

**ORDINANCE NO. 99-044**

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF AUG 17 1999

**AN ORDINANCE ADDING CHAPTER 84.12 TO THE SACRAMENTO CITY CODE, ESTABLISHING PARK IMPACT FEES FOR NEW DEVELOPMENT WITHIN THE CITY OF SACRAMENTO**

**BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:**

**SECTION 1. Purpose and intent of ordinance.**

This Ordinance adds Chapter 84.12 to the City Code pursuant to the general powers reserved to the City of Sacramento under its City Charter for the purpose of authorizing certain Park Development Impact Fees to be assessed upon the owners of residential and nonresidential property located within the City of Sacramento. The fees herein authorized shall be assessed upon landowners developing property for any residential or nonresidential use in order to provide all or a portion of the funds that will be necessary to design, construct, and install neighborhood, community, and regional park facilities including turf, landscape, and recreational amenities required to meet the needs of and address the impacts caused by the additional persons residing or employed on the property as a result of the development activity. It is the intent and purpose of the City to protect and promote the public health, safety and welfare by providing neighborhood, community, and regional park facilities necessitated by development in the City. Furthermore, it is the intent and purpose of the City to allow development within the City on the condition that the owners of property being developed pay the costs of such park development and that the costs shall not be or become a responsibility of the City's general fund.

**SECTION 2. Definitions.**

Unless the contrary is stated or clearly appears from the context in which a term is used, the following definitions shall govern construction of the words and phrases used in this Ordinance:

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**Development** means the uses to which property will be put, the buildings and improvements to be constructed on it, and the construction activities incident thereto, together with the process of obtaining all required land use entitlements.

**Development Project** means any project undertaken for the purpose of development, exclusive of projects undertaken by or for public agencies, including, without limitation, schools and parks.

**Fee Resolution** means any resolution adopted by the City Council which implements the provisions of this Ordinance, including, without limitation, the setting of the amounts of the fee established hereby and the adoption of provisions for credits, reimbursements and deferral relating to such fees.

**Government Code** means the Government Code of the State of California and any provision thereof cited in this Ordinance, as such provision exists as of the date of the enactment of this Ordinance, or as may thereafter be amended or renumbered from time to time.

**Nexus Study** means the report entitled, "City of Sacramento Park Development Impact Fee Nexus Study," dated August 4, 1999, approved by the City Council on August 17, 1999, by resolution number 99-474, including the other studies, reports, and all supporting data referred to and relied upon in said study, as such study exists as of the date of the enactment of this Ordinance, or as it may thereafter be amended or supplemented from time to time.

**Park Facility** or **Park Facilities** means the parks and recreation facilities to be designed, constructed and installed to meet the needs of and address the impacts caused by the additional persons residing or employed on property as a result of new Development, which improvements, infrastructure, and facilities are described in the Nexus Study, and the costs of the design, construction and installation of which are to be financed by the Park Development Impact Fee program.

**Park Fee** and **Park Impact Fee** and **Park Development Impact Fee or Fees** means the monetary exaction as defined by subsection (b) of Government Code section 66000 and shall include, but not be limited to, the fees established pursuant to this Ordinance.

### SECTION 3. Findings.

The City Council finds and declares as follows:

1. By resolution, the City Council adopted and approved the City of Sacramento

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Park Development Impact Fee Nexus Study, dated August 4, 1999, including other studies, reports, and data referred to and relied upon in said study which are integral to the conclusions reached therein. The Nexus Study, along with the studies and reports it references or is based upon in whole or in part, and together with any amendments thereto and any supplemental or implementation actions pursuant thereto made after their initial adoption, establishes the need, costs, and financing of Park Facilities arising out of new development within the City and presents a reasonable basis on which to establish fees under this Ordinance. The Nexus Study, and all other additional studies and reports presented to the Council now or in the past, along with the studies, reports, and data each may reference or be based upon in whole or in part, and any and all amendments thereto and any supplemental or implementation actions pursuant thereto made after their initial adoption, together with staff reports and other matters presented to the Council by City staff or interested parties, whether in writing or orally, constitute the record before the City Council for purposes of the adoption and enactment of this Ordinance.

2. The imposition of Park Development Impact Fees is one of the preferred methods of ensuring that new Development bears a proportionate share of the cost of Park Facilities necessary to fulfill the purposes of this Ordinance stated above.

3. All new Development within the City will result in additional growth in numbers of residents and employees within the City. Such growth will place additional burdens on existing City parks and recreation facilities, and will cause a need for new Park Facilities. The Development will necessitate new Park Facilities in order to meet the needs of and to address the impacts caused by Development. Park Facilities are enjoyed by and benefit both residents and employees within the City. Residents impact and benefit from neighborhood, community, and regional park facilities. Employees within the City impact, and primarily benefit from, use of neighborhood, community and regional parks during lunch hours and after work, often through recreational activities such as sports leagues. This can include neighborhood parks near places of employment, but most often employees will impact and benefit from the larger community and regional parks. Because both residents and employees utilize and benefit from Park Facilities, the costs of new Park Facilities to accommodate new residents and employees should be allocated to both new residential Development and new nonresidential Development based on the relative estimated use of Park Facilities by residents and by employees.

