

AGENDA ITEM NO.

COUNCIL MEETING June 5, 2007

APPROVED BY

DEPARTMENT DIRECTOR *M.T. Kirn*

CITY MANAGER

FROM: JON RUIZ, Director
Public Works Director

BY: Michael Kirn, City Engineer/Assistant Director *M.T. Kirn*

SUBJECT: ORDINANCE FOR INTRODUCTION AND ADOPTION AMENDING THE FRESNO MUNICIPAL CODE RELATING TO IMPACT FEES FOR STREET FACILITIES.

KEY RESULT AREA:

Fiscal Management

RECOMMENDATION

Staff recommends that Council introduce and adopt the Proposed Street Facilities Impact Fee Ordinance for imposition of the Citywide Regional Street Impact Fee and the New Growth Area Major Street Impact Fee.

EXECUTIVE SUMMARY

The Proposed Ordinance is intended to allow the City to impose the recently adopted Citywide Regional Street Impact Fee and the New Growth Area Major Street Impact Fee, which are expected to be effective July 12, 2007. As previously represented to Council, staff continues to work with stakeholders in the development of the recommended Ordinance, as well as policies for implementation and on-going administration of the new street fee program. The recommended Ordinance contains a provision that that Council adopt administrative policies by resolution. Importantly, the Proposed Ordinance will not be effective until those policies are adopted by Council.

The Proposed Ordinance does the following:

- (1) Add a new Article to Chapter 12 that imposes street facilities fees. This Article does the following:
 - Provides that there are two fees, the Citywide Fee and the New Growth Area Fee which have been adopted by Council.
 - The Citywide Fee shall be paid by every development entitlement in the City.
 - The New Growth Area Fee shall be paid by development in the New Growth Area (by map kept by Public Works).
 - This article has no effect until the Council adopts by resolution implementation and administrative guidelines - there are no substantive requirements in ordinance that aren't conditioned on guidelines being adopted which include: how the fees are calculated; reimbursements and credits given; and when and where developers are required to construct street improvement.
 - Once the Ordinance is in place and administrative guidelines have been fully adopted, the old UGM ordinance on street fees and bridges (11-226) and the ordinance on street frontage and dedication requirements (11-208) no longer have effect on development entitlements that are subject to the new street impact fees.

Street Impact Fee Ordinance

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- (2) Clarifies the Fresno Municipal Code (FMC) to allow for above ordinance by doing the following:
- Removes Traffic Signal Charge from 11-226 (old UGM street/bridge facility ordinance)
 - Puts new Street Fee and old Traffic Signal Charge fee into new articles in Chapter 12 (4.10 and 4.11) where the new parks, police and fire impact fees were placed
 - Makes no substantive changes to traffic signal charge provisions – just moves them to the new article.

KEY OBJECTIVE BALANCE

The recommended ordinance emphasizes Fiscal Management in that it establishes the legislative authority to impose the recently adopted Citywide and New Growth Area Street Impact Fees on new development entitlements. Customer satisfaction is improved by creating a financing mechanism for construction of street improvements to enhance traffic circulation. Employee satisfaction is improved through the consolidation of historical UGM major street areas which provides administrative efficiencies.

DISCUSSION

On April 24, 2007 the Council adopted new street impact fees that establish a citywide regional and new growth area street impact fees. The adopted fees will be phased in over a three year period and are per acre based on various land uses. The fees provide a financing mechanism for construction of the travel lanes necessary to build-out the circulation element of the 2025 General Plan.

As part of our on-going collaboration efforts we have met regularly with the stakeholders in the development of the recommended ordinance. The stakeholders have had the opportunity to review and provide suggested changes, which when appropriate have been incorporated.

