

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF
BURBANK AMENDING BURBANK MUNICIPAL CODE
TITLE 10, CHAPTER 1, ARTICLE 22, RELATED TO
COMMUNITY FACILITY FEES

City Attorney's Synopsis

This Ordinance amends the Burbank Municipal Code, Title 10 (Zoning Regulations), Chapter 1 (Zoning), Article 22 (Community Facilities Fees), to update the municipal code provisions regulating community facility fees, add new or update existing development impact fees concerning information technology, transportation, and lodging uses, and implement other clarifying or conforming amendments as permitted by existing state law.

THE COUNCIL OF THE CITY OF BURBANK FINDS:

- A. The City of Burbank (City) provides a variety of services and amenities to its residents, businesses, and visitors, such as libraries; transportation, transit, bicycle and pedestrian infrastructure; public safety including police and fire services; information technology infrastructure; and recreational facilities;
- B. New residential and non-residential development increases the demand for the services and amenities that the City provides, burdening existing facilities and infrastructure;
- C. In accordance with Government Code section 66000 and following (the "Mitigation Fee Act"), the City adopted Ordinance 3340 on June 14, 1993, adding Title 10, Chapter 1, Article 22, Community Facility Fees, to the Burbank Municipal Code ("BMC") related to development fees for community facilities as a condition of development approval;
- D. The City has not updated nor increased its community facility fees since 1993. The City desires to update its community facility fees and impose additional fees on new development to finance the capital costs of new development's fair share of the new facilities and infrastructure necessary to accommodate that new development, including those related to expanding the city's information technology infrastructure to serve the City's growth, and those related to transportation impacts from residential development;
- E. In accordance with the Mitigation Fee Act, the City's consultant (Economic and Planning Systems) prepared a nexus study to support the City's development impact

fee changes, the residential transportation improvement fee, and the new information technology fee, and provided notice of the City's consideration of its adoption at a public hearing at least 30 days before the public hearing;

- F. The nexus study provides the necessary technical documentation in accordance with the Mitigation Fee Act, including the identification of current or new fees, the specific uses for such fees, the reasonable relationship between the fee's use and the type of project on which the fee is imposed, the reasonable relationship between the need for public facilities and the type of project on which the fee is imposed, the reasonable relationship between the amount of the fee and the cost of the facilities or portion of the facilities attributable to the development on which the fee is imposed, and how such fees will not be used to fund existing deficiencies but only those exacerbated by increased demand due to new development projects;
- G. The impact fees charges imposed by this Ordinance are necessary and reasonable to implement Land Use Element Goals 2 and 3, Land Use Element Policy 2.3, Program LU-8, Mobility Element Goal 1, Mobility Element Policies 1.1 through 1.7, and Program M-1 of the Burbank2035 General Plan and are permitted by California state law;
- H. As such, the Council desires to adopt this Ordinance to update existing fees and establish additional transportation and non-transportation-related fees, and provide other conforming amendments to the BMC, as set forth below;
- I. The Council further exercises its independent judgment and finds that this Ordinance is Categorically Exempt from the California Environmental Quality Act (CEQA) under the "common sense exemption" per CEQA Guidelines Sections 15061(b)(3) in which the project in question has no potential for causing a significant effect on the environment, and 15378(b)(4), which excludes items involving the general creation of governmental funding mechanisms or fiscal activities. It has no potential for physical effects on the environment because it involves an adoption of certain fees and/or charges imposed by the City, does not commit the City to any specific project, and said fees and/or charges are applicable to future development projects and/or activities, each of which future projects and/or activities will be fully evaluated in full compliance with CEQA when sufficient physical details regarding said projects and/or activities are available to permit meaningful CEQA review (see CEQA Guidelines, Section 15004(b)(1)). Pursuant to CEQA Guidelines section 15378(b)(4), the creation of government funding mechanisms which do not involve any commitment to any specific project which may cause significant effect on the environment, is not defined as a "project" under CEQA. Therefore, approval of the fees and/or charges is not a "project" for purposes of CEQA, pursuant to CEQA Guidelines, Section 15378(b)(4); and, even if considered a "project" under CEQA, is exempt from CEQA review pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that approval of the fees and/or charges may have a significant effect on the environment.

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

1. Chapter 1 of Title 10 of the Burbank Municipal Code (“BMC”) is amended as follows:

1) Section 10-1-2202: Applicability, of the BMC, is amended and restated as follows:

“10-1-2202: APPLICABILITY:

This division applies to all development fees imposed by the City and as set forth in this article as a condition of issuance of certain permits required for development approval for the purpose of financing capital improvements, the need for which is attributable to such development, including without limitation:

- A. Transportation improvement fees;
- B. Library fees;
- C. Park and Recreation fees (except fees charged in lieu of park land dedication pursuant to Government Code Section 66477);
- D. Police fees; ~~and~~
- E. Fire fees;
- F. Information technology fees; and
- G. Any such other fees as established by resolution.”

2) Section 10-1-2204: Definitions, of the BMC, is amended and restated as follows:

“10-1-2204: DEFINITIONS:

For purposes of this article and any resolution adopted to implement development fees imposed by this article, the words and terms defined herein shall have the meanings stated, unless another meaning is plainly intended. To the extent that terms utilized in this article are not defined herein, but are defined elsewhere in Title 10 of the Municipal Code of the City of Burbank, such terms shall have the meanings stated therein.

~~BENEFIT AREA: Means the geographic area within which development fees are collected and expended for a particular type of capital improvement serving development projects within such area.~~

CALCULATE: Means to determine the amount of development fees to be collected based on the need for capital improvements related to a particular development project.