4. The Park Development Impact Fee program described in the Nexus Study and set forth in this ordinance is intended to ensure that new Development causing the need for new Park Facilities pays for the new Park Facilities, without requiring expenditures from the City's general fund. It is fair and equitable for landowners developing land in the City to pay substantially all costs of such Park Facilities and for the City to assess related costs to the landowners while shielding the City's general fund from liability for the same.

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5. This Ordinance establishes certain fee categories and provides the structure in which the Park Development Impact Fee may be imposed. This Ordinance also authorizes the City Council to adopt resolutions setting the initial and subsequent amounts of the established fee, any credits and reimbursements applicable to such fees, and any deferral provisions affecting the time and manner in which the fees are to be paid to the City.

6. The Park Development Impact Fee program implemented by this Ordinance is designed to mitigate the impacts caused by new Development.

7. The Park Development Impact Fees established by this Ordinance are based upon the estimated costs of new Park Facilities required in order to serve and address the impacts caused by new Development, and shall be subject to adjustment as more precise estimates or actual costs are determined.

8. The fees established by this Ordinance do not exceed the reasonable cost of providing Park Facilities, the need for which is occasioned by new Development Projects on which the fees will be imposed.

9. All new Development Projects within the City should bear a proportionate, fair, and equitable financial burden in providing the Park Facilities necessary to serve such uses.

10. The Park Facilities to be financed by the fees established by this Ordinance are consistent with the City's General Plan, including all elements thereof, and the Parks Master Plan.

11. The fees established by this Ordinance are consistent with the goals and objectives of the City's General Plan, including each of its elements, and the Parks Master Plan.

12. The fees established by this Ordinance relate rationally to the reasonable cost of providing Park Facilities occasioned by new Development Projects.

13. Park Development Impact Fees are necessary in order to finance the Park Facilities necessitated by Development, and to impose on property owners developing their properties the obligation to pay a fair share of the cost of the Park Facilities.

14. The amount of each fee established under this Ordinance and as may be adjusted over time pursuant to this Ordinance, is a reasonable approximation of the fair share of the cost of the Park Facilities, and roughly proportionate to the need for such facilities caused by new Development.

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15. For purposes of establishing the fees set forth in this Ordinance, the record before the City Council and the findings herein stated:

- (a) reasonably identify the purpose of the fee established;
- (b) reasonably identify the use to which the fee is to be put;
- (c) establish a reasonable and rational relationship between the use of the fee and the type of Development Project on which the fee is imposed;
- (d) establish a reasonable and rational relationship between the need for the Park Facilities to be financed by the fee established and the type of Development Project on which the fee is imposed; and
- (e) form the basis for the further finding that the imposition of a fee to finance Park Facilities is necessary in order to protect the public health, safety, and welfare within the City.

**SECTION 4.**

Chapter 84.12 is hereby added to the Sacramento City Code, to read as follows:

**CHAPTER 84.12. PARK DEVELOPMENT IMPACT FEE**

**Section 84.12.1201 Definitions**

**Automatic Annual Adjustment** means the automatic annual adjustment of Park Development Impact Fees based on the inflation factors described in Section 84.12.1212.

**Development** means the uses to which property will be put, the buildings and improvements to be constructed on it, and the construction activities incident thereto, together with the process of obtaining all required land use entitlements.

**Development Project** means any project undertaken for the purpose of development, exclusive of projects undertaken by or for public agencies, including, without limitation, schools and parks.

**Dwelling Unit** means any building or portion of a building used or designed for use as a residence by an individual or any group of individuals living together or as a family, excepting therefrom any unit rented or leased for temporary residency for

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fewer than thirty days, such as a motel or hotel room (which shall be considered a commercial use).

**Fee Resolution** means any resolution adopted by the City Council which implements the provisions of this Ordinance, including, without limitation, the setting of the amounts of the fee established hereby and the adoption of provisions for credits, reimbursements and deferral relating to the fees.

**Government Code** means the Government Code of the State of California and any provision thereof cited in this Ordinance, as such provision exists as of the date of the enactment of this Ordinance, or as it may thereafter be amended or renumbered from time to time.

**Nexus Study** means the report entitled, "City of Sacramento Park Development Impact Fee Nexus Study," dated August 4, 1999, approved by the City Council on August 17, 1999, by resolution number 99-474, including the other studies, reports, and all supporting data referred to and relied upon in said study, as such study exists as of the date of the enactment of this Ordinance, or as it may thereafter be amended or supplemented from time to time.