During these discussions the stakeholders have requested that there be developed, and adopted by Council resolution, a set policies on how the new street fees will be implemented and administered. The purpose and intent of the administrative policies is to establish written procedures and guidelines from a go-forward basis. These guidelines will establish consistency in program administration and will clearly spell out what is expected from developers with respect to construction of street improvements, fee obligations and reimbursement for work constructed above their fee obligation. It is envisioned that these guidelines will presented to Council for action on or before the effective date of the ordinance which is estimated to be July 12, 2007. Importantly, if the guidelines and associated resolution are not adopted by Council on or before July 12, 2007, the Ordinance will not allow the fees to be collected.

FISCAL IMPACT

There will be an overall positive impact on the street infrastructure once the new impact fee revenue is collected. It is noted that the street impact fee nexus analysis identified approximately \$32 million in street construction that the City will be responsible to construct using non-impact fee revenue. It is anticipated that flexible Measure C, gas tax and/or grants will cover these construction costs.

MIW/JVM/CGP/DHC/ems
May 31, 2007

Attachment:
Ordinance

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA, REPEALING SUBSECTION (D) OF SECTION 11-226, AMENDING SUBSECTIONS (F) AND (G) OF SECTION 11-226, ADDING ARTICLES 4.10 AND 4.11 TO CHAPTER 12 OF THE FRESNO MUNICIPAL CODE, RELATING TO IMPACT FEES FOR STREET FACILITIES AND TRAFFIC SIGNAL FACILITIES.

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Subsection (d) of Section 11-226 of the Fresno Municipal Code is repealed.

SECTION 2. Subsection (f) of Section 11-226 of the Fresno Municipal Code is amended to read:

(f) Reimbursements. The following provisions define the reimbursement process within the Urban Growth Management Areas and Non-Urban Growth Management Areas:

(1) Whenever the center section of a major street or major street bridge is installed by a person as a condition of development within the Urban Growth Management Area, the city shall reimburse such person for the actual cost of the construction, including engineering and inspection costs, less the appropriate pro rata share of the major street charge and the major street bridge charge to be paid on behalf of all property contributing to the cost thereof, in the manner and for the period prescribed in Section 12-4.504-C of this Code.

(2) Whenever a person covenants in a form acceptable to the City Attorney to install the center section of the major street or the major street bridge

within the Urban Growth Management Area, the estimated cost of construction thereof shall be credited against the major street charge or major street bridge charge, as appropriate, which is due upon granting of the development entitlement on the property contributing to the cost of the major street or major street bridge. The cost of construction of the major street shall be estimated in accordance with the credit schedules designated in the Master Fee Resolution. The estimated cost of construction of the major street bridge shall be established by the Director based on the engineer's estimate prepared in connection with the design of the bridge.

(3) In the event the actual cost of major street or major street bridge exceeds the major street charge or the major street bridge charge within the Urban Growth Management Area, the difference shall be paid from the UGM major street fund or major street bridge fund upon city acceptance of the major street or major street bridge, only to the extent that major street charges or major street bridge charges are paid on behalf of noncontributing properties served by the major street or major street bridge up to the duration of the appropriate reimbursement period, in the manner prescribed by Section 12-4.504-C of the Code, after city acceptance of the major street or major street bridge, and only to the extent that the major street charges or major street bridge charges paid on behalf of such noncontributing properties are not credited against reimbursement

for other major streets or major street bridges constructed for the noncontributing properties by the person paying such charges.

(4) Where, as a condition precedent to approval of development in the Urban Growth Management Area, a person has been required to construct the center section of a major street or a major street bridge which has been accepted by the city, he shall within ninety days of such acceptance file with the Director a project accounting stating the cost of acquisition and construction of the major street or major street bridge. The project accounting shall include a legal description of all properties on behalf of which contributions have been made and a statement of the proportion of the construction costs borne by each property.

(5) Following the receipt of the project accounting, the Director shall make semiannual determinations on or about each April first and October first, in the manner prescribed in Section 12-4.504-C of this Code, of the amounts to be reimbursed to the persons who constructed the major street or major street bridge within the Urban Growth Management Area as shown in the project accounting, subject to the following:

(i) Each determination shall calculate those charges which have been collected during the preceding six months for land developed within the major street zone in which the major street or major street bridge is located.

