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To: Mayor Fleming and Members of the City Council
From: Charles O. Lamoree, City Attorney

Re: 1) Approval of Environmental Assessment for Development Impact Fee Ordinance and Resolutions for (a) Public Facilities Fees, (b) Parks and Recreation Fee, and (c) Open Space/Greenbelt Fee. 2) An Ordinance of the City Council of Vacaville Establishing Procedures for the Uniform Adoption, Periodic Adjustment and Management of Development Impact Fees, Consolidating Existing Development Impact Fees Into a Single Chapter of the Vacaville Municipal Code, and Establishing an Open Space and Greenbelt Development Impact Fee for the City of Vacaville (Second Reading)

DISCUSSION:

ORDINANCE:

As mentioned at your meeting of July 14th, the proposed ordinance accomplishes three things: (1) consolidates all development impact fees into one place in the Vacaville Municipal Code, as, at present, those fees are scattered throughout the Municipal Code; (2) establishes a uniform procedure for evaluation, adoption, updating and administration of impact fees; and (3) establishes the right to charge an open space/greenbelt development impact fee.

I have made some changes, primarily minor wording changes. All changes from the first reading are shown by underlining added material and deleted material shown struck-through.

The main changes were to add:

(1) a provision recognizing that a credit should be given for fees previously paid when a property reconstructed. It should be noted that this change only relates to the particular situation where a building is replaced. Other issues relating to which fees and at what amounts should be charged for changes in use or expansions of uses will need to be addressed later.

(2) a provision to "freeze" fees in place for those developments that have a complete application on file more than 30 days prior to the effective date of the new fee. This is intended to try and avoid the building permit rush we usually see when fees are changed.

In summary:

(1) the ordinance is not to raise or change fees, but to create a uniform methodology for the adoption, review and administration of all impact fees and to put them all in the same place in the Municipal Code.

(2) fees will be adopted by a resolution that (a) adopts and approves the comprehensive fee study and (b) sets out the actual fee in a the body of the resolution which will stay in effect (other than C.O.L.A. changes) until further, express action by the Council

(3) each year the Council will review the fee funds and establish the Capital Improvement Program for the following year. A full fee "study" is not needed each year. A comprehensive fee review, such as your going through now, must be done every 5 years. Between each comprehensive, 5-year review a "mini" update may be needed to adjust fees or projects other than by C.O.L.A.

Environmental Assessment:

The project is within the scope of the 1990 General Plan and its environmental impacts are adequately assessed in EIR-2-90. Therefore, pursuant to Section 5168(c)(2) of the California Administrative Code (CEQA Guidelines), no further environmental assessment is required. The proposed General Plan EIR (EIR-2-90) identified significant, unavoidable impacts related to the buildout of the General Plan, of which this project is a part. Pursuant to CEQA, a Statement of Overriding Consideration was adopted that found benefits of the General Plan project outweighed the negative aspects. That statement will be adopted for this project as well.

The initial study and environmental assessment report are attached to provide an in-depth analysis of the environmental determination that recommended reaffirmation of EIR-2-90 for this project. Individual improvement projects occurring as a result of this project will receive separate environmental review when those projects are designed and approved in the future.

If you have any questions, please call me at 449-5105.

RECOMMENDATION:

1) By simple motion, to approve Environmental Assessment with the following findings:

A. That the reaffirmation of EIR-2-90 for the Development Impact Fee Consolidation Ordinance and the 1992 periodic update of the Public Facilities, Parks and Recreation, and Open Space Greenbelt Impact Fees reflects the independent judgement of the City of Vacaville (Pursuant to Section 21082.1 (c)(2), CEQA.

B. Pursuant to Section 15162 of the CEQA Guidelines, the Council finds that no new effects could occur or new mitigation measures are required for the project.

C. That this proposal, which was deemed a "project" under CEQA, was an activity within the scope of the General Plan revision approved in August, 1990, and covered by the Proposed General Plan EIR (EIR-2-90). Therefore, no environmental document is required. (Pursuant to Section 15168(c)(2).

D. The following significant impacts related to the build-out of the General Plan are unavoidable, as identified in the Proposed General Plan (EIR-2-90):

1. Development in accord with the General Plan will result in increased volumes on Interstate 80.
2. Implementation of the General Plan is expected to result in increased vehicle emissions.
3. Implementation of the General Plan will result in development of some existing open space and agricultural areas.
4. Development in accord with the General Plan will result in a change in the visual character of the community.
5. Development in accord with the General Plan will result in conversion of some land, currently functioning as habitat, to urban use.
6. Development in accord with the General Plan will result in generation of additional noise.

In regard to the above significant impacts, the Council finds that specific economic, social, environmental, land use, and other benefits related to the project outweigh the negative aspects.

2. By title only, to adopt an Ordinance of the City Council of Vacaville Establishing Procedures for the Uniform Adoption, Periodic Adjustment and Management of Development Impact Fees, Consolidating Existing Development Impact Fees Into a Single Chapter of the Vacaville Municipal Code, and Establishing an Open Space and Greenbelt Development Impact Fee for the City of Vacaville.

ORDINANCE NO.

**AN ORDINANCE OF THE CITY COUNCIL OF VACAVILLE
ESTABLISHING PROCEDURES FOR THE UNIFORM ADOPTION,
PERIODIC ADJUSTMENT AND MANAGEMENT OF DEVELOPMENT
IMPACT FEES, CONSOLIDATING EXISTING DEVELOPMENT
IMPACT FEES INTO A SINGLE CHAPTER OF THE VACAVILLE
MUNICIPAL CODE, AND ESTABLISHING AN OPEN SPACE AND
GREENBELT DEVELOPMENT IMPACT FEE FOR
THE CITY OF VACAVILLE**

THE CITY OF VACAVILLE DOES ORDAIN AS FOLLOWS:

Section 1: Purposes and Findings

In order to implement the goals of the City of Vacaville's general plan and to mitigate the impacts caused by new development in the City, certain public improvements must be constructed and lands acquired for those public improvements. The City Council has determined that development impact fees are needed necessary to finance these public improvements and lands, and to pay for new developments' fair share of the construction costs of these improvements and lands.

At the time of the adoption of this ordinance, the City of Vacaville had previously established development impact fees for: (1) water facilities, (2) sewer facilities, (3) streets and interchanges, (4) parks and recreation facilities, (5) public facilities, and for (6) drainage and storm water detention. In addition, the City had established a school facilities mitigation fee in order to provide adequate school facilities to serve in the development. Further, the City of Vacaville contemplates, through this ordinance, the adoption of an additional fee for the preservation of open space and greenbelt lands between Vacaville and the City of Fairfield.

~~Other than the Open Space and Greenbelt Fee,~~ The purpose of this ordinance is to consolidate the existing fees into a single, comprehensive ordinance within the Vacaville Municipal Code and to provide uniform procedures for the periodic review in the administration of Vacaville's development impact fees.

In consolidating the fees described in this ordinance, and in establishing an Open Space and Greenbelt Fee, the City Council finds the fees to be consistent with its general plan and, pursuant to Government Code Section 65913.2, has considered the effects of the fees with respect to the City's housing needs as established in the housing element of the general plan. The City Council recognizes the need for affordable housing and the effect of development impact fees on housing costs. However, development in past fees reflect the land uses, development standards and financing methods available to have new development pay for all impacts reasonably related thereto. The City of Vacaville has, through its General Plan Housing Element, adopted a variety of strategies to address housing affordability.

The purpose of this ordinance is to implement, amend and continue to impose existing development impact mitigation fees and to add an Open Space and Greenbelt Development Impact Fee, all to fund the cost of certain public facilities and services, the

demand for which is directly or indirectly generated by the type of new development proposed in the general plan. These development impact fees were previously adopted, or are now adopted and continued in effect under the authority of:

1. The police power of the City granted under Article XI, Section 7, of the California Constitution;
2. The provisions of the California Environmental Quality Act, Public Resources Code, Section 21000 et seq., which in general requires that all development mitigate environmental impacts;
3. The provisions of the California Government Code regarding general plans at Section 65300 et seq., including but not limited to, the provisions of Government Code Section 65400; and
4. The provisions of California Government Code Section 66000 et. seq. Development impact mitigation fees are established and imposed upon new development in the City, and such development impact mitigation fees consist of separate fees described in various sections of the Vacaville Municipal Code and prior resolutions of the Vacaville City Council, all of which are consolidated herein. Pursuant to the provisions of Government Code Section 66000, et. seq., the City Council shall, by resolution, set forth the specific amount of the fees; describe the benefit and impact area on which the fee is imposed; refer to the specific improvements to be financed, their estimated cost and reasonable relationship between this fee and the various types of new developments; and set forth time for payment. Previous adoption of such fees, whether by ordinance or resolution has been done in compliance with Government Code Sections 66016 et. seq., or predecessor statutes and applicable case law.

New development will generate new demand for facilities which must be accommodated by construction of new or expanded facilities. The amount of demand generated and, therefore, the benefit gained, varies according to kind of use. Therefore, an "equivalent dwelling unit" (EDU) or "Persons Served" factor is used to convert the service demand for each general plan land use into a ratio of the particular use's rate to the rate associated with a low-density, single-family dwelling or to the ratio's created by changes in population. The Council finds that the fee per unit of development is proportional to the EDU or Persons Served determined for each particular fee.

