous requirement for full fee payment on the entire parcel, will not affect the assumptions of the nexus study nor require any change in the necessary amount of the fee to be charged upon new development; and

WHEREAS, the proposed amendment to the Implementing Policies would remove any fee-specific restrictions on deferral of fee payment to occupancy and allow for consistency in policies with other City development impact fees and the Fresno Municipal Code; and

WHEREAS, the previously formed Major Street Impact Fee Appeals Board (“Appeals Board”) has seldom been convened and currently lacks enough seated members for a quorum; and

WHEREAS, the Appeals Board has accepted the Public Works Director’s recommendations for granting or denial of the appeal in every situation since the Appeals Board was formed; and

WHEREAS, the City desires to preserve the rights of developers to appeal the fee and to streamline the process; and

WHEREAS, the Public Works Director has the ability to conduct the aforementioned appeal hearings in order to preserve the rights of developers and provide an expeditious time frame for the consideration of these appeals.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno, to adopt the amended Implementing Policies, as provided in Exhibit “A”, and directs City staff to implement the amended Implementing Policies, effective immediately.

* * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____, 2013.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2013
Mayor Approval/No Return: _____, 2013
Mayor Veto: _____, 2013
Council Override Vote: _____, 2013

YVONNE SPENCE, CMC
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

BY: _____
Tei Yukimoto, Senior Deputy [date]

atty:secty[doc name/disk] REV. 05-01-12

IMPLEMENTING POLICIES FOR THE CITYWIDE REGIONAL STREET AND NEW GROWTH AREA MAJOR STREET IMPACT FEES

The following policies are intended to implement Fresno Municipal Code Section 12-4.1006.

- (1) **Definitions.** The following definitions shall be used to interpret the terms used in these Guidelines. Any words not specifically defined shall be subject to the reasonable interpretation of the Director.
- (a) **“Adjacent Street”** or **“Frontage Street”** shall mean all streets that abut the parcel being developed including remainder parcels created by a subdivision map or parcel map.
 - (b) **“Affordable Housing Development”** shall mean housing that is available to low income families (80% Area Median Income and below) whereas no more than thirty percent (30%) of the annual household gross income is expended on housing.
 - (c) **“Commercial retail”** shall mean any use allowed in a commercial retail designated land use district pursuant to the City of Fresno Zoning Ordinance and which use has the characteristics of commercial retail.
 - (d) **“Commercial office”** shall mean any use allowed in a commercial office designated land use district pursuant to the City of Fresno Zoning Ordinance and which use has the characteristics of commercial office.
 - (e) **“Development”** shall include any work or improvement that requires a permit under the Fresno Building Code, but shall not include any work or improvement for off-site constructions or improvements to be dedicated to public use as a condition of a Development Entitlement.
 - (f) **“Development Entitlement”** shall mean a building permit, conditional use permit, site plan, rezone, plan amendment, subdivision as defined under the Subdivision Map Act.
 - (g) **“Director”** shall mean the Director of the Public Works Department or his or her designee.
 - (h) **“Eligible Right of Way”** shall mean right of way dedications subject to reimbursement and credits as provided in these guidelines.
 - (i) **“Eligible Street Improvements”** shall mean those street improvements identified as eligible for construction using the street impact fees and eligible for credit towards street impact fee obligations and reimbursement using street impact fee program funds shall include in particular the following:

The following major street improvements in Table 1 shall be eligible for reimbursement provided the paving improvements are permanent, and all underground utilities have been installed (exceptions to the undergrounding requirement may be pursuant to Section (6)(a)):

Table 1.

Expressway	22' median, six 12' travel lanes, 5' shoulders,
Superarterial	16' median, six 12' travel lanes, 5' shoulders,
6-lane arterial	16' median, six 12' travel lanes, 5' shoulders,
4-lane arterial	16' median, four 12' travel lanes, 5' shoulders,
Collector	12' two-way left turn lane, two 12' travel lanes, 5' shoulder,
Right-of-way	Eligible ROW
Soft costs	Engineering (6% ¹), Plan Check (2% per MFS), Inspection (4.1% per MFS)

Center section improvements shall consist of two (2) 17' travel lanes plus median curb, concrete island cap and left turn pocket pavement on arterials, super arterials and expressways, and the two way left turn lane on collectors. Removal of median island to create mid-block left turn access into a property where desired by the developer shall not be considered as an eligible street improvement. All center section improvements (excluding median island landscaping) would be eligible for construction credits against the entitlements respective fee obligations credits provided they are constructed to permanent road standards and alignments.

Outside travel lanes along frontage up to the shoulder are eligible for credits and/or reimbursements provided the improvements are constructed to permanent road standards and alignments, including additional width for right turn pockets where required by the City. For collector streets including four through travel lanes (undivided collectors), the developer is required to construct an additional 12' of paving for the number two travel lane at their own expense (i.e. not eligible for reimbursement).

- (j) "FAR" shall mean floor to area ratio and shall be calculated as the building footprint divided by the parcels net acreage. When the FAR cannot be readily

¹ Engineering costs may be increased above 6% for reasonable costs that exceed 6% in the Director's discretion.

determined, the FAR assumptions used in the development of the impact fees as contained in the Nexus Report shall be used for the respective land uses.