(ii) No payments or determinations may be made if the project accounting is not timely filed.

(iii) In no event shall payments be made which total more than the cost of the major street or major street bridge as shown on the project accounting.

(iv) The major street charge and major street bridge charge on the property contributing to the cost of the major street or major street bridge shall be increased or decreased, as appropriate, by an amount equal to the difference between the actual cost of construction and the fee credit established at the time of the granting of the entitlement per acre of land in the major street zone in which the property is located.

(v) No payments or determination shall be made after the end of the appropriate reimbursement period as defined in Section 12-4.501.5-F of this Code.

(vi) The priority of reimbursements shall be based upon the date the Director accepts the project accounting statement.

(vii) Reimbursements shall not be made until reimbursements are complete for major streets or major street bridges, as the case may be, which are covered by previously submitted project accounting statements.

(6) Whenever a person is required, as a condition of development in the Urban Growth Management Area, to bear the cost of acquisition of necessary

rights-of-way or easements for street construction or facilities incidental thereto, or if a person is required to construct standard frontage improvements described in Section 11-208(d) of this Code or facilities incidental thereto beyond the limits of his development, which for purposes of this section shall mean the centerline of the adjacent street and property boundary lines generally perpendicular to the street centerline, then the city shall, as a condition of and prior to the development or subdivision of the property from which the right-of-way acquisition occurred or from the adjacent property on which the frontage improvements were installed, or from property which would have future responsibility for the construction, require the developer of such adjacent property which received benefit by virtue of the improvements having been previously constructed to pay to the city an amount determined by the Director, based on the project accounting, as representing the cost of street right-of-way acquisition and any construction. Such payment shall be made prior to approval by the city of any development entitlement or building permit for such adjacent property. The city shall then make reimbursements to the person who bore the initial cost of such right-of-way acquisition or improvements, or both, according to the terms of Section 12-4.504-C of this Code. However, any right to reimbursement under this subdivision (6) shall expire twenty years after city acceptance of such rights-of-way and improvements.

The above is as it applies to major streets shall apply only to standard frontage improvements accepted by the city after September 1, 1985 and only to those adjacent properties on which title has not changed or development entitlements have not been approved between September 1, 1985 and December 19, 1986.

(7) When the acquisition of an entire parcel is necessary for major street right-of-way and construction so that the person required to bear the cost thereof would not have the potential for reimbursement as provided in subdivision (6) above, the Director may authorize reimbursement from the applicable UGM Major Street Service Area Fund. The Director shall then revise the UGM Major Street Fee rate for the affected street zones to include the pro rata cost paid by such person for that portion of the property so acquired for right-of-way necessary for major street construction. The Director shall adjust the major street fee rate pursuant to this subdivision (7) only after he has received written verification of the purchase price of the acquired property. Any such adjustment by the Director shall be based solely on such verified purchase price, prorated as specified herein, when the property is acquired by such person. If the property is acquired by the city through negotiation or eminent domain procedures, such adjustment shall be based upon the actual cost thereof paid by such person to the city, prorated as specified herein.

The priority of reimbursements shall be based on the date the Council approves the adjustment in the UGM Major Street Fee rate pursuant to this

subdivision (7) and the priority of reimbursements for major street construction pursuant to subdivision (5)(vi) above. No such reimbursement shall be made until reimbursements are complete for major streets or for right-of-way pursuant to this subdivision (7) which are covered by previously submitted project accounting statements or approved major street fee rates.

(8) The Director shall review the reimbursement and fee schedule semiannually following the evaluation of all project accounting statements and report to the Council with appropriate recommendations for revision of the credits and fees. The major street and major street bridge charges shall be adjusted to reflect the actual cost of major streets and major street bridges constructed and included in project accounting statements received during the previous six months.