ACCESSORY DWELLING UNIT (ADU): An attached or detached structure that provides independent living facilities for one or more persons and includes permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as a single-family dwelling unit. ADUs are sometimes referred to as secondary units, granny units, or in-law units. They can have a separate mailing address and be rented to a third-party or occupied by a property owner.

AFFORDABLE OWNERSHIP HOUSING COST: Means the Total Housing Costs paid by a qualifying household, which shall not exceed a specified fraction of their gross income as specified in California Health and Safety Code Section 50052.5.

AFFORDABLE RENT: Means the Total Housing Costs, including a reasonable utility allowance, paid by a qualifying household, which shall not exceed a specified fraction of their gross income as specified in California Health and Safety Code Section 50053.

AFFORDABLE UNIT: Means a dwelling unit within a Housing Development which will be reserved for, and restricted to, Very Low Income Households or Low Income Households at an Affordable Rent or is reserved for sale to a moderate income household at an Affordable Purchase Price.

CAPITAL IMPROVEMENTS: Means public improvements, such as land and/or facilities for transportation and transit, including but not limited to streets and supporting improvements, roads, over-passes, bridges, and related facilities; for parks and recreation; police; fire; information technology; and library facilities identified in the City's master plans.

CAPITAL IMPROVEMENT PLAN: Means the ~~five (5)-year~~ plan for capital improvements adopted or updated annually as part of the nexus study by the City Council describing the approximate location, size, time of availability and estimated cost of and appropriating money for capital improvement projects.

~~CAPITAL IMPROVEMENT PROJECT LIST: Means the list attached to the annual Council resolution setting the base fee amount for a specific impact fee. The list shall describe the approximate location, size, time of availability and estimated cost of each capital improvement to be funded from a particular development fee account.~~

CERTIFICATE OF OCCUPANCY: Means the official City certification, that all or a portion of the building, structure or addition is suitable for use or occupancy. For purposes of this article, certificate of occupancy shall refer to the earlier of, issuance of a certificate of occupancy for use or occupancy of all or a portion of the building by a tenant, owner or occupant.

~~CITY OF BURBANK COMMUNITY FACILITIES STUDY (Dec., 1992./ CITY OF BURBANK DEVELOPMENT IMPACT FEE REPORT (Dec., 1992.: Collectively~~ NEXUS STUDY: means ~~the~~ any studies prepared by the Community Development Department

of the City of Burbank ~~incorporating Recht Hausrath and Associates' assessment and analysis of the Burbank Capital Facilities for non-transportation facilities, and which formsto support~~ the basis for development impact fees, including those related to public facilities improvements and plans for transportation, police, fire, library, information technology, and parks and recreation facilities related to new development, and any other fees as established by resolution.

COLLECTION: Means the point at which the development fee due is actually paid over to the City.

COMMITMENT: Means earmarking of development fees to fund or partially fund or to retire debt issued for the funding of capital improvements serving new development projects.

COMMUNITY FACILITIES FEES: Collectively means the transportation improvement fee, the fire fee, the police fee, the library fee, the information technology fee, and the parks and recreation fee.

~~DEMAND: Means the portion of transportation capacity that new development will consume measured in PM peak hour trips.~~

DEVELOPMENT: Means the addition of new dwelling units and/or new non-residential gross floor area footage to an undeveloped, partially developed or redeveloped site and involving the issuance of a building permit or certificate of occupancy for such construction, reconstruction or use, but not including (i) a permit to operate; (ii) a permit for the internal alteration, remodeling, rehabilitation, or other internal improvements or modifications to an existing structure, so long as no additional dwelling units or gross floor area is added; (iii) an accessory use, so long as no additional dwelling units or gross floor area is added, ~~or~~ (iv) parking facilities, or (v) accessory dwelling units up to 750 square feet.

DEVELOPMENT FEE: Means a monetary exaction imposed as a condition of or in connection with the issuance of an approval of a development project for the purpose of defraying all or a portion of the cost of certain capital improvements related to the development project.

DEVELOPMENT PROJECT: Means any project undertaken for the purpose of development, including a project involving the issuance of a permit for construction of a building or structure. However, development project does not include the issuance of a permit to operate.

FIRE FEE: Means a monetary exaction imposed as a condition of development approval in order to fund and to assure the provision of fire stationsapparatus needed to serve such development at established City service level standards within a reasonable period of time.

GROSS FLOOR AREA or GFA: Shall mean the total horizontal area of all floors beneath the roof of a building. The computation excludes the columns, permanent interior walls, stair shafts, mechanical equipment rooms that serve the building as a whole (offices only) and the area actually occupied by parking. The computation includes corridors, bathrooms, interior partitions which are not permanent or anything else not excluded above.

IMPOSITION: Means the determination that a particular development project is subject to the condition of payment of development fees and the attachment of such requirement to the project as a condition of development approval.

INFORMATION TECHNOLOGY FEE: Means a monetary exaction imposed as a condition of development approval in order to fund and to assure the provision of information technology facilities needed to serve such development at established City service level standards within a reasonable period of time.

ITE TRIP GENERATION MANUAL: Means and refers to the report entitled Trip Generation (~~Fourth~~Tenth Edition ~~1987~~) of the Institute of Traffic Engineers, or as subsequently updated.

LEVEL OF SERVICE (LOS): Means an indicator of the extent or degree of service provided by, or proposed to be provided by, a transportation improvement based upon the relationship of traffic volume to road capacity and related to the operational characteristics of the road as measured by standards set forth in the Highway Capacity Manual.

LIBRARY FEE: Means a monetary exaction imposed as a condition of development approval in order to fund and to assure the provision of library space and facilities needed to serve such development at established City service level standards within a reasonable period of time.

NONRESIDENTIAL DEVELOPMENT PROJECT: Means all development other than residential development projects.