Public infrastructure, such as treatment plants, pumps and pipeline systems for the acquisition, treatment and distribution of water and for the collection, treatment and discharge of sewage and wastewater, public buildings such as Fire Stations, streets, overpasses, parks, and other elements of public facilities and infrastructure cannot be built to serve individual "Equivalent Dwelling Units" or per "Person Served" but, rather, must be built in projects of sufficient size, as determined within the professional judgment of the Director of Public Works and other qualified public officials, to serve expected new development at such time and of such size as reasonably necessary to serve such new development. The necessity to construct such infrastructure projects or other public facilities when needed, often in advance of the new development which it will serve may require that the City of Vacaville include a "contingent reimbursement" component within fees and impose such component pursuant to the Vacaville Municipal Code and this ordinance. Said "contingent reimbursement" portion of the fee is reasonably expected to be repaid, with interest, to those who have paid such fee.

Certain administrative procedures should be established by the City Council in order to more effectively and efficiently utilize development fees so that the financial

integrity of such funds shall be maintained while, at the same time, allowing flexibility in the use of such funds so that infrastructure projects or "blocks" can be built when needed to serve new development.

Section 2: Title 11, Chapter 1 is added to the Vacaville Municipal Code, entitled Development Impact Fees, to read as follows:

11.01.010 Definitions.

A. The following definitions shall generally apply and be utilized to establish the appropriate land use category in determining a development impact fee. Studies for individual fees may establish specific definitions necessitated by the different aspects of the various fees adopted by the City. Specific definitions and standards contained in a fee study shall supercede and control over these general definitions.

1. "Church" shall mean a building designed for and utilized for religious worship and related accessory functions.

2. "Commercial" shall mean a building which is designed to permit exclusive retail, wholesale or commercial service uses, a combination of commercial uses in conjunction with office uses or any other use which is permitted within the Commercial General Zoning District that does not fall within the definition of any other land use category defined in this section.

3. "New Development" or "Development" shall mean the construction, alteration, addition, occupancy or use of any building, land or structure within the City of Vacaville.

4. "Dwelling Unit" shall mean a dwelling unit as defined in the Uniform Building Code (UBC) as adopted by the City of Vacaville.

5. "Hospital and Health Care Facilities" shall mean a building which is specifically designed or utilized for inpatient or outpatient medical treatment including convalescent or skilled nursing facilities but not including buildings that are primarily utilized for medical offices.

6. "Industrial" shall mean a building which is designed or utilized for exclusive manufacturing or warehousing use or a combination of manufacturing and commercial service or office use as follows:

(a) If a building in an industrially-zoned district (ML, MH or IP), is less than fifty (50) thousand square feet in floor area and the applicable zoning district or policy plan permits office or commercial service uses, the building shall be determined to be fifty percent (50%) office and fifty percent (50%) industrial unless it can be conclusively demonstrated that the occupancy of the building has been contractually limited to industrial uses.

(b) If a building in an industrially-zoned district (ML, MH or IP), is greater than fifty (50) thousand square feet in floor area, the building shall be determined to be industrial unless specific non-industrial use(s) has been approved for the building pursuant to the Zoning Ordinance.

7. "Multiple Family Unit" shall mean any dwelling unit which is not a single family unit. A manufactured home in an exclusive mobile home park or subdivision or a

detached secondary unit shall be considered a multiple family unit for the purposes of this section.

8. "Office" shall mean a building which is specifically designed for exclusive use by office uses, including those primarily utilized for medical offices, wherein the primary function is the provision of professional services as opposed to retail, wholesale, commercial service or industrial uses. The reasonable likelihood of exclusive office uses shall be conclusively demonstrated if the building is located in a zoning district which also allows commercial uses.

9. "Single Family Unit" shall mean any dwelling unit for which the enclosing walls are a minimum of six (6) feet from the enclosing walls of another dwelling unit.

10. "Square Foot" shall mean every square foot of floor area of a building as defined in the Uniform Building Code (UBC) as adopted by the City of Vacaville. Square foot shall also include outdoor sales areas such as, outdoor seating areas for restaurants, canopy areas for gasoline service stations, plant or gardening areas, and other covered areas utilized as part of a business activity.

11. "Site Area" shall mean the net acreage devoted to improvements serving the proposed use or building in the case of a single building on a site. In the case of multiple building sites, such as shopping centers, the Director of Public Works, the Director of Community Development, or his/her designee, shall approve an apportionment of the total site area to each building on the site consistent with each building's percentage of the total square footage of building area on the multiple building site.

12. "Equivalent Dwelling Unit (EDU)" or "Persons Served" are terms to describe the units of capacity necessary to provide public services for both residents and employees. In general, non-residential land uses are equated to residential land uses in terms of the burden that they place on each class of public improvements (e.g., roads, water systems, sewer systems). This equivalence may be expressed in terms of Equivalent Dwelling Units (EDUs) for those services (e.g., sewer services, drainage) where land uses primarily determine the demand for capacity. Demand may be driven by "Persons Served" for those classes of public improvements (e.g., parks, police protection) where the person being served (whether resident or employee) provides the best measure of demand for capacity. The concept of EDUs and Persons Served can be used interchangeably, in mathematical terms, if assumptions about density, floor area ratio, number of employees per thousand building square feet, and residents per occupied household) are used appropriately to make the conversion from one set of units to another. The choice of the appropriate set of units to express demand depends on the nature of the service being provided.

B. Interpretation of Definitions. The Director of Community Development or his/her designee shall, upon written request, interpret the provisions of the preceding definitions as they relate to a specific development and shall make other determinations as provided within the preceding definitions.

11.01.020 Development Impact Fees.

A. The City of Vacaville imposes upon, or agrees to collect from, new development the following development impact fees:

1. Fees reasonably related to impacts on City provided facilities and public improvements from Development:

A. Public Facilities Impact Fee. The purpose of the Public Facilities Impact Fee is to provide for Police, Fire and General City facilities and equipment to serve the needs of, and address the impacts from new residential, industrial, commercial, office and other development.

The Public Facilities Impact Fee has three components. The first component is to provide police protection by providing for the costs associated with a police facilities building and equipment to serve additional demands for police services. Based upon a review of Vacaville's land use forecasts build-out-projections, the Vacaville Police Department has determined that the anticipated residential, commercial, office and other development will adversely impact upon the department's ability to maintain existing levels of police and safety services. The Department has demonstrated the demand need for a new facility consisting of a communications center, holding area, parking, storage and office space to provide City-wide service in response to the projected development throughout the City.

The second component of the Public Facilities Impact Fee is included to provide fire protection and paramedic services by providing for the cost associated with fire stations, fire fighting and paramedic equipment to serve the additional demands for fire services from new development. There is a demand need for new fire stations and equipment in response to development identified in the General Plan. Evidence indicates that the demand need is directly related to the impacts of new development and is necessary to maintain adequate levels of fire protection, suppression and paramedic activities and to provide required response times to the area served and to maintain reasonable insurance rates for the affected property owners homeowners.

The third component of the Public Facilities Impact Fee relates to other governmental services. This portion of the fee will be used for buildings and equipment for all City Departments, other than Police and Fire, and those costs of new development not accounted for through other development impact fees. With an increase in residential, industrial, commercial or other development, the complexity and size of general City services will increase which will be reflected in the demand need for additional operation and maintenance activities that will require new and/or expanded facilities and equipment.

B. Traffic Impact Fee. This fee has previously been entitled "Major Streets and Interchanges Fee" or "M.S.& I. Fee." The fee shall now be called the "Traffic Impact Fee." The purpose of this fee is to provide for costs of street widening and reconstruction, traffic signals, transit facilities, bike paths, bridge widenings, and freeway interchange improvements related to new development in accordance with the development forecast under the General Plan. The demand need for the identified transportation improvements has been based on the development forecast and accepted traffic analysis methodology from the previously referenced documents. As the amount of new development contemplated by the General Plan occurs there will be an additional burden on the City-wide surface transportation system. Without funding identified capital improvements there will be an unacceptable level of traffic congestion, delays, accidents and generally reduced public safety throughout the City. Air quality could be adversely affected as has been demonstrated in other studies when idle/standing times are increased. Based on the development potential of the General Plan as analyzed through the development forecast, engineering consultants and the City staff have utilized traffic studies including trip generation and intersection analysis models to indicate the impact of new development in terms of roadway capacities, signalization standards, and interchange requirements to develop the transportation capital improvements projects. The projects were refined to apportion the impacts and resulting share of improvements between various land uses in accordance with prior M.S.& I. fee studies.

C. Water System Impact Fee. The purpose of the Water System Impact Fee is to further and protect the health and safety of the citizens of Vacaville by providing for facilities to ensure a continuing supply of potable water including new water mains and storage reservoirs. Federal, State and City regulations establish minimum standards for potable water required to adequately serve residential and other land uses as well as to provide for fire protection. As the population increases and new development locates or existing development expands in the City, there will be an attendant demand need to expand the facilities necessary to provide an adequate supply of potable water for domestic consumption, fire protection, and non-domestic purposes such as industry and commerce.

D. Sewer System Impact Fee. The purpose of the Sewer System Impact Fee is to further and protect the health and safety of the citizens of Vacaville by providing for the construction of sewage and waste water facilities including new sewer drains, treatment plants and aeration ponds. As new development occurs there will be an additional burden placed on the existing sewer and waste water collection, treatment and disposal systems. Federal, State and City health requirements set minimum standards for effluent treatment which result in the demand need for new sewer and waste water facilities.