~~(9) Whenever a person covenants in a form acceptable to the City Attorney to install master plan traffic signal improvements, the estimated cost of construction thereof shall be credited against the Traffic Signal Charge which is due upon granting of the development entitlement on the property contributing to the cost of the traffic signal improvements. The estimated cost of construction for the traffic signal improvements shall be established by the Director.~~

~~In the event the actual cost of traffic signal construction exceeds the Traffic Signal Charge, a reimbursement shall be paid from the Traffic Signal Fund upon city acceptance of the signal improvements only to the extent that~~

~~Traffic Signal Charges are paid on behalf of noncontributing properties served by the traffic signal up to the duration of the appropriate reimbursement period, in the manner prescribed by Section 12-4.504-C of this Code, and subject to the following:~~

~~(i) A request for reimbursement shall be submitted to the Director within ninety days following city acceptance of the signal work and shall include final statements from the contractor detailing the work that was performed. Only items approved by the Director shall be reimbursed.~~

~~(ii) Reimbursement shall be made for the actual cost of construction including engineering and plan preparation.~~

~~(iii) Except in the case of safety lighting, no reimbursement payments shall be made until the Director determines that traffic warrants for a signal are achieved. Upon such determination, and upon the Director's acceptance of the project accounting statements, the person installing the signal shall be eligible for reimbursement on or about April first and October first to the extent that unobligated funds are on deposit in the Traffic Signal Fund.~~

~~(iv) The priority of reimbursements shall be based on the date the Director accepts the project accounting statements or on the date the Director determines that traffic warrants for the signal are achieved, whichever occurs later.~~

~~(v) The person initiating the signal installation shall be responsible to the city for all operation and maintenance costs until such time as the Director determine that traffic warrants are achieved.~~

(10) When reimbursements are made pursuant to this Subdivision (f), the city shall reimburse in a manner and for the period prescribed by Section 12-4.504-C of this Code.

SECTION 3. Subsection (g) of Section 11-226 of the Fresno Municipal Code is amended to read:

(g) Deferral of Charges. Major street charges payable pursuant to subsection 11-226(b); and major street bridge charges payable pursuant to subsection 11-226(c), ~~and Traffic Signal Charges payable pursuant to Subsection 11-226(d)~~ may be deferred until issuance of a certificate of occupancy pursuant to an agreement which conforms to the requirements of Section 12-4.604.

SECTION 4. Article 4.10 is added to Chapter 12 of the Fresno Municipal Code to read:

ARTICLE 4.10

STREET FACILITIES FEE

Section 12-4.1001.	Purpose.
Section 12-4.1002.	Street Facilities Fee Established.
Section 12-4.1003.	Effect on UGM Street Fees and Street Dedication Requirements.
Section 12-4.1004.	Use of Fee Revenues.
Section 12-4.1005.	Developer Dedication or Construction of Facilities.
Section 12-4.1006.	Administrative Guidelines.

SECTION 12-4.1001. PURPOSE. In order to implement the goals and objectives of the City's general plan, and to mitigate the impacts caused by future development in the city, certain

street facilities must be constructed. The City Council has determined that street facilities fees are needed in order to finance these public facilities and to pay for each development's fair share of the construction and acquisition costs of these improvements. Based on this determination, Council adopted, by resolution amending the Master Fee Schedule, a Citywide Regional Street Impact Fee ("Citywide Street Fee") and a New Growth Area Major Street Fee ("Growth Area Street Fee"). Council adopts this Article to require the imposition of these street facilities fees on new development in the city.

SECTION 12-4.1002. STREET FACILITIES FEES ESTABLISHED.

(a) All new development in the city shall be responsible for paying a Citywide Street Fee consistent with the administrative guidelines adopted pursuant to Section 12-4.1006. The amount of the Citywide Street Fee shall be provided in the Master Fee Schedule.

(b) In addition to the Citywide Street Fee, all new development in the New Growth Area (as delineated on the Official New Growth Area Major Street Map which shall be kept and made available to the public in the Public Works Department and made available on the city's website), shall be responsible for paying the Growth Area Street Fee consistent with the administrative guidelines adopted pursuant to Section 12-4.1006. The amount of the Growth Area Street Fee shall be provided in the Master Fee Schedule and shall include, for purposes of simplification, a component that equals the required Citywide Street Fee required in subdivision (a) of this section.