NON-TRANSPORTATION COMMUNITY FACILITIES FEE: Shall mean collectively the fire fee, the library fee, the police fee, the information technology fee, and the parks fee.

PARK FEE: Means a monetary exaction imposed as a condition of development approval in connection with a development project in order to fund and to assure the provision of park ~~land~~facilities and recreation improvements needed to serve such development at established City service level standards within a reasonable period of time.

PM PEAK HOUR: Means the one (1) hour period of time between 4:00 p.m. and 6:00 p.m., when the development generates the maximum number of trips.

~~PM PEAK HOUR TRIPS: Means the total number of trips generated by a development during the PM peak hour.~~

POLICE FEE: Means a monetary exaction imposed as a condition of development approval in order to fund and to assure the provision of police ~~stations~~facilities needed to serve such development at established City service level standards within a reasonable period of time.

RESIDENTIAL DEVELOPMENT PROJECTS: Means any development undertaken for the purpose of creating a new dwelling unit, as defined in this chapter or units and involving the issuance of a building permit for construction. ADUs up to 750 square feet are exempt; ADUs that are 750 square feet or larger may be charged impact fees but only such fees that are proportional in size (by square foot) to those for the primary dwelling unit.

~~STREETS AND ROAD STUDY: Which collectively with the “City of Burbank Development Transportation Fees, Technical Report” (November, 1992) form the basis for travel demand forecasts and transportation improvement plans due to new development and is incorporated in the “Transportation Funding Strategy Nexus Summary”.~~

TOTAL HOUSING COSTS: Means the total monthly or annual recurring expenses required of a household to obtain shelter. For a rental unit, total housing costs include the monthly rent payment and utilities. For an ownership unit, total housing costs include the mortgage payment (principal and interest), utilities, homeowner’s association dues, taxes mortgage insurance and any other related assessments.

TRANSPORTATION IMPROVEMENT FEE: Means a monetary exaction imposed as a condition to the issuance of certain permits required for development approval in order to fund and to assure the provision of transportation facilities needed to serve such development at established City service level standards within a reasonable period of time.

~~TRANSPORTATION IMPROVEMENT PLAN: Means the identification, listing, cost and prioritization of transportation improvements necessary to meet travel demand forecasts through the year 2010 while maintaining the City’s adopted level of service standard for transportation. The Transportation Improvement Plan is contained in the “City of Burbank Development Transportation Fees, Technical Report” (November, 1992).~~

~~TRANSPORTATION FUNDING STRATEGY NEXUS SUMMARY: Means that document prepared by the Community Development Department of the City of Burbank incorporating the “City of Burbank Development Transportation Fees, Technical Report” (November, 1992) performed for the City by Emerson and Associates; Planning Company Associates; and Grain and Associates, Inc., and the “Streets and Road Study”, which form the basis for travel demand forecasts and transportation improvement plans for the City and portion thereof attributable to new development.”~~

3) Section 10-1-2206: Fee Payment Procedure, of the BMC, is amended and restated as follows:

“10-1-2206: FEE PAYMENT PROCEDURE:

A. IMPOSED ON DEVELOPMENT PROJECTS.

Development fees established in accordance with the article shall be imposed on all Development Projects which require a building permit.

B. CALCULATION AND COLLECTION FOR NON-RESIDENTIAL PROJECTS.

Development fees on non-residential projects, if imposed, shall be calculated and collected by the Building Official at the time, ~~and as a requirement to~~ of the issuance of a building permit certificate of occupancy or the final inspection, whichever occurs first, based on the development fee then in effect unless:

- (i) the applicant is entitled to a full credit pursuant to Section 10-1-2211; or
- (ii) the applicant’s development project is exempt pursuant to Section 10-1-2203; or
- (iii) the applicant has taken an appeal pursuant to Section 10-1-2213 and a cash deposit, letter of credit, bond or other surety in the amount of the development fee schedule, as calculated by the Building Official, has been posted with the City; or
- (iv) the applicant has requested the City Council to approve a payment plan pursuant to Section 10-1-2213, and a cash deposit, letter of credit, bond or other surety in the amount of the development fee schedule, as calculated by the Building Official, has been posted with the City. In order to have a payment plan considered, the applicant shall submit the request pursuant to Section 10-1-2213; ~~of,~~
- ~~(v) the applicant’s development project is outside of the Media District and subject to the Economic Development Credit Pool pursuant to Section 10-1-2212.~~

C. CALCULATION AND COLLECTION FOR RESIDENTIAL FEE PROJECTS.

Development fees, if imposed on residential development, shall be calculated and collected by the Building Official at ~~the time of the~~ final inspection (if issuance of a certificate of occupancy is not issued, e.g. additions) or the date the certificate of occupancy is issued. final inspection, whichever occurs first.”

4) Section 10-1-2207: Automatic Adjustment, of the BMC, is amended and restated as follows:

“10-1-2207: AUTOMATIC ADJUSTMENT:

Fees imposed by this article shall automatically be adjusted annually on the first day of July each year ~~beginning July 1, 2007~~, by an adjustment as set forth below in this section.

A. ANNUAL ADJUSTMENT.

The annual adjustment shall be made by adjusting all the current fees required in this article by a percentage equal to the inflation rate for the prior year for construction costs as determined by the Building Official on December 31st of each calendar year. The Building Official’s determination shall be based upon the Engineering News Record, Construction Cost Index for the calendar year as of December 31st.