- (k) **"Grid Street"** shall mean those streets that lie on township, section, or quarter section alignment.
- (l) **"Guidelines"** shall mean these **Implementing Policies For the Citywide Regional Street and New Growth Area Major Street Impact Fees as adopted by Council** by resolution pursuant to Fresno Municipal Code Section 12-4.1006.
- (m) **"Heavy industrial"** shall mean any use allowed in a heavy industrial designated land use district pursuant to the City of Fresno Zoning Ordinance and which use has the characteristics of heavy industrial.
- (n) **"Light industrial"** shall mean any use allowed in a light industrial designated land use district pursuant to the City of Fresno Zoning Ordinance and which use has the characteristics of light industrial.
- (o) **"More intensive use"** shall mean a use of the higher order of the following listed land uses (starting with the lowest and ending with the highest order): heavy industrial, light industrial, residential (low-medium), residential (medium/high-high), commercial office and commercial retail.
- (p) **"New Development"** shall mean any development on vacant land or additions or expansions on existing development wherein square footage on the development is increased. It shall not include remodels or reuse wherein the overall square footage is not increased.
- (q) **"New Growth Area"** shall mean that area as designated in a "New Growth Area Map" kept on file in the Public Works Department and made available to the public. The New Growth Area Map shall also be posted on the City website.
- (r) **"Net Acreage"** shall mean a parcels gross acreage less any dedications for major street facilities right of way including both eligible and non-eligible street improvements. Internal streets, alleys, or other dedications within a development project shall not be used to reduce the net acreage.
- (s) **"Nexus Study"** shall mean the Nexus Study adopted by Council on April 24, 2007, and on file with the Public Works Department.
- (t) **"Operative Date"** of these guidelines shall mean the date the guidelines become effective through a Council resolution that adopts these guidelines.
- (u) **"Parcel"** shall mean a legal lot of record including any underlying fee title area of easements.
- (v) **"Remodel"** shall mean the physical rebuild, reconstruction of all or any portion of an existing building which does not add square footage.

- (w) **“Residential (low-medium)”** shall mean any residential land use developed at less than 12 units an acre.
- (x) **“Residential (medium/high-high)”** shall mean any residential land use developed at 12 units or more an acre.
- (y) **“Reuse”** shall mean conversion of any existing building from one use to another use which does not add square footage.
- (z) **“Street Impact Fees”** shall mean the Citywide Regional Street Impact Fees and New Growth Area Major Street Impact Fees as adopted by Council in the Master Fee Schedule.
- (aa) **“UGM”** shall mean Urban Growth Management as provided in the Fresno Municipal Code.
- (bb) **“Utilities”** shall mean sewer, storm drain and water mains that must be installed underneath permanent paving in order for the street construction to be eligible for credits or reimbursement of major street impact fees.

(2) City Responsibilities/Rights

- (a) **Other Funding.** City shall secure funding for street improvements including rail crossings, bridges, grade separations, through state and federal programs wherever possible.
- (b) **Annual Updates.** City shall perform annual Street Impact Fee updates either using the ENG 20 City CPI Average or based on actual costs.
- (c) **City and RDA Reimbursements.** The City and/or Redevelopment Agency (“RDA”) are eligible for reimbursement for construction of roadway segments for that portion of the work that is within the shoulder to shoulder limits which is constructed with non-impact fee sources, and consistent with the “first in-first out” rule. Funding sources eligible for reimbursement include but are not limited to Flexible Measure C monies, gas taxes, Prop 42 or 111 funds, CDBG, RDA tax increment, General Fund, or similar discretionary sources. Reimbursements that the City receives will inure back to the parent funding source, and used in a manner consistent with the funding source guidelines.

Exclusions to this policy are as follows: Capital Improvements listed in the regional or new growth area capital improvement list that are funded using Tier 1 Measure C Tier funds, competitive state or federal grants, state or federal earmarks. This exclusion shall also apply to any developer who is the beneficiary of the fore mentioned funds.

- (d) **Cap on City/RDA Reimbursements.** The City and/or the RDA must document costs and apply for reimbursement in the same manner required of

developers. Reimbursement to the City and/or RDA shall not exceed 25% of the money available for reimbursement in any fiscal year unless all other claims have been paid in full.

- (3) **Determination of Amount of Impact Fee Obligation.** All fees are acreage based utilizing the net acreage of the parcel.

The amount of the impact fee obligation for a particular development shall be calculated by multiplying the net acreage by the per acre fee for the particular land use.

- (a) **Citywide Regional Street Impact Fee.** The Citywide Regional Street Impact Fee will be a condition on all development entitlements granted and shall be calculated on a net acreage of the entire property subject to the development entitlement based upon planned land use as provided below. Notwithstanding the above, fees shall be based upon actual land use for developments in the C-M zone district and for development projects developed inconsistent with the planned land use. Any dispute between City staff and the developer as to what the actual land use is shall be resolved by the Director of the Development and Resource Management Department (subject to appeal in Section 10.)

Table 2.