E. Parks and Recreation Facilities Impact Fee. The purpose of the Parks and Recreation Facilities Impact Fee is to provide a variety of parks, recreation facilities and park improvement projects such as tennis courts, swimming pools, soccer, ball fields and the like. As development and population increases, sub-standard park and recreation facilities, inadequate to serve the City, could occur which have potential for adversely affecting the general well being of City residents. In order to address this potential and to meet City recreation standards it is appropriate that new development pay for additional park facilities and recreation development attributable to development impacts.

F. Drainage and Stormwater Detention Facilities Impact Fee. The purpose of the Drainage and Stormwater Detention Facilities Impact Fee is to finance the cost of drainage and stormwater detention projects including mains, tributary systems, creek improvements and detention basins. New development increases the amount of impervious surfaces due to more roof area, paved streets, driveways and parking lots. Flooding potential is thereby increased particularly during periods of high intensity and/or sustained rainfall creating an unacceptable hazard to citizen welfare and safety. Drainage and stormwater detention facilities will provide the improvements necessary needed to maintain adequate drainage, flood protection, and stormwater detention throughout the City by reducing the impacts of new development.

2. Fees related to development impacts on public facilities and public improvements provided specifically by other Agencies and, in turn, provided to the citizens of Vacaville:

A. School Facilities Mitigation Fee.

3. Fees imposed and adopted by other public agencies for which the City of Vacaville has, by resolution, authorized to be imposed within its municipal boundaries and to collect on behalf of such other agencies. Such fees shall only be those development impact fees which are adopted pursuant to the provisions of Government Code Section 66000 et. seq. by public agency which provides services throughout its jurisdiction and which jurisdiction includes the City of Vacaville, and for which such development impact

fees are imposed for mitigation of impacts on public facilities and public improvements, and applied on an equitable basis throughout the other public agency's jurisdiction.

4. The development impact fees and procedure dealt with in this Chapter do not include fees or other charges adopted and imposed by the City to reimburse the City for the full cost of staff time and supplies. Such fees and costs are commonly referred to as, or include, plan check fees, inspections, application fees, costs associated with environmental reviews, special studies related to a particular project, and the like. Those fees and charges are adopted and periodically reviewed through other actions of the City Council and adopted or updated by resolution of the City Council or by application to such existing fees and charges of an annual standardized cost of living adjustment.

11.01.030. Development impact funds.

A. The City Finance Director shall create in the City treasury individual special interest-bearing funds for each development impact fee in effect within the City of Vacaville. All amounts collected under this chapter shall be deposited into each such fund, as so designated for each development impact fee.

B. The fees and interest earned thereon shall be expended solely to pay the costs of facilities (~~including interest on interfund loans~~) and appropriate administrative costs or to reimburse developers entitled to reimbursement under the resolutions and exhibit thereto previously in effect or later adopted in accordance with this Chapter, all of which provide for such fees under the provisions of Government Code Section 66000 et. seq. The funds for the categories listed above shall be kept separate. For purposes of this chapter, they are referred to in aggregate as the "development impact fee funds." Money remaining in a fund, if any, when the necessity for such fund no longer exists, shall be apportioned in accordance with the provisions of Government Code Section 66001.

C. The City Manager shall have the authority to make loans among the development impact fee funds to assure adequate cash flow for the construction of public improvements on a timely basis so long as such interfund loans do not unreasonably delay the construction of improvements under the lending fund. Interest charged on each loan shall be the same rate then earned on other City funds.

11.01.040. Payment of fees; Pending Applications.

A. The property owner of any new development causing impacts to public facilities shall pay the appropriate development impact mitigation fees as provided in this chapter at the time a building permit is issued, unless a different point of payment is established by the resolution adopted for such fees. The amount shall be calculated in accordance with the resolutions adopted for each fee and the program fee per EDU or Persons Served equivalency as established by said resolution and the exhibits thereto. The Director of Public Works is authorized to make individual adjustments in the fee charged to a development in accordance with the provisions of Section 11.01.110.

B. Payments of fees required by this chapter are required by every new development in the City of Vacaville pursuant to:

1. The police power of the City granted under Article XI, Section 7, of the California Constitution;

2. The provisions of the California Environmental Quality Act, Public Resources Code, Section 21000 et. seq., which in general requires that all developments mitigate environmental impacts; and

3. The provisions of the California Government Code regarding general plans at Section 65300 et. seq. including but not limited to the provisions of Government Code Section 65400. All fees are calculated and developed under the provisions of Government Code Section 66007 to have a schedule of public improvements and, therefore, no building permits shall be approved for property within the City shall only be issued upon payment of all their applicable development impact fees unless (1) the payment of the fee is directed to be collected at a different time or (2) the development impact mitigation fee for that property are paid or guaranteed prior to such issuance or security to guarantee the payment is made in accordance with adopted administrative procedures, if any. Fees necessitated due to a change in use not requiring a building permit, shall be paid at the time of approval of an entitlement for such change in land use.

C. Regardless of any fee increase, other than a cost of living adjustment, an applicant may pay those development impact fees in effect when a building permit application is filed, provided that he/she complies with all of the provisions listed in subsections 1 through 6 below:

1. A complete application for a building permit has been filed at least 30 calendar days but not more than 180 calendar days prior to the effective date of a fee increase adopted by City Council resolution. The Building Official will have sole discretion in the determination as to whether an application is complete.

2. In order for a building permit application to be accepted for filing, the project must have previously received Design Review approval by the City, if such approval is required by the Zoning Ordinance.

3. If, during the plan check process, the City requires the submittal of revised plans, in order to comply with conditions of approval or applicable code provisions, the applicant must submit such revised plans within 15 working days of receipt of the comments. The Director of Community Development may grant additional time to submit revised plans due to the complexity of the revisions required by the City.

4. Once the City has completed the plan check process following the effective date of a fee increase, the applicant must pay all applicable development impact fees and plan check fees within five working days of receiving written notification. If a plan check is completed prior to the effective date of a fee increase, an applicant must pay, prior to the effective date of the increase or within five working days of completion of the plan check, whichever is greater, all applicable development impact and plan check fees in effect at the time of building permit issuance, however, no written notification is required.

5. Failure of an applicant to comply with all of the above provisions shall result in the requirement that an applicant pay those fees in effect at the time a building permit is issued.

6. The provisions of section C do not apply to any fee increase which is a cost of living adjustment.

11.01.050. Adoption, by resolution, of fee studies, capital improvement programs and the establishment or adjustment of impact fees.

A. From adoption of this chapter, the City Council shall initially establish any new development impact fee by ordinance. The actual fee itself shall be adopted by resolution, which resolution shall provide for the analysis required by the provision of California Government Code Section 66000 et. seq., a study for each fee calculation and a future capital improvement program consisting of projects shown in said study for the public facilities necessitated by new development. The City Council shall review each fund annually and shall comprehensively review each study every five years, or more often if it deems it appropriate, and may amend any study by resolution, as necessary, at its discretion. Further, the capital improvement program of any fee study will be annually implemented in accordance with the budget approval process of the City and the annual approval of specific capital improvement projects.

B. The City Council shall include in the City's annual capital improvement program appropriations from the development impact fee funds for appropriate projects, which are approved as part of the annual budget, fee review and capital improvement program.

C. Except for facilities approved by the Public Works Director for construction by a property owner or as shown in the annual capital improvement program, all facilities shall be constructed in accordance with the schedule established in exhibits to each study as amended from time to time in accordance with the annual review of the various fee programs and, further, as specifically approved annually by the City Council as part of its budget, fee review or capital improvement program. Each study will enumerate the circumstances, if any, for deviating from the improvement schedule.

D. The fee per equivalent dwelling unit (EDU) or Persons Served shall be adopted by resolution and shall be comprehensively updated every five years, or more frequently if directed by the City Council, by resolution after a noticed public hearing. Comprehensive updates shall be based on a report by the Public Works Director including the estimated cost of the public improvements, the continued demand need for those improvements, the revenue generated and the reasonable relationship between such demand need and the impacts of the various types of development pending or anticipated and for which this fee is charged. In the absence of a comprehensive periodic update, the fee and the project costs shall automatically be annually adjusted by the change, if any, in the Engineering News Record San Francisco Bay Area Construction Cost Index.

11.01.060. Calculation of fees.

A. The development impact mitigation fees required hereunder, are initially set and calculated in accordance with the provisions of a study and exhibits thereto, adopted by resolution of the City Council. Each fee shall be periodically adjusted by the Resolutions, the Study thereto, the public improvement evaluations and fee calculations appended as exhibits to the Study, and the fee summary to such Resolution and Study.

B. The development impact fees presently in effect or hereafter established by resolution shall automatically adjust beginning January 1, 1993, and each January 1st thereafter, by application to such fee or fees any change in the Engineering News Record Index San Francisco Bay Area Construction Cost Index during the prior 12 month period, as calculated for the 12 month period from on or about the preceding November 1.

11.01.070. Credit and Reimbursement for Contingent Reimbursement or for Construction of Facilities.

A. Contingent Reimbursement

(1) Some development impact fees may have two components: a portion not subject to contingent reimbursement and collected as per EDU or Persons Served throughout the entire planning period of said fee and a portion subject to contingent reimbursement.