**Park Facility** or **Park Facilities** means the parks and recreation facilities to be designed, constructed and installed to meet the needs of and address the impacts caused by the additional persons residing or employed on property as a result of new Development, which improvements, infrastructure, and facilities are described in the Nexus Study, and the costs of the design, construction and installation of which are to be financed by the Park Development Impact Fee program.

**Park Fee** and **Park Impact Fee** and **Park Development Impact Fee** or **Fees** means the monetary exaction as defined by subsection (b) of Government Code section 66000 and shall include, but not be limited to, the fees established pursuant to this Ordinance.

**Section 84.12.1202            Purposes**

This Chapter 84.12 is adopted pursuant to the general powers reserved to the City of Sacramento under its City Charter for the purpose of authorizing certain Park Development Impact Fees, to be assessed upon the owners of residential and nonresidential property located within the City of Sacramento. The fees herein adopted shall be assessed upon landowners developing such property for any residential or nonresidential use in order to provide all or a portion of the funds which will be necessary to design, construct and install Park Facilities required to meet the needs of and address

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the impacts caused by new Development. It is the intent and purpose of the City to protect and promote the public health, safety and welfare by designing, constructing, and installing Park Facilities necessitated by new Development in the City. Furthermore, it is the intent and purpose of the City that landowners undertaking the new Development pay the costs of the Park Facilities and that the costs shall not be or become a responsibility of the City's general fund.

**Section 84.12.1203                    Establishment of Park Development Impact Fees for Park Facilities**

- a.     A Park Development Impact Fee is established to provide funding for Park Facilities. The Park Fees herein authorized shall be assessed upon landowners developing property for any residential or nonresidential use in order to provide all or a portion of the funds which will be necessary to provide neighborhood, community, and regional parks required to meet the needs of and address the impacts caused by the additional persons residing or employed on the property as a result of the Development.
  
- b.     The City Council, by resolution, shall establish the specific initial and subsequent amounts of the Park Development Impact Fees pursuant to Section 84.12.1205 of this Chapter and make the additional findings required under Section 84.12.1204 of this Chapter in establishing the amount of each fee. In addition, the City Council, by resolution, may adopt additional provisions, procedures and policies to implement the Park Fees established by this Chapter. The amounts of the fees, and provisions, procedures, and policies adopted by resolution pursuant to this subsection (b) shall be consistent with the Nexus Study.

**Section 84.12.1204                    Additional findings to be made when setting the amount of Development Impact Fee for Park Facilities**

At the time it sets the amount of the fees established pursuant to Section 84.12.1203, or at the time of amending the fees other than in making an Automatic Annual Adjustment to the fees made in the manner hereinafter provided by this Chapter, the City Council shall adopt the amount of the fees if it makes the following findings in support of the fees:

- a.     A finding that the fees have been determined and calculated in a manner consistent with the Nexus Study; and
  
- b.     The following additional findings required by Section 66001 of the Government Code which demonstrate that there is a nexus between the Park Facilities for which such fees are imposed and the need for such Park Facilities created by the

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Development of residential and nonresidential property within the City upon which the fees are imposed:

- (1) Findings that identify the purpose of the fees;
  - (2) Findings that identify the use to which the fees are to be put;
  - (3) Findings that demonstrate that there is a reasonable relationship between the use of the fees and the type of Development Project on which the fees are imposed;
  - (4) Findings that demonstrate that there is a reasonable relationship between the need for the Park Facilities and the type of development Project on which the fee is to be imposed; and
  - (5) Findings that demonstrate how there is a reasonable relationship between the amount of the fees and the cost of the Park Facilities, or portion of such Park Facilities, attributable to the Development Project on which the fees are imposed.
- c. In making the findings pursuant to this Section 84.12.1204 and any other findings, the City Council may consider all matters, whether offered orally or in writing, presented at the hearing or hearings conducted for the purpose of establishing or amending the fee, and any and all oral and written material presented to the City Council and City Planning Commission in connection with the adoption, approval, or amendment of the Nexus Study.

**Section 84.12.1205 Proceedings to establish the amount of Park Development Impact Fees**

- a. At the time of setting the amount of the fees established pursuant to this Chapter, or at the time of amending such fees other than in making an Automatic Annual Adjustment to the fees, the City Council shall hold a public hearing on the proposed fees or proposed amendment of fees in the manner required by Sections 66016, 66017, and 66018 of the Government Code.
- b. The effective date of any resolution adopted by the City Council that sets or amends, as the case may be, the amount of the fees established pursuant to Section 84.12.1203, shall be established pursuant to Section 66017 of the Government Code.

**Section 84.12.1206 Imposition of Park Development Impact Fees.**

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a. The Park Development Impact Fees established under this Chapter shall be imposed on real property located within the City based upon the following types of Development:

(1) For residential property:

- (A) The construction on the property of a new building or structure containing one or more Dwelling Units;
- (B) The construction on the property of alterations or additions to an existing building or structure that adds one or more Dwelling Units to such existing building or structure; or
- (C) The change in use of an existing building or structure on the property from a previous nonresidential use to a residential use, provided that the landowner shall be entitled to a credit against fees in the amount of fees that were actually paid for such previous nonresidential use, which prior fees shall be adjusted for inflation consistent with Section 84.12.1212.

