

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 on arterials, super arterials and expressways, and the two way left turn lane on collectors. 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. For collector streets (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 can not be readily 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.

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

- (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 Planning and Development 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, 2009)
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

- (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

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).

and the developer as to what the actual land use is shall be resolved by the Director of the Planning and Development 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 Use¹	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, 2009)
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, 2009)
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. Until July 1, 2009, street impact fees will be paid on the building footprint divided by the FAR but not to exceed the total amount of the effective fees provided in Section 3 multiplied by the total net acreage. On July 1, 2009, and thereafter, 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. Notwithstanding the above, Affordable Housing Developments, as defined in Section (1), may elect to pay their impact fees at the time of issuance of the certificate of occupancy.
- (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, street lights and sidewalks. 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.** Any development in the New Growth Area on property which has previously satisfied its UGM street improvement obligations (through UGM fee payment or improvement construction) shall receive a full credit for the New Growth Area Major Street Impact Fee as provided in Table 4.
- (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.).

(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 November. 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

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.

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.

- (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		
		20%	
\$250,000	@	=	\$ 50,000.00
		15%	
\$250,000	@	=	\$ 37,500.00
		10%	
\$500,000	@	=	\$ 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		
		20% =	\$50,000.00
\$250,000	@	15% =	\$37,500.00
\$250,000	@	10% =	\$50,000.00
\$500,000	@	5% =	<u>\$2,537.15</u>
\$50,743	@		
		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:
 - 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.** There is hereby established a Street Impact Fee Appeals Board ("Board"). The Board shall consist of five (5) members. The Director shall cause an Organizational Form pursuant to Resolution No. 2004-185 to be filed with the City Clerk before any Board member takes office. The Director shall act as the Secretary to the Board.
- (b) **Appointment/Term of Members.** Members of the Board shall be appointed for a two year term with staggering terms. The membership shall be as follows:

One appointed by the Mayor's Office (first term serving from appointment to Jan 2009)

One appointed by the Council (first term serving from appointment to Jan 2010)

One appointed by the local Building Industry Association ("BIA") (first term serving from appointment to Jan (2009)

One appointed by the Chamber of Commerce on behalf of the non-residential construction community (first term serving from appointment to Jan 2010)

One appointed by the other four members from the general public who does not work in the development industry or the City and resides in the City (first term serving from appointment to Jan 2010).

- (c) **Appeals Board Rules of Procedure.** The Board shall be governed by the same rules of procedure as the City Planning Commission as may be found applicable and consistent with these Guidelines. These Guidelines shall control in the event of an inconsistency.
- (d) **Brown Act and Conflicts Laws.** The Board shall be subject to the Ralph M. Brown Act and the Conflicts Laws as required under State law, including the Political Reform Act of 1974 and guidelines adopted by the Fair Political Practices Commission and common law.
- (e) **Monthly Meetings.** The Board shall meet on the first Thursday of every month at City Hall to hear appeals from imposition of Street Impact Fees.
- (f) **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 forty-five (45) days of the filing of the appeal or request. The Secretary to the Board shall continue a hearing date at least once for thirty (30) days upon request of the appellant or the City.
- (g) **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) or (f) 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 Appeal Board (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 five 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).
- (h) **Burden of Proof.** To prevail, the appellant carries the burden of proof under the bases in subsection (g).
- (i) **Status of Entitlement on Appeal.** No building permit shall be issued for any development for which an hearing has been requested unless the appellant pays the Street Impact Fees as imposed by the City.
- (j) **Costs Related to the Appeal.** 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.
- (k) **Appeal to Council.** The decision of the Board shall be final unless appealed by the appellant or by City staff to Council within fifteen (15) days of receiving written notice of the decision. Council may approve, reject or modify the Board's decision. Council decision shall be final. Any decision made by the Board 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.
- (l) **Effect of Decision.** If the appellant's fee obligation is reduced by the Appeal Board 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 confirmed by Council.
- (m) **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 Board.
- (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.