(2) Contingent reimbursement is necessary due to significantly higher proportion of project "block" costs for new development as determined necessary for earlier years of the fee program in accordance with the fee studies and exhibits thereto. Assuming that development occurs in general accordance with development forecasts, with actual project costs in accordance with the projected costs in such studies and exhibits, and with project costs unaffected by changes in design or operational standards applicable to infrastructure and facilities projects, then additional costs may not be required to be paid during the entire period and those who develop in early years would be reimbursed, with interest, from future development if, and when, it occurs. Reimbursement is contingent on: future development consistent with the development forecasts within each fee study and exhibits thereto; project costs consistent with estimates contained in these documents; and assuming projects can be constructed in accordance with design and operational standards applicable when fee studies and exhibits were developed. Changes in forecasts and project planning from development, in estimated project costs, or in project design standards may result in the reduction or elimination of the contingent reimbursement for any fee. The comprehensive, five year, review of each fee program as required by this chapter should aid in making adjustments in the infrastructure and facilities construction programs to meet changing development forecasts and project design requirements which will more likely insure the ability to reimburse earlier development than if periodic reviews were not undertaken.

(3) The Finance Director of the City of Vacaville will make annual financial reports relative to the various development impact fee accounts established by this chapter or in accordance with the other provisions of the Vacaville Municipal Code. The amount of both components of said fees (i.e., the base fee and the contingent reimbursement portion) shall be evaluated and adjusted annually by the Finance Director until; (a) all projects set forth in the study and exhibits for each fee have been constructed at their then actual costs, (b) all deficits in development fee accounts have been eliminated, (c) the portion subject to contingent reimbursement balance, along with accumulated interest, has been fully repaid, and (d) no surplus, or only a nominal surplus, remains in each development fee account. Any contingent reimbursement shall be paid to the person or entity initially paying the development fee or, if transferred, then paid to their specifically designated successor in interest. It shall be the responsibility of said person, entity or successor in interest to keep City informed of their then current address. Should said person, entity or successor in interest not be able to be located at the time of payment, then following one year of reasonable effort by City to locate such person, entity or designated successor in interest, said payment obligation of City to repay said amount will terminate and said amount shall be utilized for payments of remaining contingent reimbursement to others then remaining unreimbursed or, if the contingent reimbursement repayment program is completed, then any remaining, unpaid amounts shall be paid into other development impact fee funds, in such proportions among said funds as determined appropriate by the City Council. The contingent reimbursement shall be paid, as well as can reasonably be accommodated from an administrative standpoint, on a first paid, first reimbursed basis to those who have paid such contingent reimbursement, but in no event

shall contingent reimbursement be due and payable if more than 20 years has passed from the time of payment of such fee containing such contingent reimbursement payment and when insufficient future development has occurred, in accordance with actual project costs and project design standards, to fund the contingent reimbursement payments.

B. Construction of Facilities in Program Year.

(1) ~~The Public Works Director may direct or authorize, or conditions to the approval for a land use entitlement may require,~~ an owner of property to construct certain facilities or portions thereof specified in the development impact fee study, other than local impact expansion projects. Such direction or authorization shall ~~be at the time and as designated in the study and,~~ result in a credit in lieu of all, or a portion of, the particular fee required by this chapter to be paid by such owner which relates to the improvement constructed. The owner is entitled to a credit if the owner: (1) constructs the improvements, (2) finances an improvement by cash or other means approved by the Council, or (3) dedications of land in support of the facility, or (4) a combination of the above. The credit to be provided to the property owner shall be determined by the Public Works Director based on the actual costs of improvements plus actual costs for engineering and City administration and shall be approved by the Council. The construction of a facility authorized by this section must consist of a usable facility or segment and be approved by the City and constructed in accordance with the City's public improvement design standards. The property owner must post a bond or other security in a form acceptable to the Director for the complete performance of the construction before credit is given.

(2) If the amount of ~~F~~fee credit is less than the amount of the otherwise applicable fee, the property owner shall thereafter pay the an amount which, when added to the credit received for the construction of facilities, equals the fee obligation.

(3) If the amount of ~~F~~fee credit is greater than the amount of the otherwise applicable ~~mitigation~~ fee, the property owner shall be paid the difference from the appropriate development impact fee fund, after the project is accepted by the City, and at the end of the Fiscal year in which the project is planned to be completed under the appropriate fee study, providing funds are available. With specific approval of the Council, reimbursement may occur after the year in which the project is planned, if in the opinion of the Public Works Director, the delay is necessary to assure the orderly implementation of the City capital improvement program. Interest equivalent to that earned by an impact fee fund shall be applied to a credit following acceptance of the improvements or as otherwise agreed between the City and an owner of property.

C. Construction of Facilities Prior to Program Year.

(1) If the construction described in subsection B of this section occurs before the fiscal year for which construction is scheduled under a fee program, other than local impact expansion projects, the property owner may receive credit against the applicable fee, if approved by the City Manager or his/her designee as part of a master financing program for the property in question. The property owner shall be reimbursed from the appropriate development impact fee fund at the end of the year in which the project is planned under the program year. Reimbursement is available only to the degree funds are available in any given year. If reimbursement cannot be made during one year, the unreimbursed portion will continue in following years until repaid. The reimbursable amount shall be the estimated cost of the facility as determined in subsection B of this section or as otherwise agreed between the City and the owner.

(2) To implement subsection (1) above, the property owner or developer and the City shall first enter into a reimbursement agreement. In addition to its other terms, the agreement shall provide that:

(a) The general fund of the City is not liable for payment of any obligations arising from the agreement;

(b) The credit or taxing power of the City is not pledged for the payment of any obligations arising from the agreement;

(c) The land owner shall not compel the exercise of the City taxing power or the forfeiture of any of its property to satisfy any obligations arising from the agreement;

(d) The obligation arising from the agreement is not a debt of the City, nor a legal or equitable pledge, charge, lien, or encumbrance, upon any of its property, or upon any of its income, receipts or revenues, and is payable only from the fees deposited in the appropriate City development impact fee fund;

(e) The reimbursable amount shall be adjusted annually in accordance with the Engineering News Record Index applicable to the fees themselves, or otherwise adjusted by agreement between the parties.

D. Credits Based on Replacement of Existing Structures.

A credit against development impact fees established pursuant to this ordinance, shall be provided for the replacement of existing legal structures with new structures. A credit will be given to the extent that the Director of Public Works or Director of Community Development finds that the new development makes demands on infrastructure, as determined by the existing EDU/Person Served calculations, in addition to that imposed by the structures being replaced and when the owner of the previous structure paid the applicable development fees, if any, at the time of its construction.

E. Other Credits.

Except as provided herein or as agreed between the City and a property owner, credits toward fees from construction or dedications shall not exceed the fees payable by the property owner.

11.01.080. Other authority.

A. This chapter is intended to establish a supplemental method for funding the cost of certain public facilities, services and infrastructure, the demand for which is reasonably related to and thereby reasonably resulting from, the level and type of new development proposed in the City general plan.

B. The provisions of this chapter shall not be construed to limit the power of the City Council to impose any other fees or exactions or to continue to impose existing obligations on the right to develop within the City, but shall be in addition to any other requirements which the City Council is authorized to impose, or has previously imposed, as a condition of approving a plan, rezoning or other entitlement. In particular, individual property owners shall remain obligated to fund, construct, and/or dedicate the improvements, public facilities and other exactions required by, but not limited to, the City codes, public improvement design standards and other applicable documents, and to mitigate individual impacts from development.

C. Any credits or reimbursements under Section 11.01.070 above relate only to development impact fees established in accordance with the resolution, study and exhibits for each fee, and shall not include the funding, constructions, dedications, or other costs described in this section.

11.01.090. Findings regarding use of fees.

A. As required under Government Code Section 66001(d), the City shall make findings once each fiscal year with respect to any portion of the fee remaining unexpended or uncommitted in its account five or more years after deposit of the fee, to identify the purpose to which the fee is to be put and demonstrate a reasonable relationship between the fee and the purpose for which it was charged.

B. As required under Government Code Section 66001(e), and except for contingent reimbursement amounts established hereunder which shall be paid to the original payor, the City shall refund to the current record owner on a prorated basis the unexpended or uncommitted portion of the fee, and any interest accrued thereon, for which need cannot be established.

11.01.100. Fee exemptions.

The following developments are exempt from payment of fees described in this chapter:

A. City facilities, ~~and such as~~ buildings used for governmental purposes or lands for public uses such as parks and public facilities of other governmental agencies, but only to the degree to which such other governmental agencies are exempt from payment of such fees as a matter of law;

B. Public projects constructed or financed under this chapter;

C. Reconstruction of, or residential additions to single-family dwellings, but not including additional dwelling units, unless such activity requires additional sewer or water connections in which case all development impact fees shall be charged.

11.01.110. Fee adjustment or waiver.

A. The owner of a project subject to a fee under this chapter may apply to the Public Works Director for an adjustment to or waiver of that fee. The waiver of a fee or portion thereof shall be based on the absence of a any reasonable relationship between the impact on public facilities of that development and either the amount of fee charged or the type of facilities to be financed.