B. EXCEPTION-ACTION BY COUNCIL.

Nothing in this section shall prevent the Burbank City Council from making fee adjustments greater or less than indicated by the above calculation. ~~An automatic adjustment, as provided for in Subsection (A), shall not become effective until the 31st day after the Building Official has provided Council with written notification of such adjustment. The Building Official shall file with the City Clerk, a certification, in a form approved by the City Attorney, demonstrating compliance with this subsection.”~~

- 5) Section 10-1-2208: Development Fee Accounts and Audits, of the BMC, is amended and restated as follows:

“10-1-2208: DEVELOPMENT FEE ACCOUNTS AND AUDITS:

A. SEPARATE ACCOUNT.

The City shall deposit development fees received with other fees for the same type of capital improvement in a separate capital improvement account in a manner to avoid any commingling of the fees with other City revenues and funds, except for temporary investments, and shall expend the fees solely for the purpose for which they were collected.

B. INTEREST.

Any interest income earned by money in the capital improvement account shall also be deposited in that account and expended only for the purpose for which the fees were collected.

C. USE OF FUNDS.

The funds of each account ~~shall be expended within the benefit area and~~ shall be used exclusively for the capital improvements for which the development fees were collected.

D. ANNUAL STATEMENT OF ACCOUNT BALANCES BY FINANCE DIRECTOR.

For each separate development fee account, the ~~City's Financial Services Director~~City Manager or designee shall, within ~~60~~180 days of the close of each ~~calendar~~fiscal year, make available to the public the beginning and ending balance for the calendar year and the fee, interest, and other income and the amount of expenditure by capital improvement and the amount of refunds made during the ~~calendar year~~fiscal year. The current and five previous annual reports shall be posted on the City's internet website.

E. ANNUAL REVIEW OF STATEMENT BY CITY COUNCIL.

The City Council shall review the information referred to in Subsection (D) of this section at the next regularly scheduled public meeting held not less than 15 days after the information is made available to the public.

F. AUDITS.

The applicant or property owner may request an audit of any subfund by submitting a request for audit with the City Clerk, to determine whether the development fee imposed exceeds the amount reasonably necessary to finance capital improvements to serve new development at established City service levels. The Council may then retain an independent auditor who shall determine whether the fee is reasonable. The City may require, and it shall be a condition to the right to such audit, that the applicant or property owner deposit with the City a sum equal to the reasonable estimated cost of the audit. The decision of the independent auditor shall be final unless duly appealed to the Council by the property owner or applicant.”

6) 10-1-2210: Refunds, of the BMC, is amended and restated as follows:

“10-1-2210: REFUNDS:

A. UNSPENT FUNDS: AUTOMATIC REFUND.

If development fees are unexpended or uncommitted five (5) or more years after deposit in a development fee account, the City Council shall make findings ~~once each fiscal year to identify the purpose to which the fee is to be put and to demonstrate a reasonable relationship between the fee and the purpose for which it was charged.~~for the fifth fiscal year following the first deposit into the account or fund, and every five years thereafter, in accordance with Government Code Section 66001(d). Such findings need be made only for money in possession of the City, and not for letters of credit, bonds or other instruments taken to secure payment of the fees at a future date.

(i) Refunds. If the City Council cannot make the aforementioned findings, the City shall refund to the then current record owner or owners of lots or units of the development project or projects on a prorated basis the unexpended or uncommitted portion of the fee, and any interest accrued thereon, which has been on deposit over five (5) years and for which need cannot be demonstrated pursuant to Subsection (A).

(ii) Finding by Council not to Refund. If the City Council finds that the administrative costs of refunding unexpended or uncommitted development fees exceed the amount to be refunded, the City Council, after a public hearing, notice of which shall be published in accordance with Government Code Section 6061 and posted in three (3) prominent places within the area of each development project subject to a refund, may determine that the revenues shall be allocated for other capital improvements for which development fees are collected and which serve the development projects on which the fee was originally imposed.

(iii) Method of Refund. The City may refund the unexpended or uncommitted portions of development fees by direct payment, by temporarily suspending fees, by offsetting the refunds against other development fees due for development projects on the property, or by other means agreed to by the property owner. The property owner shall provide as evidence of ownership, a title report issued by a licensed title insurer. If, in the view of the City Attorney, there is doubt as to whom such refund shall be made, the City Attorney may interplead the possible claimants and deposit the amount of refund with the Superior Court.

B. OTHER REFUNDS.

~~In the event that~~if an applicant requests a refund due to reasons not set forth in this section, the applicant shall submit a claim for refund with the City Clerk who then shall forward the request to the City Council for action. The time period to file a claim pursuant to this provision shall be limited to one (1) year after the termination, expiration, or other action which ends the use of the valid building permit.”

7) Section 10-1-2211: Credits, of the BMC, is amended and restated as follows:

“10-1-2211: CREDITS:

A. DEMOLITION CREDIT.

1. Eligibility. Any applicant who requests a building permit for a development project on property, which has had improvements demolished since ~~January 1, 1990~~February 19, 2013, may request a demolition credit in accordance with this section. The applicant shall establish the amount of square footage which has been demolished from his/her property since ~~January 1, 1990~~February 19, 2013,

and shall have allocated to the property the appropriate credit for the demolished portion of the property based on the previous use.

2. Amount. The applicant shall submit to the Building Official proof of the square footage demolished on the property since ~~January 1, 1990~~February 19, 2013. The Building Official shall calculate the Development Fee credit which that property shall be allocated.

3. Request in writing. Credit requests shall be made in writing and shall be submitted at or before the time of development fee collection. The request shall contain a declaration of those facts along with the relevant documentary evidence which qualifies the applicant for the credit.

4. Demolition credit runs with the property. Any credit unused by the applicant when applied towards any Development Fee shall remain available for future credit solely for future development on that same property. In no event may the credit be used for development on property other than the property where the demolition occurred.