Land Use	City Wide Street Impact Fee Per Acre (Applicable after effective date of implementing ordinance)	City Wide Street Impact Fee Per Acre (Effective July 1, 2008)	City Wide Street Impact Fee Per Acre (Effective July 1, 2015)
Residential (Low-Medium) <12 units/acre ²	\$8,361	\$8,361	\$8,361
Residential (Medium/High-High) > 12 units/acre	\$12,030	\$13,846	\$15,663
Commercial Retail FAR @ 25%	\$12,030	\$16,131	\$20,233
Commercial Office FAR @ 25%	\$12,030	\$13,726	\$15,422
Light Industrial FAR @ 40%	\$3,633	\$3,633	\$3,633
Heavy Industrial FAR @ 40%	\$2,541	\$2,541	\$2,541

² Acreage, for the purpose of determining the applicable use under Tables 2 and 3, shall be based on net acreage which is defined in Section (1)(r).

- (b) **New Growth Area Major Street Impact Fee.** The New Growth Area Major Street Impact Fee and the Citywide Regional Street Impact Fee will be a condition on all development entitlements granted in the New Growth Area and shall be calculated on a net acreage of the entire property subject to the development entitlement based upon planned land use as provided below. Notwithstanding the above, fees shall be based upon actual land use for developments in the C-M zone district and for development projects developed inconsistent with the plan land use. Any dispute between City staff and the developer as to what the actual land use is shall be resolved by the Director of the Development and Resource Management Department (subject to appeal in Section 10.)

The New Growth Area Impact Fee provided in Table 3 below includes both the New Growth Area Major Street Impact Fee and the Citywide Regional Street Impact Fee in one consolidated amount. To determine the actual amount of the New Growth Area Major Street Fee subtract the amount of the respective land use fee found in Table 2 from the amount in Table 3 for the same land use type and time period (see Table 4).

Table 3.

Actual Land Use ¹	New Growth Area Major Street Impact Fee + Citywide Regional Street Impact Fee Per Acre (Applicable after effective date of implementing ordinance)	New Growth Area Major Street Impact Fee + Citywide Regional Street Impact Fee Per Acre (Effective July 1, 2008)	New Growth Area Major Street Impact Fee Per Acre+ Citywide Regional Street Impact Fee Per Acre (Effective July 1, 2015)
Residential (Low-Medium) <12 units/acre	\$27,151	\$27,151	\$27,151
Residential (Medium/High-High) > 12 units/acre	\$36,900	\$44,621	\$52,342
Commercial Retail FAR @ 25%	\$36,900	\$53,626	\$70,353
Commercial Office FAR @ 25%	\$36,900	\$43,574	\$50,249
Light Industrial FAR @ 40%	\$11,837	\$11,837	\$11,837
Heavy Industrial FAR @ 40%	\$8,280	\$8,280	\$8,280

Table 4.

Actual Land Use ¹	New Growth Area Major Street Impact Fee Per Acre (Applicable after effective date of implementing ordinance)	New Growth Area Major Street Impact Fee Per Acre (Effective July 1, 2008)	New Growth Area Major Street Impact Fee Per Acre (Effective July 1, 2015)
Residential (Low-Medium) <12 units/acre	\$18,790	\$18,790	\$18,790
Residential (Medium/High-High) > 12 units/acre	\$24,060	\$30,775	\$36,709
Commercial Retail FAR @ 25%	\$24,060	\$37,495	\$50,120
Commercial Office FAR @ 25%	\$24,060	\$29,848	\$34,827
Light Industrial FAR @ 40%	\$8,204	\$8,204	\$8,204
Heavy Industrial FAR @ 40%	\$5,739	\$5,739	\$5,739

(4) Payment of Fees; Credits

- (a) **Time of Payment of Impact Fees.** Street Impact Fees shall be due and payable at the time of building permit issuance unless otherwise required by State law or unless otherwise allowed to be deferred to certificate of occupancy by the Fresno Municipal Code or other Council action. Street impact fees may be paid on the building footprint divided by the FAR for non-residential developments, but not to exceed the total amount of the effective fees provided in Section 3 multiplied by the total net acreage. For parcels being fully developed, all Street Impact Fees shall be paid based upon the net acreage of the property that is subject to the development entitlement for which the building permit is pulled. If the development entitlement was a subdivision, the amount of fee required to be paid at building permit will be an

equal proportionate share that the parcel for which the building permit is being pulled bears to the total size of all of the lots under the subdivision.