(2) For nonresidential property:

- (A) The construction on the property of a new building or structure;
- (B) The construction on the property of alterations or additions to an existing building or structure that results in the expansion in the size or use of such existing building or structure; or
- (C) The change in use of an existing building or structure on the property from a previous residential use to a nonresidential use, or from a previous nonresidential use to another nonresidential use requiring a certificate of occupancy under the building regulations adopted by City or pursuant to the Sacramento City Code, provided that the landowner shall be entitled to a credit against fees in the amount of fees that were actually paid for such previous residential or nonresidential use, which prior fees shall be adjusted for inflation consistent with Section 84.12.1212.

b. Except as may be expressly provided in this Chapter, no building permits or extension of permits relating to the activities described in subsections (a)(1) and (a)(2) of this Section shall be granted unless and until the appropriate Park Development Impact Fee has been paid to the City in accordance with the

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provisions of this Chapter.

- c. Notwithstanding anything to the contrary set forth in subsection (a) of this Section or in any other provision of this Chapter, the Park Development Impact Fee established pursuant to this Chapter shall apply to any Development Project (1) that has heretofore received a tentative map approval or other approval or permit, whether discretionary or nondiscretionary, from the City, where the approval of the same has been conditioned upon payment of a Park Development Impact Fee to be established, or (2) that is subject to a development agreement or other agreement between the landowner and City that requires the payment of a Park Development Impact Fee.

**Section 84.12.1207 Exemptions**

- a. The following shall be exempted from payment of the Park Fee established by this Chapter:
  - (1) Alterations, renovations, or expansion of an existing residential building or structure where no additional Dwelling Units are created and the use is not changed; provided, however, that the expansion or intensification of use of an existing commercial or industrial building or structure shall not be exempt from the fees established in this Chapter. For purposes of this section, "expansion or intensification of uses" means any increase in the anticipated number of employees associated with the proposed new use.
  - (2) The replacement of a destroyed or partially destroyed or damaged building or structure with a new building or structure of the same size and use.
  - (3) A Development Project that is the subject of a Development Agreement executed prior to the effective date of this Ordinance, if the Development Agreement does not require the payment of a Park Development Impact Fee.
- b. Any claim of exemption with respect to the fees established by this Chapter must be made no later than the time for application for fee adjustment pursuant to Section 84.12.1214.

**Section 84.12.1208 Computation of fees**

- a. The methodologies set forth in the Nexus Study shall be used as the basis to set the amount of fees pursuant to any resolution referenced under subsection (b) of Section 84.12.1203 of this Chapter. The amount of fees due from any landowner

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shall be calculated from the actual uses of land proposed by the landowner. Applicants for building or other development permits shall include plans and calculations prepared by the applicant or applicant's agent, specifying data necessary to calculate Park Development Impact Fees, including, without limitation, each proposed land use, the square footage of each use, and other relevant data as may be required by the City Director of Public Works, or his or her authorized designee. All fees due under this Chapter shall be determined and calculated by the City Director of Public Works, or his or her authorized designee.

- b. The Director may calculate a revised fee or require additional exactions where the impacts of a particular proposed Development Project exceed the standards otherwise applicable in determining the Park Facilities necessitated by the Development Project pursuant to the Nexus Study.

**Section 84.12.1209 Time of payment of fee**

Except as otherwise provided in any policies, guidelines and procedures established by the City Council as provided under Section 84.12.1210 relating to deferral of payment of fees, the fees established by this Chapter shall be paid for the property on which a Development Project is proposed at the time, and as a condition of, of the issuance of any required building permit relating to the Development Project. With respect to Development Projects completed or commenced as of the effective date of this Chapter, the Director may enter into agreements with landowners regarding the amount, time, and manner of payment of fees payable with respect to such Development Projects.

**Section 84.12.1210 Deferral of fees**

The City Council, by resolution, may establish policies, guidelines and procedures regarding the deferral or other adjustment of the time in which the fees established under this Chapter must be paid. The policies, guidelines, and procedures shall be subject to annual review and adjustment to assure that funds are available to construct or acquire Park Facilities in a timely manner and to promote fairness and equity relating to deferrals and adjustments.

**Section 84.12.1211 Credits and reimbursements**

- a. The City Council, by resolution, may establish policies, guidelines and procedures regarding credits and reimbursements that may apply to the Park Fees established by this Chapter. Said policies, guidelines and procedures shall be subject to the terms of any written agreement entered into by the City and any landowner or landowners concerning credits against and reimbursement of Park Fees.