~~5. No participation in credit pool if demolition credits exist. All demolition credits shall be used prior to any participation in the Economic Development Credit Pool in Section 10-1-2212 below.~~

B. IN-LIEU CREDIT.

1. Eligibility. Any applicant subject to a Development Fee pursuant to this article who constructs, escrows money with the City for the construction of, agrees to participate in an assessment district for the construction of, or who otherwise contributes funds for capital improvements, may be eligible for a credit for such contribution against the development fee otherwise due.

2. Amount. Eligibility for, and the amount of, the credit shall be determined by the City Manager, or theirs designee, based upon whether the contribution meets capital improvement needs for which the particular development fee has been imposed; whether the developer contribution will substitute for or otherwise reduce the need for capital improvements anticipated to be provided with development fee funds; and the value of the developer contribution. Any improvements specified in the ~~“Transportation Funding Strategy Nexus Summary” or the “City of Burbank Community Facilities Study” (Dec., 1992)~~“City of Burbank Development Impact Fee Report” (Dec., 1992) shall Study may be eligible for an in-lieu credit.

3. Request in writing. Credit requests shall be made in writing prior to the initiation of any bidding or construction of the improvements to the City Manager or theirs designee and shall be submitted at or before the time of development fee

collection. The request shall contain a declaration of those facts along with the relevant documentary evidence which qualifies the applicant for the credit.

4. City to prepare plans; approval by Council. Upon the concurrence and approval of the City Manager or their designee, that the improvements are eligible for in-lieu credit, the City may prepare plans and specifications for the design and construction of said approved improvements, or may request the applicant to prepare them. The plans and specifications, whether prepared by the City or the applicant, shall be approved by Council as well as any environmental assessment under the California Environmental Quality Act. Upon approval by Council, the City shall deliver such plans to the applicant, who shall cause the construction to be performed in accordance with such plans and specifications.

5. Construction restrictions; insurance. The applicant shall abide by public bidding and construction requirements which apply to governmental entities, some of which are set forth in Title 2, Chapter 2 of the Burbank Municipal Code. The applicant shall enter into all contracts with the contractor and through these contracts require insurance in the amounts required through the excavation permit provisions of Section 7-1-203, and as amended from time to time, and the City shall be named as an additional insured on all such insurance during construction. Except to the extent of the negligent or intentional acts or omissions of the City, its agents, or employees, the City shall have no liability towards the applicant or contractor, and each shall indemnify and hold City harmless for all liability incurred during the construction, and for all liability or stop notices submitted to the City by contractors providing labor or materials to such work prior to the final payment by the applicant.

6. Faithful performance and payment bond or other security required. The applicant shall further provide the City with performance and payment bond, or other adequate security, equal to 100 percent of the contract amount for the improvements, to assure that the improvements shall be completed. Such bonds, or other security, shall be in a form acceptable to and approved by the City Attorney. The security herein shall be released 30 days after the Notice of Completion has been recorded.

7. Credit issued upon completion and acceptance by City. Upon completion, approval, and acceptance of the improvements by the City, a Notice of Completion shall be recorded by the City, and the applicant shall be credited by written documentation by the City Manager or his/her designee for the actual cost of the construction contract(s) upon proper documentation by the applicant. In the event the applicant, at the City's request, performs any design or engineering services in connection with such improvements, said credit shall include the actual cost to the applicant of such services.

8. Credit from same category of fees. The credit shall be applied against the applicant's obligation to pay developer fees from the same category.

C. CALCULATION AND ANNUAL INCREASE OF DEMOLITION CREDIT AND IN-LIEU CREDIT.

The exact amount of the credit in the year it is granted shall be based upon actual costs approved by the City Manager or his/her designee in accordance with this section. Each credit listed in this section which exceeds the Development Fee required shall remain available to be applied to future Development Projects as specified in this section. After determining the value of the credit, the value of any unused credits shall be increased annually in accordance with Section 10-1-2207. No credits shall be cashed out by the City.

D. ACCOUNTING OF CREDITS.

The Community Development Director, or theirs designee shall be responsible for maintaining an accounting for the credits issued pursuant to this section, ~~and Section 10-1-2212.~~

- 8) The text of Section 10-1-2212: Economic Development Credit Pool, of the BMC, is deleted in its entirety, and amended to read as follows:

“10-1-2212: ECONOMIC DEVELOPMENT CREDIT POOL:

~~This section is intentionally deleted.~~

~~A. LIMITATION OF APPLICABILITY OF SECTION 10-1-2212.~~

~~Only development projects that have received Development Review approval as of January 23, 1999, the effective date of Ordinance No. 3505, may participate in the Economic Development Credit Pool in accordance with this section. Any project that has not received Development Review approval, or let Development Review approval lapse, as of that aforementioned effective date, is no longer entitled to participate in the credit pool as a matter of right in accordance with Subsections (B)-(F) herein. Application for participation in the credit pool as to new development projects outside a redevelopment project area may be made to the City Planner for consideration by the City Council. Special consideration may be provided for new projects located in the Magnolia Park area. Application for participation in the credit pool as to new development projects inside a redevelopment project area may be made to the Assistant Executive Director of the Redevelopment Agency of the City of Burbank for consideration by the Redevelopment Agency Board.~~

~~B. TRANSPORTATION IMPROVEMENT FEE-ECONOMIC DEVELOPMENT CREDIT POOL FOR DEVELOPMENT PROJECTS LOCATED OUTSIDE OF THE MEDIA DISTRICT.~~

~~Due to the urgent need to encourage and stimulate new development to offset the loss of thousands of jobs since 1990, an Economic Development Credit Pool of Four Million Seven Hundred Ninety Two Thousand Dollars (\$4,792,000) was appropriated in furtherance of Ordinance No. 3340 in 1993, whereby the first Four Million Seven Hundred Ninety Two Thousand (\$4,792,000) of development fees otherwise payable for development projects, initially outside the Media District, and later limited to the definition in Subsection (C), shall not be collected. Upon the depletion of the Economic Development Pool, all projects subject to the fee shall pay the required fee.~~