- (b) **Prepayment of Impact Fees.** Notwithstanding the above, Street Impact Fees may be paid, at the election of the developer, at any time after the developer receives an approved development entitlement. If the developer prepays his or her fees pursuant to this provision, they will not be subject to any Major Street Fee increases (automatic inflationary increases or other increases adopted pursuant to the Mitigation Fee Act through hearing and notice) on any future building permit only to the extent that the building permit is pulled within four years or all street improvement and right of way dedication requirements required as a condition of the development entitlement are completed.
- (c) **Credits for Planned Construction.** When a developer is required or conditioned to construct Eligible Street Improvements, the developer shall be given credits against their Street Impact Fee obligation for the entire development for which the Eligible Street Improvement construction requirements were imposed. The construction cost estimate shall be prepared by a registered civil engineer using the units costs used to determine the total capital needs for the respective funds. The construction credit shall not exceed the approved engineer's estimate. This includes curb to curb or shoulder on opposite side as appropriate. Any credits given under this provision will be deducted from any reimbursement provided in Section (6). In the event it is determined that a developer was given fee credits in excess of actual construction costs, the developer shall pay to the City the outstanding amount owed.
- (d) **Credits for Previously Constructed Street Improvements.** Any development in the New Growth Area which at the time the development entitlement is approved has all Eligible Street Improvements along its frontage(s) and those improvements extend to the nearest major intersection and were in place at the Operative Date of these Guidelines shall receive full credit for the New Growth Area Major Street Impact Fee as provided in Table 4. The above provision shall not apply if the City determines that the street improvements were installed through public monies, other than impact fees or funds coming from an assessment district created to install street improvements.
- (e) **Credits for Previous Payment of UGM Fees toward New Growth Area Major Street Impact Fees.** Any development in the New Growth Area on property which has previously satisfied its UGM street improvement obligations (through full payment of UGM major street and UGM major street bridge fees; or completed construction of UGM major street improvements that are Conditions of Approval for the subject property in excess of the dollar value of the combined UGM major street and UGM major street bridge fee obligation for the subject property) shall receive a full credit for the New Growth Area Major Street Impact Fee as provided in Table 4. UGM major

street improvements, that are Conditions of Approval for the subject property in excess of the dollar value of the combined UGM major street and UGM major street bridge fee obligation for the subject property; and that are secured for by a form of security acceptable to the Public Works Director, City Controller and City Attorney, and are included within an executed Subdivision Agreement, Parcel Map Agreement or Development Agreement between the developer and the City which ensures that the UGM major street improvements shall be completed prior to release of the security and acceptance of the development; shall be acceptable as an alternative to completing construction of those improvements for the purposes of obtaining the full credit for the New Growth Area Major Street Impact Fee. Fee deferral covenants do not satisfy the developer's UGM street improvement obligations.

- (f) **Credits for Off-Site Regional Streets.** Any parcel that has previously contributed to the construction of off-site regional street improvements shall be eligible for a dollar for dollar credit (without interest or inflationary adjustment) towards the Citywide Regional Street Impact Fee in the amount the developer can prove the parcel contributed to off-site nonadjacent regional streets for shoulder to shoulder improvements that were constructed and dedicated to the City.
- (g) **Annexation Status Exemption.** Any developer that has an approved development entitlement(s) which has been approved for at least two weeks prior to the Operative Date of these Guidelines that could obtain building permits but for the need to be annexed is exempt from the Major Street Fees and must pay the fees that the development project would be subject to prior to the adoption of these policies. Eligibility for this exemption must be determined in the first instance by the Appeal Board under Section 10 which may be appealed to Council. A developer waives any right to this exemption if they pay the Major Street Fee without seeking this exemption and are issued a building permit. This exemption is in addition to any other right that may exist at law or in these policies that may exempt development from paying the Major Street Fee (e.g., vesting rights, credits, etc.).
- (h) **Expired Final Subdivision Map Exemption for Citywide Regional Street Impact Fees.** This Section (4)(h) expired on January 1, 2011, and is no longer in effect.

(5) **Application of Fees to Development Types**

(a) **Remodel, Reuse or New Development on Existing Buildings.**

1. If a reuse is not a more intensive use (as defined in Section (1)(o)), than the original use, there is no Street Impact Fee obligation and no obligation on the City to provide a credit.

2. If a reuse is more intensive than the original use, the developer shall be required to pay the difference between the current amount of the Street Impact Fee obligation for the old use and current amount of the Street Impact Fee obligation for the new use.
3. If the developer proposes to convert apartments to residential condos, there is no Street Impact Fee obligation.
4. If the developer proposes to convert a warehouse to lofts or residential condos to office condos, than the Director shall determine if the use is more intensive and apply the relevant provision of paragraph 1. or 2. above.
5. If a developer proposes new construction on a property that is partially developed that exists prior to the operative date of these Guidelines, the Street Impact Fee would be applied to the incremental increase proportionate to the respective floor to area ratios (25% for commercial and 40% for industrial). For example, if an office adds 5,000 square feet the FAR/density comparisons equates to .46 acres. The fee would be the per acre fee multiplied by 0.46 acres. In no case shall anyone pay more than the amount of the total net acreage of the parcel multiplied by the applicable fee pursuant to Section 3. This Section (5)(a)5. does not apply to additions on single family homes or any addition to a residential development that does not add an additional unit.
6. If a developer proposes a remodel that does not involve a reuse to a more intensive use or an expansion of square footage, there is no Street Impact Fee obligation.

(b) New Construction on Vacant Parcels

1. Building permits pulled for new construction on vacant parcels which have no vesting rights will be subject to the Street Impact Fee.
2. Building permits pulled for new construction on vacant parcels which have vesting rights will be subject to the street fee/exaction conditions imposed at the time the vesting rights were created, or as provided by agreement or State law.

(c) Non-Residential Site Plans and Conditional Use Permit. No increase to the Street Impact Fee (with the exception of an increase to capture inflationary adjustments) may be collected on any building permit pulled under a conditional use permit or site plan for a non-residential development that was approved after the Operative Date of these Guidelines within two years of the date of approval for the conditional use permit or site plan.