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- b. All policies, guidelines and procedures regarding credits and reimbursements shall be consistent with the following:
- (1) The credits and reimbursements shall apply to Park Fees owed (i) by landowners who have advanced funds for the construction of Park Facilities that otherwise would be paid from the revenue of the Park Fees established by this Chapter, and (ii) by landowners who constructed Park Facilities that otherwise would be paid for from the revenue of the park Fees established by this Chapter.
  - (2) The policies, guidelines and procedures shall provide for reimbursement to the City for administrative and engineering costs and other expenses relating to the provision of the Park Facilities.
  - (3) The credits and reimbursements may be transferred, in whole or in part, upon notice to the City in the form and in the manner specified by the City.
  - (4) The amounts of credits and reimbursements shall be subject to adjustments for inflation calculated consistent with the provisions of Section 84.12.1212, but shall not accrue interest.
  - (5) Credit also shall be given to the extent that Park Facilities are financed through the establishment of an assessment district or the use of other financing mechanisms.
  - (6) The policies, guidelines and procedures for credits and reimbursements shall be subject to annual review and adjustment to insure that funds are available to construct or acquire Park Facilities in a timely manner and to promote fairness and equity relating to credits and reimbursements.
  - (7) The credits and reimbursements shall not be given for site-related improvements and dedications of land that are specifically required by the Development Project in order to serve it.
  - (8) Except as otherwise agreed in writing by the Director of Public Works, any claim for credit or reimbursement must be made no later than at the time of application for a building permit. Any claim not made by or before the time of such application shall be deemed waived.
  - (9) The sole source of the payment of a reimbursement shall be the revenue collected that could be expended on the Park Facility to which the reimbursement relates.

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- (10) Credits and reimbursements may cease or be amended if the City Council, by resolution, determines that the same constitute threats to the public health, safety or welfare.
- c. A landowner may construct a Park Facility for credit or reimbursement only with the advance written approval of the Director of Parks, or the Director's designee, which approval shall be granted at the Director's sole discretion. All expenditures for which the landowner intends to seek credit or reimbursement, including but not limited to costs of design, engineering, and construction, shall be approved by the Director in advance.
- d. After the work is completed, the landowner seeking a credit or reimbursement, or both, shall submit such documentation, including, without limitation, engineering drawings, specifications, and construction cost estimates, and utilize such methods as may be appropriate and acceptable to the Director of Public WorksParks, or the Director's designee to support the request for a credit or reimbursement. The Director shall determine the credit or reimbursement amount for construction of a specific Park Facility based upon either the foregoing landowner-provided cost estimates or upon alternative engineering criteria and construction cost estimates if the Director determines that such estimates submitted by the landowner are either unreliable or inaccurate. The Director shall determine whether facilities or improvements are eligible for credit or reimbursement. Any decision made by the Director pursuant to this Section may be appealed to the City Council by the filing of a notice of appeal with the City Clerk. The City Council shall consider the appeal at a public hearing held within sixty (60) days after the filing of the notice of appeal. The decision of the City Council shall be announced at the public hearing.

**Section 84.12.1212 Automatic annual adjustment**

To take into consideration inflation, on July 1 of each fiscal year, beginning on July 1, 2000, the fees established by this Chapter shall be adjusted automatically by a factor equal to the percentage increase, if any, of the Construction Cost Index for San Francisco (based on 1913 U.S. average = 100) during the twelve months ending on the preceding March 1 of the prior fiscal year, as published by Engineer News Record/McGraw-Hill Construction Weekly, or any substitute index that the City Council adopts by resolution. In no event shall the automatic annual adjustment reduce the fees below the fees established for the previous fiscal year.

**Section 84.12.1213 Adjustment of fee by resolution**

In addition to any Automatic Annual Adjustment, the amount of the fees established by this Chapter may be revised periodically, including, without limitation, upon the report and

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review provided for in Section 84.12.1220, by resolution of the City Council. Any action by the City Council to increase fees shall comply with the provisions of this Chapter and Government Code sections 66016 through 66018.

**Section 84.12.1214      Protest of fees**

- a. A landowner subject to a fee established by this Chapter may apply to the City Director of Public Works, or his or her designee (for purposes of this Section, the "Director"), for a reduction, adjustment, or waiver of the fee, or any portion thereof, based upon the absence of a reasonable relationship or nexus between the impacts of the landowner's Development Project and either the amount of the fee charged or the type of Park Facility to be financed, or both. The application shall state in detail the factual basis for the claim of reduction, adjustment, or waiver, and shall include any and all written materials that the landowner deems appropriate in support of the application.
- b. The application shall be made in writing and filed with the Director at or before the time required for the filing of protests under Government Code sections 66020 and 66021. For purposes of determining the applicable limitations period set forth in Government Code section 66020, the date of the imposition of the fee under this Chapter shall be the date of the earliest discretionary approval by the City of the subject Development Project. The application shall be accompanied by the payment of a filing fee in an amount established by the City Council. The applicant shall be liable for the actual cost of the City in processing and ruling upon the application to the extent the cost exceeds the filing fee. The excess amount may be deducted from any refund found due and owing to the applicant or may be added to the amount of Park Development Impact Fees found to be due or owing from the applicant, as the case may be.
- c. Notwithstanding the filing of an application and the pendency of any hearing or procedure under this Section, the landowner shall pay the Park Development Impact Fee originally determined by the City in a timely manner pursuant to Section 84.12.1209. The payment shall be deemed to be a payment under protest pursuant to Government Code sections 66020 and 66021.
- d. The Director shall consider the application at an informal hearing held within sixty (60) days after the filing of the application. The decision of the Director shall be final and not appealable, except as provided in subsections (h) and (i) of this Section. The Director shall make his or her determination of the fee calculation within fifteen days from the date of the informal hearing or from the date that Director sets for the submission of additional engineering or other studies, other information, or additional calculations as found necessary by the Director during the course of the