~~C.—NON-TRANSPORTATION FEE-ECONOMIC DEVELOPMENT CREDIT POOL FOR DEVELOPMENT PROJECTS LOCATED OUTSIDE OF THE MEDIA DISTRICT.~~

~~Due to the urgent need to encourage and stimulate new development to offset the loss of thousands of jobs since 1990, an Economic Development Credit Pool of One Million One Hundred Fifty Eight Thousand (\$1,158,000) was appropriated in furtherance of Ordinance No. 3340 in 1993, whereby the first One Million One Hundred Fifty Eight Thousand (\$1,158,000) of development fees otherwise payable for development projects, initially outside the Media District, and later limited to the definition in Subsection (C), shall not be collected, except for a partial credit allotted to the Parks Fee. As long as the economic pool is in existence, there shall be a partial parks fee imposed on all residential development of \$150.00/bedroom which is not covered by the credit pool. Upon the depletion of the Economic Development Pool, all projects subject to the fee shall pay the required fee.~~

~~D.—DEFINITION OF DEVELOPMENT PROJECT.~~

~~For purposes of this section, development projects eligible for the credit pool must meet all of the following criteria:~~

- ~~1.—Geographical limitation. Eligible projects are those located within any Redevelopment Project Area (except West Olive Project Area and except Airport-zoned property in the Golden State Project Area).~~
- ~~2.—Size limitations. The first 100,000 gross square feet of any commercial development project and the first 250,000 gross square feet of any industrial development project is the maximum size of an eligible development project.~~
- ~~3.—Separate Parcels. Only one (1) development project may exist on any one (1) parcel.~~
- ~~4.—No residential projects; exception. No residential projects, except Low and Moderate Income Housing projects meeting applicable state law requirements, may use the credit pool.~~

~~E.—APPEAL OF DETERMINATION OF ELIGIBILITY FOR CREDIT POOL.~~

~~Any decision about the eligibility of participating in the credit pool can be administratively appealed to the Community Development Director by submitting the~~

~~grounds in writing within five (5) days of the determination. Any further appeals can be pursued in accordance with Section 10-1-2213.~~

~~F. ADDITIONAL ELIGIBILITY DETERMINATION BY COUNCIL.~~

~~As to any development projects not otherwise eligible for the credit pool, the Council may determine that it is in the best interests of the City to permit certain other development projects to participate in the credit pool.”~~

9) Section 10-1-2218: Purpose, of the BMC, is amended and restated as follows:

“10-1-2218: PURPOSE:

A Transportation Improvement Fee is hereby imposed on new residential and non-residential development in the City of Burbank for the purpose of assuring that the transportation level of service goals of the City as set forth in the “Transportation Funding Strategy City of Burbank Development Impact Fee Nexus Summary” Study are met with respect to the additional demands placed on the transportation system by traffic generated from such development.”

10) Article 22, Division 2, Section 10-1-2219: Applicability, of the BMC, is amended and restated as follows:

“10-1-2219: BENEFIT AREA/RESIDENTIAL EXCLUDED APPLICABILITY:

This Transportation Improvement Fee shall be applicable to all new development in the City of Burbank, ~~except residential dwelling units.”~~

11) Section 10-1-2220: Transportation Improvement Fee Requirements and Amount, of the BMC, is amended and restated as follows:

“10-1-2220: TRANSPORTATION IMPROVEMENT FEE REQUIREMENTS AND AMOUNT:

All residential and non-residential development shall be required to pay a Transportation Improvement Fee in accordance with Section 10-1-2206. The Transportation Improvement Fee ~~by per gross floor area (hereafter “g.f.a.”) of land use and, where relevant, by location,~~ is hereby established to be as follows:

Land Use Type	Transportation Improvement Fee
RESIDENTIAL (City-Wide)	Not applicable
NON-RESIDENTIAL (City-Wide) Office	-
0 to 40,000 gfa	\$4.00
40,000 to 100,000 gfa	\$4.00

Land Use Type	Transportation Improvement Fee
100,000 to 500,000 gfa	\$4.00
over 500,000 gfa	\$3.27
Medical Office/gfa	\$4.00
Retail	-
0 to 26,000 gfa	\$4.00
26,000 to 40,000 gfa	\$4.00
40,000 to 250,000 gfa	\$4.00
over 250,000 gfa	\$4.00
Manufacturing/gfa	\$2.19
Warehouse/gfa	\$2.16
Institutional/gfa	\$4.00
Studio Uses	-
Office/gfa	\$3.42
Technical/gfa	\$2.28
Stage/gfa	\$1.14

<u>Land Use Type</u>	<u>Transportation Improvement Fee</u>
<u>RESIDENTIAL (Market-Rate Units)</u>	
<u>Single-Family (per new dwelling unit)</u>	<u>\$8,411</u>
<u>Multi-Family (per new dwelling unit)</u>	<u>\$3,490</u>
<u>RESIDENTIAL (Affordable Units)</u>	
<u>Single-Family (per new dwelling unit)</u>	<u>\$5,257</u>
<u>Multi-Family (per new dwelling unit)</u>	<u>\$2,181</u>

<u>Land Use Type</u>	<u>Transportation Improvement Fee</u>
<u>NON-RESIDENTIAL</u>	
<u>Office/Institutional (GFA, per square feet)</u>	<u>\$12.89</u>
<u>Retail (GFA, per square feet)</u>	<u>\$7.00</u>
<u>Warehouse/Industrial (GFA, per square feet)</u>	<u>\$3.04</u>

<u>Studio Uses (GFA, per square feet)</u>	<u>\$7.70</u>
<u>Lodging (per new rooms)</u>	<u>\$4,355</u>

Fees are subject to a 5% administration fee. (For automatic adjustment section, see Section 10-1-2207.)