(6) **Reimbursement Policy**

- (a) **General Rule.** Developers shall be reimbursed for Eligible Street Improvements less the amount of the developer's Street Impact Fee obligation provided the paving improvements are permanent, and all underground utilities have been installed. If a Developer has paid any Street Impact Fees, they shall receive a reimbursement for any amount of the Street Impact Fee they have paid. Exceptions to the undergrounding requirement may be made if the Director finds that it is in the best interest of public safety to construct street improvements prior to the installation of the underground utilities.
- (b) **Order of Reimbursements.** Reimbursements shall be made on a first in-first out basis.
- (c) **Timing of Reimbursements.** Reimbursements will be made in April and October. More frequent reimbursement may be made predicated on impact fee cash flow and other extenuating circumstances.
- (d) **Outstanding UGM Reimbursement Obligations.** Outstanding UGM amounts owed would be consolidated into a single list, in chronological order (oldest to newest) and given highest priority for reimbursement.
- (e) **Use of Reimbursements for Fee Obligations.** No developer will be allowed to utilize reimbursements rights against fee obligations unless they are at the top of the respective reimbursement list. Notwithstanding the above, a developer may use reimbursement rights to satisfy their fee obligation for the development project for which the Eligible Street Improvement works that created the reimbursement rights were conditioned and/or required. If the constructed Eligible Street Improvements were not a formal condition or requirement a development entitlement, the Developer shall have no right to use the reimbursement rights against any fee obligations.
- (f) **Allocation of Fees Toward Reimbursements.** The City shall appropriate a minimum of 50% of the anticipated Street Impact Fee revenue for developer reimbursement on an annual basis. The City reserves the right to sponsor capital improvements, as identified and approved for construction by Council, that address public safety items or are best sponsored by the City to take advantage of certain utility relocation rights that the City enjoys provided such improvement are listed in the Capital Improvement Plan for the Street Impact Fee and the improvements are to street segments which meet one or more of the criteria A and one of criteria B as provided below:

Criteria A

- Overhead utilities can be relocated via a franchise move or undergrounded with a Rule 20 Underground Utility District.

- The City has obtained Federal or State grant funding for the project which will provide at minimum a 1 to 1 match on street impact fee dollars.
- The City-sponsored project is on a property with no current development activity.
- The City-sponsored project involves bridge construction or widening of a railroad crossing in excess of \$250,000.

Criteria B

- The roadway traffic volume is at level of service ("LOS") D³ or worse.
- The roadway is a planned but unconstructed facility that when built will relieve traffic on an adjacent roadway which is at LOS D or worse.

(7) Adjacent Street Improvement Requirements

- (a) Credits and Reimbursements.** For all work required in this Section (7), developers shall be eligible for credits and reimbursements for Eligible Street Improvements consistent with the policies provided above.
- (b) CEQA Mitigation.** Developer shall construct all adjacent (frontage) street improvements required to mitigate significant and/or cumulatively significant impacts identified under CEQA.
- (c) Frontage Requirements.** New development is required to construct Eligible Street Improvements as identified on Table 1. along the entire frontage of the legal parcel on which the development occurs. If the development fronts on a collector, the developer is required to construct an additional 12' of paving for the number two travel lane⁴ (this is not an Eligible Street Improvement). New development is required to dedicate street easements and construct all other street improvements along its frontage which includes, but is not limited to, bike lanes, turn lanes, curb and gutter, sidewalks, landscaping, fences/block walls, street lighting and other required improvements on the developer's project frontage. All development shall be subject to Fresno Municipal Code Sections 11-208, 11-208.1 and 11-208.2. In the event of a conflict between these guidelines and those sections, these guidelines shall control. Notwithstanding any of the above, there is no requirement for a developer who is expanding or adding onto a parcel with existing development to construct frontage improvements when the cost of the development is less than fifty percent of the estimated replacement cost of the existing improvements on the parcel unless the frontage improvements are required under Section 7(b) as CEQA mitigation.

³ LOS D is defined in the 2025 Fresno General Plan.

⁴ Travel lanes are numbered from the inside out, so that the number two travel lane is the second lane from the center of road.

- (d) **Bridge Facilities.** Developer shall be required to participate in the design and construction of major bridge facilities when the developer's required frontage improvements cross or terminate at a bridge that does not have sufficient width to accommodate the full width of the required street improvements. Any funds provided to the City for bridge facilities pursuant to this provision shall be held in a separate fund specifically for bridge facilities. If a developer is required to pay a pro-rata fair-share cash contribution in lieu of actual construction of a facility included in the fee program, then the developer may submit for reimbursement of those dollars from the fee program. The City will provide the reimbursement in accordance with the first-in first-out policy from the larger fee program. When a future developer or the City is then required to construct the facility, the dollars held in the separate fund for the facility will be made available to the entity constructing the facility.
- (e) **Railroad Facilities.** Developer shall be required to participate in the design and construction of railroad crossing improvements when the developer's required frontage improvements cross or terminate at a crossing that does not have sufficient width to accommodate the full width of the required street improvements. Any funds provided to the City for railroad crossing improvements pursuant to this provision shall be held in a separate fund specifically for railroad crossing facilities. If a developer is required to pay a pro-rata fair-share cash contribution in lieu of actual construction of a facility included in the fee program, then the developer may submit for reimbursement of those dollars from the fee program. The City will provide the reimbursement in accordance with the first-in first-out policy from the larger fee program. When a future developer or the City is then required to construct the facility, the dollars held in the separate fund for the facility will be made available to the entity constructing the facility.
- (f) **Ineligible Street Improvements.** Any cost for major street construction other than required frontage improvements or CEQA mitigation directly attributable to the Development, that is not an Eligible Street Improvement under these Guidelines, shall be documented to the City and the City shall record a notice of potential lien on the parcel(s) adjacent to the construction.