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informal hearing. Applicant's failure to submit, on a timely basis, additional information requested by the Director may result in a denial of the application. The applicant shall be notified of the Director's decision, in writing, by the mailing of the decision by first-class mail, postage prepaid, and addressed to the address provided by the applicant.

- e. The Director shall consider the following factors in his or her determination whether or not to approve an application:
- (1) The factors identified in Government Code Section 66001:
    - (A) The purpose and proposed use of the fee;
    - (B) The type of Development involved;
    - (C) The relationship between the fee's use and the type of Development involved;
    - (D) The relationship between the need or demand for Park Facilities and the type of Development involved; and
    - (E) The relationship between the amount of the fee and the cost of the Park Facilities, or the portion of the Park Facilities, attributable to the Development involved.
  - (2) The substance and nature of the evidence presented by the applicant.
  - (3) The facts, findings and conclusions stated in the Nexus Study, including technical information, studies, and reports contained within and supporting said study, together with findings supporting the resolution setting the amount of the fee in question. The applicant must present comparable technical information, studies, and reports to demonstrate that the fee is inappropriate for the particular Development involved.
- f. If the application is granted, any change in use within the particular Development involved in an application shall invalidate the reduction, adjustment, or waiver of the fee if such change in use would render the same inappropriate.
- g. Within ten (10) days after the date of the mailing of the Director's decision, an applicant may appeal the Director's decision to the City Council, by filing a notice of appeal with the City Clerk. The provisions of Chapters 2.05, 2.06 and 2.07 of Title 2 of the Sacramento City Code shall govern the appeal to the City Council. In

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reaching its decision, the City Council or the appointed hearing examiner, as the case may be, shall hold a hearing and consider the factors set forth in subsections (a) and (f) of this Section. The decision on the appeal shall be mailed within five (5) days following the hearing held pursuant to this Section by first-class mail, postage prepaid, and addressed to the address provided by the applicant. The decision shall be final and not appealable, except as provided in subsection (h) of this Section.

- h. The protest procedures set forth in this Section are administrative remedies that shall be exhausted prior to the institution of any judicial proceeding concerning the fees protested. Any petition seeking judicial review of a decision by the City Council shall be made under Code of Civil Procedure section 1094.5 and shall be filed by or before (1) ninety (90) days following the date on which the decision is mailed to the applicant or (2) the expiration of the limitation period set forth in subsection (d) of Government Code section 66020, whichever occurs later. For purposes of determining the applicable limitations period set forth in Government Code section 66020, the date of the imposition of the fee under this Chapter shall be the date of the earliest discretionary approval by the City of the subject Development Project.

**Section 84.12.1215            Creation of special fund**

The fees established and collected pursuant to this Chapter shall be deposited in a separate special fund created specifically to hold the revenue generated by such fees. The collected fees shall be deposited, managed, and maintained pursuant to the provisions of Section 66006 of the Government Code. Moneys within the fund may be used solely for the purposes set forth in Section 84.12.1216.

**Section 84.12.1216            Use of fees**

- a. Revenue collected from the fees established by this Chapter and deposited in the special fund established under Section 84.12.1215 shall be used for the purpose of:
  - (1) expending by appropriation by the City Council for the payment of the actual costs of constructing Park Facilities described in the Nexus Study for which the fees may be expended;
  - (2) reimbursing the City for the Development's share of those Park Facilities already constructed by the City, or to reimburse the City for costs advanced, including, without limitation, administrative costs incurred with respect to a specific Park Facility, as set forth in Section 84.12.1211;

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- (3) providing for reimbursements as described in Section 84.12.1211;
  - (4) providing refunds as described in Sections 84.12.1214, 84.12.1217 and 84.12.1218;
  - (5) funding the City's administration of the fee program implemented by the provisions of this Chapter; and
  - (6) using the same as may be permitted under Section 66006 of the Government Code.
- b. Revenue shall be expended on Park Facilities within the Planning Area in which the Development Project paying the fee is located; provided, however, that the revenue may be expended in an adjacent Planning Area if the Park Facility is a Neighborhood Park within two miles of the Development Project or a Community Park within five miles of the Development Project.
  - c. Unless used or refunded as otherwise permitted under this Section 84.12.1216, moneys, including any accrued interest, not assigned in any fiscal period shall be retained in the fund until the next fiscal period.