B. The application for adjustment or waiver shall be made in writing and filed with the City Clerk no later than ten (10) days after formal notification of the fee to be charged. The application shall state in detail the factual basis and legal theory for the claim of adjustment or waiver.

C. It is the intent of this section that:

(1) The land use categories are based on general plan designations which are in average of a wide range of specific land uses; thus substantial variation must be shown in order to justify a fee adjustment.

(2) The Public Works Director may calculate a fee and/or require additional improvements where the service demand of a particular land use exceeds the standards shown in the definitions or used in determining the improvements needed under the fee program; and

(3) The fee categories shall be considered individually; thus it may occur that a fee adjustment or waiver is made in one category and not another.

D. The Public Works Director shall consider the application at an informal hearing held within sixty (60) days after the filing of the fee adjustment or waiver application. The decision of the Public Works Director is not appealable except in accordance with the provisions of section (F) below. The Public Works Director shall make his/her determination of the fee calculation within fifteen (15) days from the informal hearing or the receipt of any engineering studies or other calculation determinations found necessary as a result of the informal hearing. The applicant will be notified, in writing, of the Public Works Director's decision, which decision shall be mailed to the applicant, first-class mail, postage prepaid.

E. The applicant bears the burden of proof in presenting substantial evidence to support the application. The Public Works Director shall consider the following factors in its determination whether or not to approve a fee adjustment or waiver:

(1) The factors identified in Government Code Section 66001:

- (a) The purpose and proposed uses of the fee,
- (b) The type of development, including factors such as differences in floor area ratio, for example,
- (c) The relationship between the fee's use and type of development,
- (d) The need or demand for improvements and the type of development, and
- (e) The amount of the fee and the portion of it attributable to the development; and

(2) The substance and nature of the evidence including the development impact fee study and the applicant's technical data supporting its request. The applicant must present comparable technical information to show that the fee is inappropriate for the particular development.

F. Within ten (10) days of the mailing of the decision of the Public Works Director, an appeal, in writing, may be filed with the City Clerk. Thereafter, a hearing on the appeal of the fee calculation will be scheduled and held by the City Council. The City Council and the appellant will follow the evaluative and procedural processes as set forth in sections (A) through (E).

G. The City hereby adopts the Code of Civil Procedure, Section 1094.5, for the purposes of judicial review under this section. A petition seeking review of a decision under this chapter shall be filed not later than the ninetieth day following the date on which the decision of the City Council becomes final.

Section 3. Establishing an Open Space and Greenbelt Buffer Impact Fee.

Section 11.01.020 (G) is added to the Vacaville Municipal Code to read as follows:

"(G) Open Space and Greenbelt Buffer Impact Fee.

The purpose of this fee is to provide partial funding of the costs of preserving agricultural and open space uses in and adjacent to the City of Vacaville in accordance with the Vacaville General Plan and other policies adopted by the City Council of the City of Vacaville and to preserve the community identity by separating developed lands of Vacaville and Fairfield. The fee is intended to be one component in a variety of strategies to attain these goals. Other strategies which could include, but are not required to be implemented or limited to, maintaining existing land uses in identified open space and greenbelt buffer areas, acquiring lands that are put to public use such as parks, providing for the transfer of development rights, or modifying development standards."

2. The Open Space Component

Section 4. Severability. If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance and the prior provisions of the Vacaville Municipal Code shall be reinstated as though not having been superceded.

The City Council hereby declares that it would have passed this ordinance and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrases or clauses be declared unconstitutional.

Section 5. Effective Date. This ordinance shall take effect thirty (30) days after passage thereof.

Section 6. Publication. This ordinance shall be published once within fifteen (15) days after its adoption, in the Vacaville Reporter, a newspaper of general circulation in the City of Vacaville.

I HEREBY CERTIFY that this ordinance was introduced at a regular meeting of the City Council of the City of Vacaville, held on the ____ day of _____, 1992, and **ADOPTED AND PASSED** at a regular meeting of the City Council of the City of Vacaville, held on the ____ day of _____, 1992 by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

David A. Fleming, Mayor

ATTEST:

Kathleen M. Andronico, City Clerk

July 22, 1992
10:47 AM

TO: CHUCK LAMOREE
FROM: RON ROWLAND
DATE: 7-14-92
SUBJECT: PROPOSED LANGUAGE FOR FEE ORDINANCE REGARDING PENDING APPLICATIONS

"1. An applicant is eligible to pay only those development impact fees in effect when a building permit application is filed, provided that he/she complies with all of the provisions listed in sub-sections (a) through (d) below:

a. A complete application for a building permit is filed no later than 30 days prior to the effective date of a fee increase adopted by City Council resolution. The Building Official will have sole discretion in the determination as to whether an application is complete.

b. In order for a building permit application to be accepted for filing, the project must have previously received Design Review approval by the City, if such approval is required by the Zoning Ordinance.

c. If, during the plan check process, the City requires the submittal of revised plans, in order to comply with conditions of approval or applicable code provisions, the applicant must submit the revised plans within 15 working days of receipt of the comments. The Director of Community Development may grant additional time to submit revised plans due to the complexity of the revisions required by the City.

d. Once the City has completed the plan check process and if this occurs subsequent to the effective date of a fee increase, the applicant must pay all applicable development impact fees and plan check fees within two working days of receiving written notification. If a plan check is completed prior to the effective date of a fee increase, an applicant must pay all applicable development impact and plan check fees in effect at the time of building permit issuance; no written notification is required.

Failure to comply with all of the above provisions means that an applicant must pay those fees in effect at the time a building permit is issued.

2. The provisions of section (1) do not apply to any fee increase which is a cost of living adjustment."

ORDINANCE NO.

**AN ORDINANCE OF THE CITY COUNCIL OF VACAVILLE
ESTABLISHING PROCEDURES FOR THE UNIFORM ADOPTION,
PERIODIC ADJUSTMENT AND MANAGEMENT OF DEVELOPMENT
IMPACT FEES, CONSOLIDATING EXISTING DEVELOPMENT
IMPACT FEES INTO A SINGLE CHAPTER OF THE VACAVILLE
MUNICIPAL CODE, AND ESTABLISHING AN OPEN SPACE AND
GREENBELT DEVELOPMENT IMPACT FEE FOR
THE CITY OF VACAVILLE**

THE CITY OF VACAVILLE DOES ORDAIN AS FOLLOWS:

Section 1: Purposes and Findings

In order to implement the goals of the City of Vacaville's general plan and to mitigate the impacts caused by new development in the City, certain public improvements must be constructed and lands acquired for those public improvements. The City Council has determined that development impact fees are needed to finance these public improvements and lands, and to pay for new developments' fair share of the construction costs of these improvements and lands.

At the time of the adoption of this ordinance, the City of Vacaville had previously established development impact fees for: (1) water facilities, (2) sewer facilities, (3) streets and interchanges, (4) parks and recreation facilities, (5) public facilities, and for (6) drainage and storm water detention. In addition, the City had established a school facilities mitigation fee in order to provide adequate school facilities to serve in the development. Further, the City of Vacaville contemplates, through this ordinance, the adoption of an additional fee for the preservation of open space and greenbelt lands between Vacaville and the City of Fairfield.

Other than the Open Space and Greenbelt Fee, the purpose of this ordinance is to consolidate the existing fees into a single, comprehensive ordinance within the Vacaville Municipal Code and to provide uniform procedures for the periodic review in the administration of Vacaville's development impact fees.

In consolidating the fees described in this ordinance, and in establishing an Open Space and Greenbelt Fee, the City Council finds the fees to be consistent with its general plan and, pursuant to Government Code Section 65913.2, has considered the effects of the fees with respect to the City's housing needs as established in the housing element of the general plan.

The purpose of this ordinance is to implement, amend and continue to impose existing development impact mitigation fees and to add an Open Space and Greenbelt Development Impact Fee, all to fund the cost of certain public facilities and services, the demand for which is directly or indirectly generated by the type of new development proposed in the general plan. These development impact fees were previously adopted, or are now adopted and continued in effect under the authority of:

1. The police power of the City granted under Article XI, Section 7, of the California Constitution;
2. The provisions of the California Environmental Quality Act, Public Resources Code, Section 21000 et seq., which in general requires that all development mitigate environmental impacts;
3. The provisions of the California Government Code regarding general plans at Section 65300 et seq., including but not limited to, the provisions of Government Code Section 65400; and
4. The provisions of California Government Code Section 66000 et. seq. Development impact mitigation fees are established and imposed upon new development in the City, and such development impact mitigation fees consist of separate fees described in various sections of the Vacaville Municipal Code and prior resolutions of the Vacaville City Council, all of which are consolidated herein. Pursuant to the provisions of Government Code Section 66000, et. seq., the City Council shall, by resolution, set forth the specific amount of the fees; describe the benefit and impact area on which the fee is imposed; refer to the specific improvements to be financed, their estimated cost and reasonable relationship between this fee and the various types of new developments; and set forth time for payment. Previous adoption of such fees, whether by ordinance or resolution has been done in compliance with Government Code Sections 66016 et. seq., or predecessor statutes and applicable case law.

New development will generate new demand for facilities which must be accommodated by construction of new or expanded facilities. The amount of demand generated and, therefore, the benefit gained, varies according to kind of use. Therefore, an "equivalent dwelling unit" (EDU) factor is used to convert the service demand for each general plan land use into a ratio of the particular use's rate to the rate associated with a low-density, single-family dwelling. The Council finds that the fee per unit of development is proportional to the EDU determined for each particular fee.