(8) Off-Site (Non-Adjacent) Street Improvement Requirements

- (a) **Credits and Reimbursements.** For all work required in this Section (8), developers shall be eligible for credits and reimbursements for Eligible Street Improvements consistent with the policies provided above.
- (b) **CEQA Mitigation.** Developer shall construct all off-site (non-adjacent) street improvements required to mitigate significant and/or cumulatively significant impacts identified under CEQA
- (c) **Center Section Requirements.** Developer shall construct center section improvements as defined by Section 1(i) between the project frontage and the

nearest geometrically complete center section improvements along the predominant path of travel as identified by a trip trace analysis. The amount of over exaction the Director may require is defined in Section (8)(g).

Improvement requirements include: railroad crossings (consistent with paragraphs (8)(e) below), bridges (consistent with paragraphs (8)(d) below), Eligible Street Improvements, and median islands.

- (d) **Off-Site (Non-Adjacent) Bridge Requirements.** Developer shall be required to participate in the design and construction of major bridge facilities when the center section improvements cross or terminate at a bridge that does not have sufficient width to accommodate the full width of the required street improvements.

Developer shall be required to participate in the design and construction of major bridge facilities if center section improvements create a situation deemed to not meet FHWA or Caltrans standards when street construction crosses or terminates at the bridge and the bridge does not have sufficient width to accommodate the street construction, including transitions.

Any funds provided to the City for bridge facilities pursuant to this provision shall be held in a separate fund specifically for bridge facilities. If a developer is required to pay a pro-rata fair-share cash contribution in lieu of actual construction of a facility included in the fee program, then the developer may submit for reimbursement of those dollars from the fee program. The City will provide the reimbursement in accordance with the first-in first-out policy from the larger fee program. When a future developer or the City is then required to construct the facility, the dollars held in the separate fund for the facility will be made available to the entity constructing the facility.

- (e) **Off-Site (Non-Adjacent) Railroad Requirements.** Developer shall be required to participate in the design and construction of railroad crossing improvements when center section improvements cross or terminate at a crossing that does not have sufficient width to accommodate the full width of the required street improvements.

Developer shall be required to participate in the design and construction of railroad crossing improvements if center section improvements create a situation deemed to not meet FHWA or Caltrans standards when street construction crosses or terminates at the railroad and the railroad does not have sufficient width to accommodate the street construction, including transitions.

Any funds provided to the City for railroad crossing improvements pursuant to this provision shall be held in a separate fund specifically for railroad crossing facilities. If a developer is required to pay a pro-rata fair-share cash contribution in lieu of actual construction of a facility included in the fee program, then the developer may submit for reimbursement of those dollars

from the fee program. The City will provide the reimbursement in accordance with the first-in first-out policy from the larger fee program. When a future developer or the City is then required to construct the facility, the dollars held in the separate fund for the facility will be made available to the entity constructing the facility.

(f) Other Off-Site (Non-Adjacent) Street Improvement Requirements.

1. **Citywide Regional Street Point of Constriction.** In addition to the above, as a condition of any development entitlement, the City may condition an entitlement with the requirement to construct a portion of, or provide a cash contribution towards, any component of the citywide regional street system (within 1.5 miles of the development) that the City has identified as being a "point of constriction" in the predominate direction of travel wherein the peak hour level of service is "D" or worse.

2. **New Growth Area Street Point of Constriction.** In addition to the above, as a condition of any development entitlement in the New Growth Area, the City may condition an entitlement with the requirement to widen a portion of, or provide a cash contribution towards, any component of the major street capital improvement program of the new growth area (within 1 mile of the development) that the City has identified as being a "point of constriction" in the predominate direction of travel wherein the peak hour level of service is "D" or worse.

(g) Maximum Off-Site (Non Adjacent) Street Improvement Requirements.

1. **Citywide Maximum.** The total amount of off-site (non adjacent) street improvements the City can require of a developer (whether construction, cash or a combination thereof) in section (8)(c)(d)(e) and (f)(1), above, shall be limited to the following cumulative percentages of the developers total Citywide Street Impact Fee obligation provided in Table 5.

Table 5.