SECTION 12-4.1003. EFFECT ON UGM STREET FEES AND STREET DEDICATION REQUIREMENTS. Following adoption of this Article and the administrative guidelines described in Section 12-4.1006, any project subject to the Citywide Street Fee and/or the Growth Area Street Fee shall be exempt from Sections 11-208, 11-208.1, 11-208.2 and 11-226. Notwithstanding the above, if a court of competent jurisdiction declares the Citywide Street Fee and/or the Growth Area Street Fee to be invalid or otherwise prevents the City from collecting these fees following the fees becoming effective, all projects shall remain subject to all of the requirements of Sections 11-208, 11-208.1, 11-208.2 and 11-226.

SECTION 12-4.1004. USE OF FEE REVENUES. The revenues raised by payment of the Fee shall be accounted for in the city's capital project fund. Separate and special accounts within the fund shall be used to account for revenues, along with any interest earnings on such account. These monies shall be used for the following purposes:

(a) To pay for land acquisition for, and design, engineering, and construction of the public street facilities designated to be financed with the Citywide Street Fee or the Growth Area Street Fee and identified in the Major Street Capital Improvement Plan (“designated public street facilities”) and reasonable costs of outside consultant studies and other administrative costs related thereto consistent with administrative guidelines adopted pursuant to Section 12-4.1006;

(b) To reimburse the city for designated public street facilities constructed by the city with funds from other sources (not including Tier 1 Measure C Tier funds, competitive state or federal grants, state or federal earmarks) consistent with

administrative guidelines adopted pursuant to Section 12-4.1006 ;

(c) To reimburse developers who have designed and constructed designated public street facilities in excess of the amount equal to their full fee obligation (and eligibility for fee credits) consistent with administrative guidelines adopted pursuant to Section 12-4.1006;

(d) To discharge reimbursement obligations for street or bridge requirements created under subsection 11-226(f) consistent with subdivision 11-226(f)(5) and administrative guidelines adopted pursuant to Section 12-4.1006; and/or

(e) To pay for and/or reimburse the costs of program development and to pay for ongoing administration costs of the street facilities fee program administrative guidelines adopted pursuant to Section 12-4.1006.

SECTION 12-4.1005. DEVELOPER DEDICATION OR CONSTRUCTION OF FACILITIES. If a developer is required, as a condition of approval of a development entitlement, to dedicate land for or construct a public facility that has been designated to be financed with the Citywide Street Fee or the Growth Area Street Fee, the developer shall be given a credit against the amount of their Citywide Street Fee and/or Growth Area Street Fee obligation in the amount of the value of the dedication and/or construction consistent with the guidelines adopted pursuant to Section 12-4.1006. If the developer's construction and/or dedication exceeds the full value of their fee obligation (i.e., eligibility for fee credits), the developer shall be reimbursed from the Citywide Street Fee and Growth Area Street Fee funds in the amount of the value of the dedication and/or construction exceeds the full fee obligation consistent with the guidelines adopted pursuant to Section 12-4.1006.

All credits and reimbursements shall be administered pursuant to guidelines adopted pursuant to Section 12-4.1006.

SECTION 12-4.1006. ADMINISTRATIVE GUIDELINES. The Council shall, by resolution, adopt administrative guidelines, which may be amended from time to time, to provide procedures for the calculation and payment of the Citywide Street Fee and/or the Growth Area Street Fee; reimbursement, credit, or deferred payment of the Citywide Street Fee and/or the Growth Area Street Fee; requirements on when a developer shall construct facilities to be financed by the Citywide Street Fee or the Growth Area Street Fee; and any other policies, not limited by the above, related to the administration of the street facilities fee program adopted pursuant to this Article.