**Section 84.12.1217            Disposition of unexpended or unappropriated fee revenues**

- a. Commencing with the fifth fiscal year following the first year of receipt of any revenues from the fees established, assessed and levied pursuant to the provisions of this Chapter, and in each fiscal year thereafter, the City Treasurer, or his or her designee, shall provide the City Council with a report that sets forth the total amount of all the fee revenues that were received and deposited in the special fund established under Section 84.12.1215 in each fiscal year prior to the date of the report, but that remain unexpended or unappropriated as of the date of the report; provided, however, that no report shall be required for any year in which there were no unspent or unappropriated fee revenues in the fund that were received and deposited in the fund more than five years prior to the date of the required report.
- b. Upon review of the report described in subsection (a) above, the City Council shall take one of the following actions required by Section 66001 of the Government Code with respect to any unexpended or unappropriated fee revenue in the special fund established under Section 84.12.1215 that was received and deposited in such fund five or more years prior to the date of the report:
  - (1) Appropriate all or any part of the unexpended or unappropriated fee revenue

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for the design, construction, or installation of the Park Facilities for which the fee was imposed;

- (2) Make findings with respect to all or any part of the unexpended or unappropriated fee revenue that identify the purposes to which the revenue is to be put and that demonstrate a reasonable relationship between the fee revenue and the purpose for which it was imposed; or
- (3) Provide for the refund of all or any part of the unexpended or unappropriated fee revenue, together with any actual interest accrued thereon, in the manner described in Section 66001(e) of the Government Code, to the current record owner of any property for which a fee was paid; provided that if the administrative costs of refunding the fee revenue exceed the amount to be refunded, the City Council, after considering the matter at a public hearing, notice of which is given in the manner provided for by Section 66001(f) of the Government Code, may appropriate the revenue for any other Park Facility for which Park Development Impact Fees are charged or otherwise imposed pursuant to this Chapter and which the City Council determines will benefit the properties for which the Park Development Impact Fee was charged or otherwise imposed; and further provided that the portion of any fee revenue received by the City as reimbursement of its costs in administering the provisions of this Chapter shall not be refunded.

- c. The provisions of subsections (d), (e), and (f) of Government Code Section 66001 shall apply fully to any refund of fees remaining unexpended or uncommitted in the special fund established under Section 84.12.1215 for five or more years after deposit, and the provisions of this Section 84.12.1217 and Section 84.12.1218 shall be subordinate to the said state statute and shall be applied consistently therewith.

**Section 84.12.1218 Refund of fees paid**

If a building permit or, if appropriate, a grading permit, expires without commencement of construction, then the feepayer shall be entitled to a refund, without interest, of the fees paid hereunder as a condition for its issuance; provided, however, that the portion of any fee revenue received by the City as reimbursement of its costs in administering the provisions of this Chapter shall not be refunded. The feepayer shall submit an application for a refund to the City Director of Public Works within ninety (90) days after the expiration of the permit. Failure to timely submit the required application for refund shall constitute an absolute waiver of any right to the refund.

**Section 84.12.1219 Other fee and dedication requirements**

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The provisions of this Chapter shall not release any owner of residential or nonresidential property from the obligation of paying other applicable fees relating to Development of property, including, without limitation, the application fees, processing fees, mitigation fees, and other development fees within the control of the City; from complying with any public facility or improvement requirements that are imposed pursuant to applicable law, including, without limitation, the provisions of this City Code; from complying with any requirement to dedicate property for public use pursuant to applicable law, including without limitation, the provisions of this City Code and the Government Code, at the time of approval of a tentative subdivision map, tentative master parcel map, certificate of compliance, building permit or other land use entitlement; and from complying with any obligation to pay fees or exactions, or to comply with mitigation requirements, of identified project-related environmental effects.

**Section 84.12.1220                    Annual reports and review of fee**

- a.     No later than sixty days following the end of each fiscal year, the City Director of Public Works, or his or her designee (for purposes of this Section, the "Director"), shall prepare a report for the City Council identifying the following:
  - (1)    the beginning and ending balances of the special fund established under Section 84.12.1215 for the fiscal year;
  - (2)    the fee revenue, interest, and other income collected in the fund during the fiscal year;
  - (3)    the amount of expenditures from the fund;
  - (4)    an accounting of all refunds and reimbursements that the City is obligated to make or has made pursuant to this Chapter;
  - (5)    the reallocation, if any, of unexpended or unappropriated fee revenue made pursuant to subsection (b)(3) of Section 84.12.1217 and Government Code section 66001(f);
  - (6)    the Park Facilities constructed and to be constructed utilizing the revenues collected from the fee established by this Chapter, the continued need for such Park Facilities, the reasonable relationship between such need and the impacts of Development for which the fee is charged;
  - (7)    the estimated costs of the Park Facilities described in the report; and
  - (8)    the amount of any Automatic Annual Adjustment made pursuant to Section

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84.12.1212, including the basis of the calculation therefor.