Total Citywide Street Impact Fee Obligation	Maximum Percent of Off-Sites
\$0-\$250,000	20%
\$250,000-\$500,000	15%
\$500,000-\$1,000,000	10%
Over \$1,000,000	5%

For example if a developer has a Citywide Street Fee obligation of \$1,050,743.70 the maximum amount of non-CEQA mitigation off-site improvements would be calculated as follows:

Ex. 1

Fee Obligation		\$1,050,743.70		
\$250,000			20%	
0	@		=	\$ 50,000.00
\$250,000			15%	
0	@		=	\$ 37,500.00
\$500,000			10%	
0	@		=	\$ 50,000.00
\$50,743	@		5% =	<u>\$ 2,537.15</u>
			Total	\$140,037.20

2. **New Growth Area Fee.** The total amount the City can require of a developer for New Growth Area off-site (non adjacent) street improvements (whether construction, cash or combination thereof) in paragraph (8)(c)(d)(e) or (f)(2) shall be limited to the following cumulative percentages of the developer's total Growth Area Street Impact Fee obligation (as provided in Table 4).

Table 6.

Growth Area Street Impact Fee Obligation	Maximum Percent of Off-Sites
\$0-\$250,000	20%
\$250,000-\$500,000	15%
\$500,000-\$1,000,000	10%
Over \$1,000,000	5%

For example if a developer has a Growth Area Fee obligation of \$1,050,743.70 the maximum amount of non-CEQA mitigation off-site improvements would be calculated as follows:

Ex. 2

Fee Obligation		\$1,050,743.70		
\$250,000	@	20% =		\$50,000.00
\$250,000	@	15% =		\$37,500.00
\$500,000	@	10% =		\$50,000.00
\$50,743	@	5% =		<u>\$2,537.15</u>
		Total		\$140,037.20

3. **Maximum Off-Site Cap.** Notwithstanding the above, the City can only require non-CEQA mitigation off-site (non adjacent) street improvements in this Section 8⁵ to the extent that the amount of adjacent Eligible Street Improvements⁶ plus the amount of Eligible Street Improvements CEQA mitigation⁷ equals less than the amount of the developer's Street Impact Fee obligation⁸ plus the maximum amount of the off-site street improvements provided in (g)(1) and (2).⁹

Ex. 3

Developer X			
Street Fee Obligation (A)	=	\$1,000,000.00	
Max. Off Site (B)	=	\$ 100,000.00	
Total Frontage Improvements (Eligible Street Improvements) (C)	=	\$ 300,000.00	
Total CEQA Improvements (Eligible Street Improvements) (D)	=	\$ 400,000.00	
	=	\$ 200,000.00	
Amount of Max Off-Site Cap = (A+B) – (C+D)			
(1,000,000.00 + 100,000.00) – (100,000 + 200,000) = \$ 800,000.00			
RESULT: The City can require Developer X to construct full maximum of \$100,000.00 in Off Site.			

Ex. 4.

Developer Y			
Street Fee Obligation (A)	=	\$100,000.00	
Max. Off Site. (B)	=	\$ 25,000.00	Total
Frontage Improvements (Eligible Street Improvements) (C)	=	\$300,000.00	
Total CEQA Improvements (Eligible Street Improvements) (D)	=	\$150,000.00	
	=	\$200,000.00	
	=	\$100,000.00	
Amount of Max Off-Site Cap = (A+B) – (C+D)			
(100,000.00+25,000.00) – (150,000.00 + 100,000.00) = <\$125,000.00>			
RESULT: The City cannot require Developer Y to construct any non-CEQA Off Sites.			

⁵ As required under Sections (8)(c), (d), (e) and (f).

⁶ As required under Sections (7)(c),(d) and (e).

⁷ As required under Section (7)(b) and (8)(b).

⁸ As required under Section (3)(a), (b) and (c).

⁹ As provided under Section (8)(g)1. and 2.

Ex. 5

Developer Z		
Street Fee Obligation (A)	=	\$100,000.00
Max. Off Site (B)	=	\$ 25,000.00
Total Frontage Improvements	=	\$300,000.00
(Eligible Street Improvements) (C)	=	\$ 50,000.00
Total CEQA Improvements	=	\$200,000.00
(Eligible Street Improvements)(D)	=	\$ 60,000.00
Amount of Max Off-Site Cap = (A+B) – (C+D)		
(100,000.00+25,000.00) – (50,000.00+60,000.00) = \$15,000.00		
RESULT: The City can require Developer Z to construct \$15,000.00 of Off Site improvements.		

(h) **Utility Work; Waivers.** The cost to install utilities shall not be included in calculation of caps in (8)(g) in situations where the utility owner (i.e. sewer, water, storm drain) has a cash balance in the fund which can be immediately reimbursed to the developer. Utilities that are required for the developer shall also be excluded from the calculation of the cap. However, any utility cost that is not required for the development and is in excess of the available cash balance in the respective utility fee account shall be included in the calculation of the cap. If there are utilities that need to be constructed prior to the street work and the developer is not reliant upon these utilities to serve his or her development, the developer may petition the Director for a waiver of a portion or all of the off-site the street improvements requirements. The request for waiver will be reviewed and a determination made by the Director based on fiscal impact caused by the required utility installation. If there is sufficient cash balances in the relevant utility fund, the developer may be required to install the improvements.

(i) **Non-Eligible Off-Site Street Improvements.** Any cost for off-site (non-adjacent) street construction, that is not an Eligible Street Improvement, as provided in these Guidelines, shall be documented to the City and the City shall record a notice of potential lien on the parcel(s) adjacent to the construction.