SECTION 5. Article 4.11 is added to Chapter 12 to the Fresno Municipal Code to read:

ARTICLE 4.11

TRAFFIC SIGNAL FACILITIES FEE

- Section 12-4.1101 Traffic Signal Charge.
- Section 12-4.1102 Reimbursements.
- Section 12-4.1103 Deferral of Charges.

SECTION 12-4.1101. TRAFFIC SIGNAL CHARGE. A Traffic Signal Charge shall be required for each lot created by subdivision, each development, or building permit issued within the City limits, as designated on the Official Traffic Signal Impact Fee Boundary Map as prepared by the Public Works Director. The fee shall be based on the average daily trip(s), or fraction thereof, generated by a specific development times the per unit ADT fee designated in the Master Fee Schedule. Average Daily Trip (ADT) is the current average daily traffic that is generated by a particular development. ADTs include trips leaving or originating from a property. For example, a

vehicle leaving a property or development would be counted as one ADT, a vehicle entering a property or development would also be counted as one ADT.

For residential developments the trip generation shall be identified in the Master Fee Schedule. For non-residential development the trip generation calculations shall be based on the square footage of building(s), the building use, and utilizing the Institute of Transportation Engineers, Trip Generation Manual for average daily trip generation of the various building uses.

12-4.1102. REIMBURSEMENTS. Whenever a person covenants in a form acceptable to the City Attorney to install master plan traffic signal improvements, the estimated cost of construction thereof shall be credited against the Traffic Signal Charge which is due upon granting of the development entitlement on the property contributing to the cost of the traffic signal improvements. The estimated cost of construction for the traffic signal improvements shall be established by the Director.

In the event the actual cost of traffic signal construction exceeds the Traffic Signal Charge, a reimbursement shall be paid from the Traffic Signal Fund upon city acceptance of the signal improvements only to the extent that Traffic Signal Charges are paid on behalf of noncontributing properties served by the traffic signal up to the duration of the appropriate reimbursement period, in the manner prescribed by Section 12-4.504-C of this Code, and subject to the following:

- (a) A request for reimbursement shall be submitted to the Director within ninety days following city acceptance of the signal work and shall include final statements from the contractor detailing the work that was performed. Only items approved by the Director shall be reimbursed.

(b) Reimbursement shall be made for the actual cost of construction including engineering and plan preparation.

(c) Except in the case of safety lighting, no reimbursement payments shall be made until the Director determines that traffic warrants for a signal are achieved. Upon such determination, and upon the Director's acceptance of the project accounting statements, the person installing the signal shall be eligible for reimbursement on or about April first and October first to the extent that unobligated funds are on deposit in the Traffic Signal Fund.

(d) The priority of reimbursements shall be based on the date the Director accepts the project accounting statements or on the date the Director determines that traffic warrants for the signal are achieved, whichever occurs later.

(e) The person initiating the signal installation shall be responsible to the city for all operation and maintenance costs until such time as the Director determine that traffic warrants are achieved.

(f) When reimbursements are made pursuant to this Section, the city shall reimburse in a manner and for the period prescribed by Section 12-4.504-C of this Code.

SECTION 12-4.1103. DEFERRAL OF CHARGES. Traffic Signal Charges may be deferred until issuance of a certificate of occupancy pursuant to an agreement which conforms to the requirements of Section 12-4.604.

SECTION 6. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its final passage.

* * * * *

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

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the ____ day of _____, 2007.

AYES :
NOES :
ABSENT:
ABSTAIN:

Mayor Approval: _____, 2007

Mayor Approval/No Return: _____, 2007

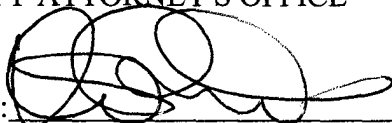
Mayor Veto: _____, 2007

Council Override Vote: _____, 2007

REBECCA E. KLISCH
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

BY: 
KATHRYN C. PHELAN
Deputy City Attorney

KCP:sz[41052sz/kcp/ord] 5/30/07