Subsequent actions, including those increasing or amending this fee, may be by resolution.”

12)Section 10-1-2221: Calculation of Transportation Improvement Fee, of the BMC, is amended and restated as follows:

“10-1-2221: CALCULATION OF TRANSPORTATION IMPROVEMENT FEE:

The Building Official shall calculate the amount of the applicable Transportation Improvement Fee due at the time specified in Section 10-1-2206 based upon the applicable impact rate as specified herein.

The Building Official shall calculate the amount of the applicable Transportation Improvement Fee due for residential development by determining the number and type of new dwelling units in the proposed residential development project and multiplying the same by the applicable Transportation Fee amount.

The Building Official shall calculate the amount of the applicable Transportation Improvement Fee due for non-residential development by determining the gross floor area or number of new lodging rooms, type of use and location in a non-residential development, and multiplying the same by the Transportation Improvement Fee amount as established herein.

The Building Official shall be responsible for determining the use type of the proposed development. If the Building Official determines that a proposed development is not in one of the use classifications included in the fee resolution, or, if the applicant submits relevant information and documentation acceptable to the Building Official demonstrating that the proposed development is not in one of the use classifications included in the fee resolution or is a mixed use, the Building Official shall:

A. Determine whether the proposed development has trip generation characteristics similar to a listed use classification;

B. If so, that use classification shall be used in calculating the appropriate Transportation Improvement Fee;

C. If not, the Building Official shall identify the trip generation characteristics of the proposed development and, utilizing the ITE Trip Generation Manual, assign the proposed use to the most similar land use type listed in the manual.

D. If there is no similar land use types listed in the ITE Trip Generation Manual, the Building Official may request that the applicant perform, at his own expense, a trip

generation study or may utilize other statistically valid trip generation data applicable to the proposed use.”

13) Section 10-1-2223: Limitation on use of Funds Derived from Transportation Improvement Fees, of the BMC, is amended and restated as follows:

“10-1-2223: LIMITATION ON USE OF FUNDS DERIVED FROM TRANSPORTATION IMPROVEMENT FEES:

Funds derived from payment of Transportation Improvement Fees pursuant to this article shall be placed in the ~~S~~subfund and shall be used solely and exclusively for the purpose of funding transportation improvements and as identified in the “City of Burbank Development ~~Transportation Fees, Technical Report~~” (November, 1992). Impact Fee Nexus Study. These funds shall not be used for the provision of roadway or transit improvements relating to (i) the needs of existing City residents; (ii) the enhancement of transportation improvements to provide a higher level of service to existing development; (iii) operation and maintenance costs associated with roadway or transit improvements, (iv) repair and/or replacement of existing provision of transportation services, as contrasted with transportation improvements.”

14) Section 10-1-2224: Short Title, of the BMC, is amended and restated as follows:

“10-1-2224: SHORT TITLE:

This division shall be known as the Community Facilities - Non-Transportation Related Fee. This fee in turn is a combination of ~~four~~ (4) five (5) distinct subfees: parks and recreation, fire, police, information technology, and libraries. The fee imposed pursuant to this division shall be known collectively as the Non-Transportation Related Fee. The fee also may be referred to in part, by the specific ~~sub-fees~~ subfees, e.g. fire fee, police fee, library fee, information technology fee, and parks and recreation fee.”

15) Section 10-1-2225: Purpose, of the BMC, is amended and restated as follows:

“10-1-2225: PURPOSE:

A Community Facilities Non-Transportation Related Fee is ~~hereby~~ imposed on new residential and non-residential development in the City of Burbank for the purpose of assuring that the current level of service goals of the City as set forth in the “~~City of Burbank Community Facilities Study~~” (Dec., 1992). City of Burbank Development Impact Fee Report” (Dec., 1992). Nexus Study are met with respect to the additional demands placed on library ~~space~~; police and fire facilities; information technology, and parks and recreation ~~space~~ capital generated from such development.”

16)Section 10-1-2227: Community Facilities Non-Transportation Related Fee Requirements and Amount, of the BMC, is amended and restated as follows:

“10-1-2227: COMMUNITY FACILITIES NON-TRANSPORTATION RELATED FEE REQUIREMENTS AND AMOUNT:

All development shall be required to pay a Community Facilities Non-Transportation Fee in accordance with Section 10-1-2206. The Community Facilities Non-Transportation Fee per population increases by land use and, where relevant, by location, shall be as follows:

Land Use Type	Community Facilities Fee				
Non-residential (City-wide)	Total	Fire	Police	Library	Parks
Office	\$1.04	-.044	-.208	-.124	-.664
Retail	\$0.52	-.022	-.104	-.062	-.332
Industrial	\$0.486	-.021	-.097	-.058	-.310
Institutional	\$0.26	-.011	-.052	-.031	-.166
Residential (City-wide)	-	-	-	-	-
Single-Family	1,663*	37	181	583	862
Multiple-Family	1,231*	28	134	431	638
* Per Dwelling Unit	-	-	-	-	-