- b. In addition to the report on matters set forth in subsection (a) above, at least once each fiscal year, the Director or his or her duly authorized designee, shall present to the City Council a proposed capital improvement program for the various Park Facilities referenced in the Nexus Study, assigning moneys (including any accrued interest) from the special fund to specific improvement projects, acquisitions, and related expenses. The adoption of the capital improvement program shall comply with the provisions of Government Code section 66002.
- c. In preparing the report pursuant to this Section, the Director shall adjust the estimated costs of the Park Facilities in accordance with the Engineering Construction Cost Index as published by Engineer News Record/McGraw-Hill Construction Weekly, or other reasonable standard, for the elapsed time period from the first day of the previous July or the date that the cost estimate was developed.
- d. The report prepared pursuant to subsection (a) of this Section shall be made available to the public pursuant to the provisions of subsection (b) of Government Code section 66006. The City Council shall review the information contained in the report at its next regularly scheduled public meeting not less than 15 days after the report is made available to the public. The scheduling of the hearing and notice thereof shall comply with the provisions of subsection (b) of Government Code section 66006.
- e. The City Council, by resolution, may revise the fees established by this Chapter to reflect the findings made from its consideration of the annual report and to include additional projects previously not foreseen as being needed, provided that all such revisions shall be consistent with the Nexus Study.
- f. The report prepared by the Director and its review by the City Council, as well as any findings thereon, shall be subject to the provisions of subsection (d) of Government Code Section 66001, to the extent applicable.

**Section 84.12.1221 Severability**

- a. If any section, phrase, sentence, or other portion of this Chapter for any reason is held or found to be invalid, void, unenforceable, or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Chapter.

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- b. If any fee established by this Chapter for any reason is held or found to be invalid, void, unenforceable, or unconstitutional by a court of competent jurisdiction, such fee shall be deemed a separate, distinct and independent fee, and such holding shall not affect the validity of the remaining fees established by this Chapter.
- c. If any fee established by this Chapter is held or found to be invalid, void, unenforceable, or unconstitutional by a court of competent jurisdiction based upon an insufficient nexus to a specific Park Facility for which the revenue generated from such fee may be expended pursuant to this Chapter, said fee as it relates to such specific Park Facility shall be deemed a separate, distinct and independent fee, and such holding shall not affect the validity of the fee as it relates to other Park Facilities.

**SECTION 5. Credits and reimbursements.**

The Director of Public Works, or his or her designee, hereby is authorized and directed to prepare policies, guidelines and procedures concerning credits and reimbursements relating to the fees established under this Ordinance pursuant to Section 84.12.1211 of Chapter 84.12 and to present the same to the City Council for consideration and approval.

**SECTION 6. Deferral of fees.**

The Director of Public Works, or his or her designee, hereby is authorized and directed to prepare policies, guidelines and procedures concerning the deferral of the time of payment of fees established under this Ordinance pursuant to Section 84.12.1210 of Chapter 84.12 and to present the same to the City Council for consideration and approval. With respect to Development Projects completed or commenced by or before the effective date of this Ordinance, the Director of Public Works, or his or her designee, is hereby authorized to enter into agreements with property owners governing the amount, time and manner of payment of fees payable with respect to such Development Projects.

**SECTION 7. Severability.**

1. If any section, phrase, sentence, or other portion of this Ordinance for any reason is held or found to be invalid, void, unenforceable, or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

2. If any fee established by this Ordinance for any reason is held or found to be

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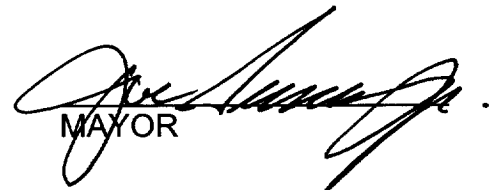
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invalid, void, unenforceable, or unconstitutional by a court of competent jurisdiction, such fee shall be deemed a separate, distinct and independent fee, and such holding shall not affect the validity of the remaining fees established by this Ordinance.

3. If any fee established by this Ordinance is held or found to be invalid, void, unenforceable, or unconstitutional by a court of competent jurisdiction based upon an insufficient nexus to a specific Park Facility for which the revenue generated from such fee may be expended, said fee as it relates to such specific Park Facility shall be deemed a separate, distinct and independent fee, and such holding shall not affect the validity of the fee as it relates to other Park Facilities.

DATE PASSED FOR PUBLICATION: 08/10/99  
DATE ENACTED: 08/17/99  
DATE EFFECTIVE: 09/16/99

  
MAYOR

ATTEST:

  
CITY CLERK

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