Public infrastructure, such as treatment plants, pumps and pipeline systems for the acquisition, treatment and distribution of water and for the collection, treatment and discharge of sewage and wastewater, public buildings such as Fire Stations, streets, overpasses, parks, and other elements of public facilities and infrastructure cannot be built to serve individual "Equivalent Dwelling Units" but, rather, must be built in projects of sufficient size, as determined within the professional judgment of the Director of Public Works and other qualified public officials, to serve expected new development at such time and of such size as reasonably necessary to serve such new development. The necessity to construct such infrastructure projects or other public facilities when needed, often in advance of the new development which it will serve may require that the City of Vacaville include a "contingent reimbursement" component within fees and impose such component pursuant to the Vacaville Municipal Code and this ordinance. Said "contingent reimbursement" portion of the fee is reasonably expected to be repaid, with interest, to those who have paid such fee.

Certain administrative procedures should be established by the City Council in order to more effectively and efficiently utilize development fees so that the financial integrity of such funds shall be maintained while, at the same time, allowing flexibility in the use of such funds so that infrastructure projects or "blocks" can be built when needed to serve new development.

Section 2: Title 11, Chapter 1 is added to the Vacaville Municipal Code to read as follows:

11.01.010 Definitions.

A. The following definitions shall generally apply and be utilized to establish the appropriate land use category in determining a development impact fee. Studies for individual fees may establish specific definitions necessitated by the different aspects of the various fees adopted by the City. Specific definitions and standards contained in a fee study shall supercede and control over these general definitions.

1. "Church" shall mean a building designed for and utilized for religious worship and related accessory functions.

2. "Commercial" shall mean a building which is designed to permit exclusive retail, wholesale or commercial service uses, a combination of commercial uses in conjunction with office uses or any other use which is permitted within the Commercial General Zoning District that does not fall within the definition of any other land use category defined in this section.

3. "New Development" or "Development" shall mean the construction, alteration, addition, occupancy or use of any building or structure within the City of Vacaville.

4. "Dwelling Unit" shall mean a dwelling unit as defined in the Uniform Building Code (UBC) as adopted by the City of Vacaville.

5. "Hospital and Health Care Facilities" shall mean a building which is specifically designed or utilized for inpatient or outpatient medical treatment including convalescent or skilled nursing facilities but not including buildings that are primarily utilized for medical offices.

6. "Industrial" shall mean a building which is designed or utilized for exclusive manufacturing or warehousing use or a combination of manufacturing and commercial service or office use as follows:

(a) If a building in an industrially-zoned district (ML, MH or IP), is less than fifty (50) thousand square feet in floor area and the applicable zoning district or policy plan permits office or commercial service uses, the building shall be determined to be fifty percent (50%) office and fifty percent (50%) industrial unless it can be conclusively demonstrated that the occupancy of the building has been contractually limited to industrial uses.

(b) If a building in an industrially-zoned district (ML, MH or IP), is greater than fifty (50) thousand square feet in floor area, the building shall be determined to be industrial unless specific non-industrial use(s) has been approved for the building pursuant to the Zoning Ordinance.

7. "Multiple Family Unit" shall mean any dwelling unit which is not a single family unit. A manufactured home in an exclusive mobile home park or subdivision or a detached secondary unit shall be considered a multiple family unit for the purposes of this section.

8. "Office" shall mean a building which is specifically designed for exclusive use by office uses, including those primarily utilized for medical offices, wherein the primary

function is the provision of professional services as opposed to retail, wholesale, commercial service or industrial uses. The reasonable likelihood of exclusive office uses shall be conclusively demonstrated if the building is located in a zoning district which also allows commercial uses.

9. "Single Family Unit" shall mean any dwelling unit for which the enclosing walls are a minimum of six (6) feet from the enclosing walls of another dwelling unit.

10. "Square Foot" shall mean every square foot of floor area of a building as defined in the Uniform Building Code (UBC) as adopted by the City of Vacaville. Square foot shall also include outdoor sales areas, outdoor seating areas for restaurants, canopy areas for gasoline service stations and other covered areas utilized as part of a business activity.

11. "Site Area" shall mean the net acreage devoted to improvements serving the proposed use or building in the case of a single building on a site. In the case of multiple building sites, such as shopping centers, the Director of Public Works, the Director of Community Development, or his/her designee, shall approve an apportionment of the total site area to each building on the site consistent with each building's percentage of the total square footage of building area on the multiple building site.

B. Interpretation of Definitions. The Director of Community Development or his/her designee shall, upon written request, interpret the provisions of the preceding definitions as they relate to a specific development and shall make other determinations as provided within the preceding definitions.

11.01.020 Development Impact Fees.

A. The City of Vacaville imposes upon, or agrees to collect from, new development the following development impact fees:

1. Fees reasonably related to impacts on City provided facilities and public improvements from Development:

A. Public Facilities Impact Fee. The purpose of the Public Facilities Impact Fee is to provide for Police, Fire and General City facilities and equipment to serve the needs of, and address the impacts from new residential, industrial, commercial, office and other development.

The Public Facilities Impact Fee has three components. The first component is to provide police protection by providing for the costs associated with a police facilities building and equipment to serve additional demands for police services. Based upon a review of build-out projections, the Vacaville Police Department has determined that the anticipated residential, commercial, office and other development will adversely impact upon the department's ability to maintain existing levels of police and safety services. The Department has demonstrated the need for a new facility consisting of a communications center, holding area, parking, storage and office space to provide City-wide service in response to the projected development throughout the City.

The second component of the Public Facilities Impact Fee is included to provide fire protection and paramedic services by providing for the cost associated with fire stations, fire fighting and paramedic equipment to serve the additional demands for fire services from new development. There is a need for new fire stations and equipment in response to development identified in the General Plan. Evidence indicates that the need is directly related to the impacts of new development and is necessary to maintain adequate

levels of fire protection, suppression and paramedic activities and to provide required response times to the area served and to maintain reasonable insurance rates for the affected homeowners.

The third component of the Public Facilities Impact Fee relates to other governmental services. This portion of the fee will be used for buildings and equipment for all City Departments, other than Police and Fire, and those costs of new development not accounted for through other development impact fees. With an increase in residential, industrial, commercial or other development, the complexity and size of general City services will increase which will be reflected in the need for additional operation and maintenance activities that will require new and/or expanded facilities and equipment.

B. Traffic Impact Fee. This fee has previously been entitled "Major Streets and Interchanges Fee" or "M.S.& I. Fee." The fee shall now be called the "Traffic Impact Fee." The purpose of this fee is to provide for costs of street widening and reconstruction, traffic signals, bike paths, bridge widenings, and freeway interchange improvements related to new development in accordance with the development forecast under the General Plan. The need for the identified transportation improvements has been based on the development forecast and accepted traffic analysis methodology from the previously referenced documents. As the amount of new development contemplated by the General Plan occurs there will be an additional burden on the City-wide surface transportation system. Without funding identified capital improvements there will be an unacceptable level of traffic congestion, delays, accidents and generally reduced public safety throughout the City. Air quality could be adversely affected as has been demonstrated in other studies when idle/standing times are increased. Based on the development potential of the General Plan as analyzed through the development forecast, engineering consultants and the City staff have utilized traffic studies including trip generation and intersection analysis models to indicate the impact of new development in terms of roadway capacities, signalization standards, and interchange requirements to develop the transportation capital improvements projects. The projects were refined to apportion the impacts and resulting share of improvements between various land uses in accordance with prior M.S.& I. fee studies.

C. Water System Impact Fee. The purpose of the Water System Impact Fee is to further and protect the health and safety of the citizens of Vacaville by providing for facilities to ensure a continuing supply of potable water including new water mains and storage reservoirs. Federal, State and City regulations establish minimum standards for potable water required to adequately serve residential and other land uses as well as to provide for fire protection. As the population increases and new development locates or existing development expands in the City, there will be an attendant need to expand the facilities necessary to provide an adequate supply of potable water for domestic consumption, fire protection, and non-domestic purposes such as industry and commerce.

D. Sewer System Impact Fee. The purpose of the Sewer System Impact Fee is to further and protect the health and safety of the citizens of Vacaville by providing for the construction of sewage and waste water facilities including new sewer drains, treatment plants and aeration ponds. As new development occurs there will be an additional burden placed on the existing sewer and waste water collection, treatment and disposal systems. Federal, State and City health requirements set minimum standards for effluent treatment which result in the need for new sewer and waste water facilities.

E. Parks and Recreation Facilities Impact Fee. The purpose of the Parks and Recreation Facilities Impact Fee is to provide a variety of parks, recreation facilities and park improvement projects such as tennis courts, swimming pools, soccer, ball

fields and the like. As development and population increases, sub-standard-park and recreation facilities could occur which have potential for adversely affecting the general well being of City residents. In order to address this potential and to meet City recreation standards it is appropriate that new development pay for additional park facilities and recreation development attributable to development impacts.