(9) Right of Way

(a) **General Rule.** The developer shall dedicate to the City at no cost all major street rights of way (“ROW”) along their frontage. The developer shall

dedicate to the City at no cost any remainder parcels sufficient to construct eligible street improvements up to the center section adjacent to the remainder.

- (b) **Internal/Local Streets.** Dedications for internal/local streets are not eligible for ROW acquisition reimbursement or credits.
- (c) **Non-Grid Streets Proposed by the Developer.** Dedications for non-grid street alignments proposed by the developer are not eligible for credits or reimbursement.
- (d) **Non-Grid Streets Required by the City.** Dedications for non-grid street alignments required by City are eligible for credits and reimbursement as follows:
 - Collectors and all other four (4) lane streets: Value of thirty feet (30') on either side of street center line.
 - Six (6) lane streets: Value of forty-five feet (45') on either side of street center line.
- (e) **Vacated Grid Streets.** The value of any grid streets that are proposed to be vacated in conjunction with a development that has a City required non-grid street shall be used as an offset against any credit or reimbursements allowed for a non-grid dedication. For purposes of calculating the amount of credit and/or reimbursement and off-setting value of vacated ROW, the same square foot valuation shall be used.
- (f) **Non-Eligible Street Improvement Off-Site ROW.** The developer shall be eligible for reimbursement from the Street Impact Fee program for off-site ROW acquisitions that would not be necessary to construct Eligible Street Improvements when there is a high probability that the property adjacent to the ROW will not convert to a higher and better use. At its discretion, the City may file a Notice of Potential Lien against the affected property for reimbursement back to the respective street impact fee fund. If the property adjacent to the ROW has the potential for being developed or redeveloped to a higher and better use, then the City will record a Notice of Potential Lien against the subject parcel and reimburse the developer from any revenues collected as a result of the lien.

(10) **Appeals Board**

- (a) **Street Impact Fee Appeals Board.** The previously formed Board is hereby dissolved. The Public Works Director shall have the full authority to hear, grant or deny appeals filed by developers as was previously delegated to the Board. Developers shall retain the right to appeal the Director's decision to the Council.

- (b) **Right to Appeal.** A developer may file (i) an appeal on a form provided by the Director within fifteen (15) days of the fee being imposed on the developer's entitlement in a final decision issued by the City or (ii) a request for eligibility determination under Section (4)(g) at any time prior to issuance of building permit. The appellant shall submit the basis for his or her appeal or request for eligibility in writing to the Director at least fifteen (15) days prior to the hearing date. Appellants shall be given at least ten (10) days notice of the date of the hearing. Appeals shall be heard within thirty (30) days of the filing of the appeal or request. The Director shall continue a hearing date at least once for thirty (30) days upon request of the appellant.
- (c) **Basis of Appeal/Request.** An appeal or request brought under these provisions shall be limited to the following bases:
1. Application of provisions in Section (4)(d), (e), (f) or (h) regarding credits for existing streets and/or payment of UGM fees.
 2. Improper calculation of FAR to collect fee on an expansion under Section (5)(a)5.
 3. Challenge to the land use attributed to the development by staff pursuant to (3)(a) and (3)(b). To determine the appropriate land use, the Director (or Council) can consider the planned land use, the expected impacts in relation to type of actual land use, classifications and definitions of the City zoning ordinance, the testimony of City planning staff, and any other relevant evidence.
 4. Challenge that the development will cause twenty-five (25) percent or less of the impacts identified as the standard that forms the basis under the Nexus Study. The appeal board may limit the fee to the developer's proven impact.
 5. Determination of eligibility for exemption under Section (4)(g).
- (d) **Burden of Proof.** To prevail, the appellant carries the burden of proof under the bases in subsection (g).
- (e) **Status of Entitlement on Appeal.** No building permit shall be issued for any development for which a hearing has been requested unless the appellant pays the Street Impact Fees as imposed by the City.
- (f) **Appeal to Council.** The decision of the Director shall be final unless appealed by the appellant to Council within fifteen (15) days of receiving written notice of the decision. Council may approve, reject or modify the Director's decision. Council decision shall be final. Any decision made by the Director or Council shall be based upon substantial evidence in the record and upon these Guidelines, the Fresno Municipal Code, and adopted policies, guidelines and standards of the City.
- (g) **Costs Related to the Appeal.** If an Appeal to Council is made, appellants shall pay a fee for their costs of appeal which may be provided in the Master Fee Schedule. The appeal fee shall be refunded if the Council decides to

reduce the street impact fee obligation. Any carrying costs, plan revision, construction, or other project costs that may be required as a result of the appeal shall be the full responsibility of the appellant, and the appellant shall not have the right to seek any restitution from the City.

- (h) **Effect of Decision.** If the appellant's fee obligation is reduced by the Director or Council decision and the appellant previously paid street impact fees, the Director shall reimburse the appellant in the amount of payment they made in excess of the appellant's fee obligation in accordance with the final decision.
 - (i) **Imposition of Fee.** For purposes of the right to protest a fee under Government Code Section 66020, the date of imposition of any street impact fee that has been appealed pursuant to this Section (10) shall be the date of a final Council decision on an appeal from the Director.
- (11) **Affordable Housing.** Developers who have developed affordable housing units may be eligible for fee waivers, reductions, credits or reimbursements pursuant to adopted Council policy.

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