Land Use Type	Community Facilities Non-Transportation Related Fee					
	Total	Fire	Police	Library	Parks	Information Technology
Non-residential						
<u>Office/Institutional (per square feet)</u>	<u>\$4.85</u>	<u>\$0.37</u>	<u>\$0.36</u>	<u>\$1.07</u>	<u>\$2.62</u>	<u>\$0.42</u>
<u>Retail (per square feet)</u>	<u>\$2.94</u>	<u>\$0.22</u>	<u>\$0.22</u>	<u>\$0.65</u>	<u>\$1.59</u>	<u>\$0.26</u>
<u>Warehouse/Industrial (per square feet)</u>	<u>\$2.94</u>	<u>\$0.22</u>	<u>\$0.22</u>	<u>\$0.65</u>	<u>\$1.59</u>	<u>\$0.26</u>
<u>Studio (per square feet)</u>	<u>\$3.22</u>	<u>\$0.25</u>	<u>\$0.24</u>	<u>\$0.71</u>	<u>\$1.74</u>	<u>\$0.28</u>
<u>Lodging (per room)</u>	<u>\$554</u>	<u>\$42</u>	<u>\$42</u>	<u>\$122</u>	<u>\$299</u>	<u>\$49</u>
Residential (Market-Rate Units)						

<u>Land Use Type</u>	<u>Community Facilities Non-Transportation Related Fee</u>					
	<u>Total</u>	<u>Fire</u>	<u>Police</u>	<u>Library</u>	<u>Parks</u>	<u>Information Technology</u>
<u>Single-Family (per new dwelling unit)</u>	<u>\$4,811*</u>	<u>\$402</u>	<u>\$307</u>	<u>\$1,510</u>	<u>\$2,229</u>	<u>\$363</u>
<u>Multiple-Family (per new dwelling unit)</u>	<u>\$3,779*</u>	<u>\$315</u>	<u>\$242</u>	<u>\$1,186</u>	<u>\$1,751</u>	<u>\$285</u>
<u>Residential (Affordable Units)</u>						
<u>Single-Family (per new dwelling unit)</u>	<u>\$3,007</u>	<u>\$251</u>	<u>\$192</u>	<u>\$944</u>	<u>\$1,393</u>	<u>\$227</u>
<u>Multiple-Family (per new dwelling unit)</u>	<u>\$2,362</u>	<u>\$197</u>	<u>\$151</u>	<u>\$742</u>	<u>\$1,095</u>	<u>\$178</u>

Fees are subject to a 5% administration fee. (For automatic adjustment section, see Section 10-1-2207.)

Subsequent actions, including those increasing or amending this fee, may be by resolution.

17) Section 10-1-2229: Establishment of Community Facilities Non-Transportation Fee Accounts, of the BMC, is amended and restated as follows:

“10-1-2229: ESTABLISHMENT OF COMMUNITY FACILITIES NON-TRANSPORTATION FEE ACCOUNTS:

The City hereby establishes a segregated Community Facilities Non-Transportation Fee Subfund (hereafter “Subfund”) to which all Non-Transportation Improvement Fees collected by the Building Official shall in turn be divided into ~~four (4)~~ five (5) separate accounts (hereafter “Fire Subfund;”, “Parks Subfund;”, “Police Subfund;”, “Information Technology Subfund”; and “Library Subfund”). The Non-Transportation Fees shall be divided into the ~~four (4)~~ five (5) separate accounts in the manner set forth in Section 10-1-2227. All fees collected shall be deposited in accordance with this section and in accordance with Section 10-1-2208.”

18) Section 10-1-2230: Limitation on Use of Funds Derived from Community Facilities-Non-Transportation Improvement Fees, of the BMC, is amended and restated as follows:

“10-1-2230: LIMITATION ON USE OF FUNDS DERIVED FROM COMMUNITY FACILITIES-NON-TRANSPORTATION IMPROVEMENT FEES:

Funds derived from payment of Community Facilities Non-Transportation Fees pursuant to this article shall be placed in the ~~four (4) separate~~ separately identified accounts. ~~The~~

~~Fire Subfund shall be and used solely and exclusively for the purpose of funding fire station and improvements and as identified in the "City of Burbank Community Facilities Study" (Dec., 1992)/"City of Burbank Development Impact Fee Report" (Dec., 1992). The Police Subfund shall be used solely and exclusively for the purpose of funding police station improvements and as identified in the "City of Burbank Community Facilities Study" (Dec., 1992)/"City of Burbank Development Impact Fee Report" (Dec., 1992). The Library Subfund shall be used solely and exclusively for the purpose of funding library space and improvements and as identified in the "City of Burbank Community Facilities Study" (Dec., 1992)/"City of Burbank Development Impact Fee Report" (Dec., 1992). The Park Subfund shall be used solely and exclusively for the purpose of funding park space and improvements and as identified in the "City of Burbank Community Facilities Study" (Dec., 1992) "City of Burbank Development Impact Fee Report" (Dec., 1992). Nexus Study."~~

2. The City of Burbank Development Impact Fee Nexus Study and supporting City Burbank Development Impact Fee Capital Improvement Plan are approved and adopted.

3. If any provision of this Ordinance or its application is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions, sections, or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end each phrase, section, sentence, or word is declared to be severable.

This Ordinance shall become effective at 12:01 a.m. on the 31st day from and after the date of adoption; however, the fees implemented by the Ordinance will be effective at 12:01 a.m. on the sixtieth (60th) day after the date of adoption.

PASSED AND ADOPTED this ____ day of _____, 2022.

Jess A. Talamantes
Mayor

Attest:

Approved as to Form:
Office of the City Attorney

Zizette Mullins, MMC, City Clerk

By: _____
Kane Thuyen
Senior Assistant City Attorney

,

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF BURBANK)

I, Zizette Mullins, MMC, City Clerk of the City of Burbank, do hereby certify that the foregoing Ordinance No. _____ was duly and regularly passed and adopted by the Council of the City of Burbank at its regular meeting held on the ____ day of _____, 2022, by the following vote:

AYES:

NOES:

ABSENT:

I further certify that said Synopsis was published as required by law in a newspaper of general circulation in the City of Burbank, California on the ____ day of _____, 2022.

Zizette Mullins, MMC, City Clerk