F. Drainage and Stormwater Detention Facilities Impact Fee. The purpose of the Drainage and Stormwater Detention Facilities Impact Fee is to finance the cost of drainage and stormwater detention projects including mains, tributary systems, creek improvements and detention basins. New development increases the amount of impervious surfaces due to more roof area, paved streets, driveways and parking lots. Flooding potential is thereby increased particularly during periods of high intensity and/or sustained rainfall creating an unacceptable hazard to citizen welfare and safety. Drainage and stormwater detention facilities will provide the improvements needed to maintain adequate drainage, flood protection, and stormwater detention throughout the City by reducing the impacts of new development.

2. Fees related to development impacts on public facilities and public improvements provided specifically by other Agencies and, in turn, provided to the citizens of Vacaville:

A. School Facilities Mitigation Fee.

3. Fees imposed and adopted by other public agencies for which the City of Vacaville has, by resolution, authorized to be imposed within its municipal boundaries and to collect on behalf of such other agencies. Such fees shall only be those development impact fees which are adopted pursuant to the provisions of Government Code Section 66000 et. seq. by public agency which provides services throughout its jurisdiction and which jurisdiction includes the City of Vacaville, and for which such development impact fees are imposed for mitigation of impacts on public facilities and public improvements, and applied on an equitable basis throughout the other public agency's jurisdiction.

4. The development impact fees and procedure dealt with in this Chapter do not include fees or other charges adopted and imposed by the City to reimburse the City for the full cost of staff time and supplies. Such fees and costs are commonly referred to as, or include, plan check fees, inspections, application fees, costs associated with environmental reviews, special studies related to a particular project, and the like. Those fees and charges are adopted and periodically reviewed through other actions of the City Council and adopted or updated by resolution of the City Council or by application to such existing fees and charges of an annual standardized cost of living adjustment.

11.01.030. Development impact funds.

A. The City Finance Director shall create in the City treasury individual special interest-bearing funds for each development impact fee in effect within the City of Vacaville. All amounts collected under this chapter shall be deposited into each such fund, as so designated for each development impact fee.

B. The fees shall be expended solely to pay the costs of facilities (including interest on interfund loans) and appropriate administrative costs or to reimburse developers entitled to reimbursement under the resolutions and exhibit thereto previously in effect or later adopted in accordance with this Chapter, all of which provide for such fees under the provisions of Government Code Section 66000 et. seq. The funds for the categories listed above shall be kept separate. For purposes of this chapter, they are

referred to in aggregate as the "development impact fee funds." Money remaining in a fund, if any, when the necessity for such fund no longer exists, shall be apportioned in accordance with the provisions of Government Code Section 66001.

C. The City Manager shall have the authority to make loans among the development impact fee funds to assure adequate cash flow for the construction of public improvements on a timely basis so long as such interfund loans do not unreasonably delay the construction of improvements under the lending fund. Interest charged on each loan shall be the same rate then earned on other City funds.

11.01.040. Payment of fees.

A. The property owner of any new development causing impacts to public facilities shall pay the appropriate development impact mitigation fees as provided in this chapter at the time a building permit is issued, unless a different point of payment is established by the resolution adopted for such fees. The amount shall be calculated in accordance with the resolutions adopted for each fee and the program fee per EDU equivalency as established by said resolution and the exhibits thereto. The Director of Public Works is authorized to make individual adjustments in the fee charged to a development in accordance with the provisions of Section 11.01.110.

B. Payments of fees required by this chapter are required by every new development in the City of Vacaville pursuant to:

1. The police power of the City granted under Article XI, Section 7, of the California Constitution;

2. The provisions of the California Environmental Quality Act, Public Resources Code, Section 21000 et. seq., which in general requires that all developments mitigate environmental impacts; and

3. The provisions of the California Government Code regarding general plans at Section 65300 et. seq. including but not limited to the provisions of Government Code Section 65400. All fees are calculated and developed under the provisions of Government Code Section 66007 to have a schedule of public improvements and, therefore, no building permit shall be approved for property within the City unless the development impact mitigation fee for that property are paid or guaranteed prior to such issuance or security to guarantee the payment is made in accordance with adopted administrative procedures, if any.

11.01.050. Adoption, by resolution, of fee studies, capital improvement programs and the establishment or adjustment of impact fees.

A. From adoption of this chapter, the City Council shall initially establish any new development impact fee by ordinance. The actual fee itself shall be adopted by resolution, which resolution shall provide for the analysis required by the provision of California Government Code Section 66000 et. seq., a study for each fee calculation and a future capital improvement program consisting of projects shown in said study for the public facilities necessitated by new development. The City Council shall review each fund annually and shall comprehensively review each study every five years, or more often if it deems it appropriate, and may amend any study by resolution, as necessary, at its discretion. Further, the capital improvement program of any fee study will be annually implemented in accordance with the budget approval process of the City and the annual approval of specific capital improvement projects.

B. The City Council shall include in the City's annual capital improvement program appropriations from the development impact fee funds for appropriate projects, which are approved as part of the annual budget, fee review and capital improvement program.

C. Except for facilities approved by the Public Works Director for construction by a property owner or as shown in the annual capital improvement program, all facilities shall be constructed in accordance with the schedule established in exhibits to each study as amended from time to time in accordance with the annual review of the various fee programs and, further, as specifically approved annually by the City Council as part of its budget, fee review or capital improvement program. Each study will enumerate the circumstances, if any, for deviating from the improvement schedule.

D. The fee per equivalent dwelling unit (EDU) shall be adopted by resolution and shall be comprehensively updated every five years, or more frequently if directed by the City Council, by resolution after a noticed public hearing. Comprehensive updates shall be based on a report by the Public Works Director including the estimated cost of the public improvements, the continued need for those improvements, the revenue generated and the reasonable relationship between such need and the impacts of the various types of development pending or anticipated and for which this fee is charged. In the absence of a comprehensive periodic update, the fee and the project costs shall automatically be annually adjusted by the change, if any, in the Engineering News Record San Francisco Bay Area Construction Cost Index.

11.01.060. Calculation of fees.

A. The development impact mitigation fees required hereunder, are initially set and calculated in accordance with the provisions of a study and exhibits thereto, adopted by resolution of the City Council. Each fee shall be periodically adjusted by the Resolutions, the Study thereto, the public improvement evaluations and fee calculations appended as exhibits to the Study, and the fee summary to such Resolution and Study.

B. The development impact fees presently in effect or hereafter established by resolution shall automatically adjust beginning January 1, 1993, and each January 1st thereafter, by application to such fee or fees any change in the Engineering News Record Index San Francisco Bay Area Construction Cost Index during the prior 12 month period, as calculated for the 12 month period from on or about the preceding November 1.

11.01.070. Credit and Reimbursement for Contingent Reimbursement or for Construction of Facilities.

A. Contingent Reimbursement

(1) Development impact fees have two components: a portion not subject to contingent reimbursement and collected as per EDU throughout the entire planning period of said fee and a portion subject to contingent reimbursement.

(2) Contingent reimbursement is necessary due to significantly higher proportion of project "block" costs for new development as determined necessary for earlier years of the fee program in accordance with the fee studies and exhibits thereto. Assuming that development occurs in general accordance with development forecasts, with actual project costs in accordance with the projected costs in such studies and exhibits, and with project costs unaffected by changes in design or operational standards applicable to

infrastructure and facilities projects, then additional costs may not be required to be paid during the entire period and those who develop in early years would be reimbursed, with interest, from future development if, and when, it occurs. Reimbursement is contingent on: future development consistent with the development forecasts within each fee study and exhibits thereto; project costs consistent with estimates contained in these documents; and assuming projects can be constructed in accordance with design and operational standards applicable when fee studies and exhibits were developed. Changes in forecasts and project planning from development, in estimated project costs, or in project design standards may result in the reduction or elimination of the contingent reimbursement for any fee. The comprehensive, five year, review of each fee program as required by this chapter should aid in making adjustments in the infrastructure and facilities construction programs to meet changing development forecasts and project design requirements which will more likely insure the ability to reimburse earlier development than if periodic reviews were not undertaken.

(3) The Finance Director of the City of Vacaville will make annual financial reports relative to the various development impact fee accounts established by this chapter or in accordance with the other provisions of the Vacaville Municipal Code. The amount of both components of said fees (i.e., the base fee and the contingent reimbursement portion) shall be evaluated and adjusted annually by the Finance Director until; (a) all projects set forth in the study and exhibits for each fee have been constructed at their then actual costs, (b) all deficits in development fee accounts have been eliminated, (c) the portion subject to contingent reimbursement balance, along with accumulated interest, has been fully repaid, and (d) no surplus, or only a nominal surplus, remains in each development fee account. Any contingent reimbursement shall be paid to the person or entity initially paying the development fee or, if transferred, then paid to their specifically designated successor in interest. It shall be the responsibility of said person, entity or successor in interest to keep City informed of their then current address. Should said person, entity or successor in interest not be able to be located at the time of payment, then following one year of reasonable effort by City to locate such person, entity or designated successor in interest, said payment obligation of City to repay said amount will terminate and said amount shall be utilized for payments of remaining contingent reimbursement to others then remaining unreimbursed or, if the contingent reimbursement repayment program is completed, then any remaining, unpaid amounts shall be paid into other development impact fee funds, in such proportions among said funds as determined appropriate by the City Council. The contingent reimbursement shall be paid, as well as can reasonably be accommodated from an administrative standpoint, on a first paid, first reimbursed basis to those who have paid such contingent reimbursement, but in no event shall contingent reimbursement be due and payable if more than 20 years has passed from the time of payment of such fee containing such contingent reimbursement payment and when insufficient future development has occurred, in accordance with actual project costs and project design standards, to fund the contingent reimbursement payments.

B. Construction of Facilities in Program Year.

(1) The Public Works Director may direct or authorize an owner of property to construct certain facilities or portions thereof specified in the development impact fee study, other than local impact expansion projects. Such direction or authorization shall be at the time and as designated in the study and, in lieu of all, or a portion of, the fee required by this chapter to be paid by such owner. The owner is entitled to a credit if the owner: (1) constructs the improvements, (2) finances an improvement by cash or other means approved by the Council, or (3) a combination of the above. The credit to be provided to the property owner shall be determined by the Public Works Director based on the actual costs of improvements plus actual costs for engineering and City administration

and shall be approved by the Council. The construction of a facility authorized by this section must consist of a usable facility or segment and be approved by the City and constructed in accordance with the City's public improvement design standards. The property owner must post a bond or other security in a form acceptable to the Director for the complete performance of the construction before credit is given.

(2) If the amount of Fee credit is less than the amount of the otherwise applicable fee, the property owner shall pay the amount which, when added to the credit received for the construction of facilities, equals the fee obligation.

(3) If the amount of Fee credit is greater than the amount of the otherwise applicable mitigation fee, the property owner shall be paid the difference from the appropriate development impact fee fund, after the project is accepted by the City, and at the end of the Fiscal year in which the project is planned to be completed under the appropriate fee study, providing are available. With specific approval of the Council, reimbursement may occur after the year in which the project is planned, if in the opinion of the Public Works Director, the delay is necessary to assure the orderly implementation of the City capital improvement program.

C. Construction of Facilities Prior to Program Year.

(1) If the construction described in subsection B of this section occurs before the fiscal year for which construction is scheduled under a fee program, other than local impact expansion projects, the property owner may receive credit against the applicable fee, if approved by the City Manager or his/her designee as part of a master financing program for the property in question. The property owner shall be reimbursed from the appropriate development impact fee fund at the end of the year in which the project is planned under the program year. Reimbursement is available only to the degree funds are available in any given year. If reimbursement cannot be made during one year, the unreimbursed portion will continue in following years until repaid. The reimbursable amount shall be the estimated cost of the facility as determined in subsection B of this section or as otherwise agreed between the City and the owner.

(2) To implement subsection (1) above, the property owner or developer and the City shall first enter into a reimbursement agreement. In addition to its other terms, the agreement shall provide that:

(a) The general fund of the City is not liable for payment of any obligations arising from the agreement;

(b) The credit or taxing power of the City is not pledged for the payment of any obligations arising from the agreement;

(c) The land owner shall not compel the exercise of the City taxing power or the forfeiture of any of its property to satisfy any obligations arising from the agreement;

(d) The obligation arising from the agreement is not a debt of the City, nor a legal or equitable pledge, charge, lien, or encumbrance, upon any of its property, or upon any of its income, receipts or revenues, and is payable only from the fees deposited in the appropriate City development impact fee fund;

(e) The reimbursable amount shall be adjusted annually in accordance with the Engineering News Record Index applicable to the fees themselves, or otherwise adjusted by agreement between the parties.

11.01.080. Other authority.

This chapter is intended to establish a supplemental method for funding the cost of certain public facilities, services and infrastructure, the demand for which is reasonably related to and thereby reasonably resulting from, the level and type of new development proposed in the City general plan. The provisions of this chapter shall not be construed to limit the power of the City Council to impose any other fees or exactions or to continue to impose existing obligations on the right to develop within the City, but shall be in addition to any other requirements which the City Council is authorized to impose, or has previously imposed, as a condition of approving a plan, rezoning or other entitlement. In particular, individual property owners shall remain obligated to fund, construct, and/or dedicate the improvements, public facilities and other exactions required by, but not limited to, the City codes, public improvement design standards and other applicable documents, and to mitigate individual impacts from development. Any credits or reimbursements under Section 11.01.070 above relate only to development impact fees established in accordance with the resolution, study and exhibits for each fee, and shall not include the funding, constructions, dedications, or other costs described in this section.

11.01.090. Findings regarding use of fees.

A. As required under Government Code Section 66001(d), the City shall make findings once each fiscal year with respect to any portion of the fee remaining unexpended or uncommitted in its account five or more years after deposit of the fee, to identify the purpose to which the fee is to be put and demonstrate a reasonable relationship between the fee and the purpose for which it was charged.

B. As required under Government Code Section 66001(e), and except for contingent reimbursement amounts established hereunder which shall be paid to the original payor, the City shall refund to the current record owner on a prorated basis the unexpended or uncommitted portion of the fee, and any interest accrued thereon, for which need cannot be established.

11.01.100. Fee exemptions.

The following developments are exempt from payment of fees described in this chapter:

A. City facilities, such as buildings used for governmental purposes or lands for public uses such as parks and public facilities of other governmental agencies, but only to the degree to which such other governmental agencies are exempt from payment of such fees as a matter of law;

B. Public projects constructed or financed under this chapter;

C. Reconstruction of, or residential additions to single-family dwellings, but not including additional dwelling units, unless such activity requires additional sewer or water connections in which case all development impact fees shall be charged.

11.01.110. Fee adjustment or waiver.

A. The owner of a project subject to a fee under this chapter may apply to the Public Works Director for an adjustment to or waiver of that fee. The waiver of a fee or portion thereof shall be based on the absence of any reasonable relationship between the

impact on public facilities of that development and either the amount of fee charged or the type of facilities to be financed.

B. The application for adjustment or waiver shall be made in writing and filed with the City Clerk no later than ten (10) days after formal notification of the fee to be charged. The application shall state in detail the factual basis and legal theory for the claim of adjustment or waiver.

C. It is the intent of this section that:

(1) The land use categories are based on general plan designations which are in average of a wide range of specific land uses; thus substantial variation must be shown in order to justify a fee adjustment.

(2) The Public Works Director may calculate a fee and/or require additional improvements where the service demand of a particular land use exceeds the standards shown in the definitions or used in determining the improvements needed under the fee program; and

(3) The fee categories shall be considered individually; thus it may occur that a fee adjustment or waiver is made in one category and not another.

D. The Public Works Director shall consider the application at an informal hearing held within sixty (60) days after the filing of the fee adjustment or waiver application. The decision of the Public Works Director is not appealable except in accordance with the provisions of section (F) below. The Public Works Director shall make his/her determination of the fee calculation within fifteen (15) days from the informal hearing or the receipt of any engineering studies or other calculation determinations found necessary as a result of the informal hearing. The applicant will be notified, in writing, of the Public Works Director's decision, which decision shall be mailed to the applicant, first-class mail, postage prepaid.

E. The applicant bears the burden of proof in presenting substantial evidence to support the application. The Public Works Director shall consider the following factors in its determination whether or not to approve a fee adjustment or waiver:

(1) The factors identified in Government Code Section 66001:

(a) The purpose and proposed uses of the fee,

(b) The type of development, including factors such as differences in floor area ratio, for example,

(c) The relationship between the fee's use and type of development,

(d) The need for improvements and the type of development, and

(e) The amount of the fee and the portion of it attributable to the development; and

(2) The substance and nature of the evidence including the development impact fee study and the applicant's technical data supporting its request. The applicant

must present comparable technical information to show that the fee is inappropriate for the particular development.

F. Within ten (10) days of the mailing of the decision of the Public Works Director, an appeal, in writing, may be filed with the City Clerk. Thereafter, a hearing on the appeal of the fee calculation will be scheduled and held by the City Council. The City Council and the appellant will follow the evaluative and procedural processes as set forth in sections (A) through (E).

G. The City hereby adopts the Code of Civil Procedure, Section 1094.5, for the purposes of judicial review under this section. A petition seeking review of a decision under this chapter shall be filed not later than the ninetieth day following the date on which the decision of the City Council becomes final.

Section 3. Establishing an Open Space and Greenbelt Buffer Impact Fee.

Section 11.01.020 (G) is added to the Vacaville Municipal Code to read as follows:

"(G) Open Space and Greenbelt Buffer Impact Fee. The purpose of this fee is to provide partial funding of the costs of preservation uses in and adjacent to the City of Vacaville and to preserve the community identity by separating developed lands of Vacaville and Fairfield. The fee is intended to be one component in a variety of strategies to attain these goals which could include, but are not required to be implemented or limited to, maintaining existing land uses in identified open space and greenbelt buffer areas, acquiring lands that are put to public use such as parks, providing for the transfer of development rights, or modifying development standards."

Section 4. Severability. If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this ordinance and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrases or clauses be declared unconstitutional.

Section 5. Effective Date. This ordinance shall take effect thirty (30) days after passage thereof.

Section 6. Publication. This ordinance shall be published once within fifteen (15) days after its adoption, in the Vacaville Reporter, a newspaper of general circulation in the City of Vacaville.

I HEREBY CERTIFY that this ordinance was introduced at a regular meeting of the City Council of the City of Vacaville, held on the ____ day of _____, 1992, and ADOPTED AND PASSED at a regular meeting of the City Council of the City of Vacaville, held on the ____ day of _____, 1992 by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

David A. Fleming, Mayor

ATTEST:

Kathleen M. Andronico, City Clerk

July 9, 1992
12:21 PM