Attachment 1

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF MOUNTAIN VIEW
ADDING CHAPTER 47 TO THE MOUNTAIN VIEW CITY CODE
REGARDING PRECISE PLAN DEVELOPMENT IMPACT FEES AND
THE EAST WHISMAN PRECISE PLAN DEVELOPMENT IMPACT FEE

THE CITY COUNCIL OF THE CITY OF MOUNTAIN VIEW DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Council Findings.

a. On November 5, 2019, the City Council adopted the East Whisman Precise Plan ("Precise Plan"), which allows new residential land use and expanded commercial land use, open spaces, and multi-modal connectivity in the East Whisman Area ("East Whisman").

b. The Precise Plan identifies key public improvements needed in East Whisman to serve projected development in the area.

c. The Precise Plan includes a Funding Strategy that details how new public improvements in East Whisman could be funded to serve new development in the area.

d. The Funding Strategy identified the need for development fees as a key element to fund public improvements needed to serve new development in the Precise Plan area.

e. Prior to the approval of this Ordinance, the City Council by Resolution No. 18669 adopted a nexus study prepared by Willdan Financial Services, entitled "East Whisman Precise Plan Development Impact Fee Nexus Study" and dated May 10, 2022 ("Nexus Study"), which was placed on file and made available for public inspection on the City website on April 22, 2022, and is incorporated herein by reference.

f. The Nexus Study describes: (i) an East Whisman Transportation Facilities Impact Fee; (ii) an East Whisman Potable Water Facilities Impact Fee; (iii) an East Whisman Sewer Facilities Impact Fee; and (iv) an East Whisman Recycled Water Facilities Impact Fee (collectively herein, the "Fees" and sometimes referred to together as the "East Whisman Precise Plan Development Impact Fee").

g. The Nexus Study demonstrates that each of the Fees meets the requirements of the Mitigation Fee Act (Section 66000 *et seq.* of the California Government Code) and applicable law.

h. The Nexus Study includes data indicating the amount of cost, or the estimated cost, required to provide public facilities and the revenue sources anticipated to fund those public facilities, including General Fund revenues.

i. At its May 24, 2022 Regular Meeting, the City Council held a public hearing on the imposition of the fees set forth in the Nexus Study and related matters (the "Public Hearing").

j. At least 30 days prior to the date this Ordinance was heard, notice of the filing of the Nexus Study and of the Public Hearing was provided to any persons or organizations who had requested such notice pursuant to Sections 66016.5 or 66019 of the Government Code or other applicable law.

k. Notice of the Public Hearing was published twice in a newspaper of general circulation, in the manner set forth in Government Code Section 6062a as required by Government Code Section 66018.

l. The City Council has received and considered the Nexus Study, the Council report, and any and all public comments, oral and written, received prior to or during Public Hearing.

m. The City Council finds that the findings set forth in Section 8 of the Nexus Study are true and correct with respect to the fees described in the Nexus Study.

Section 2. Chapter 47 is hereby added to the Mountain View City Code to read as follows:

"**CHAPTER 47**
IMPACT FEES IN PRECISE PLAN AREAS

ARTICLE 1.
GENERAL PROVISIONS

SEC. 47.1. - Short title.

This Article may be referred to as the City of Mountain View Precise Plan Impact Fee Administration Ordinance.

SEC. 47.2. - Application.

a. The provisions of this Article 1 apply to any fee imposed by any article of this Chapter 47, unless such article specifically provides that the provisions of this Article 1 do not apply to said fee.

b. In the event the article imposing a fee contains provisions that directly contradict a provision of this Article 1, such contradictory language in the article imposing the fee shall govern.

SEC. 47.3. - Definitions.

The following terms shall have the following meanings:

a. **Developer.** The owner of land that is to be developed as part of a development project.

b. **Development project or project.** A construction or reconstruction project that requires a zoning permit or building permit under this code.

c. **Dwelling units.** Defined as in Chapter 36.

d. **Existing land use.** A site's legally existing improvements, uses and characteristics (such as gross floor area, dwelling units, and hotel or motel rooms) at the time of submission of a complete and adequate application for a zoning permit (or for a building permit if no zoning permit is required). A site's legally existing improvements, use and characteristics include legally existing improvements, uses and characteristics that were demolished not more than one (1) year prior to the filing of the applicable complete and adequate application and have not yet been replaced.

e. **Fee.** Any fee to which the provisions of this Article 1 apply pursuant to Sec. 47.2(a) of this Article. For purposes of this Chapter, each fee for which a separate fund is established shall be considered a separate fee; for example, if an article creates a transportation impact fee for a precise plan area, and also creates a sewer impact fee for that same precise plan area, the transportation impact fee and the sewer impact fee shall be considered separate fees.

f. **Gross floor area.** Defined as in Chapter 36.

g. **Public facilities or facilities.** Shall have the meaning set forth in Section 66000(d) of the California Government Code.

h. **Public improvement or improvement.** Any physical improvement or land needed for a public purpose, including, for example, streets, intersections, sidewalks, bikeways, pedestrian and bicycle bridges, transit stops, potable and recycled water pipes, sewer pipes, storage tanks, pumps and other equipment. The cost of an "improvement" also includes the architectural, administrative, engineering, legal, planning, environmental and other costs required in connection with the construction, acquisition or improvement of the improvement.

i. **Zoning permit.** Any of the discretionary permits included in Chapter 36.

SEC. 47.4. - Interaction with other fees, requirements and exactions.

Except as specifically provided in this code, payment of any fee shall not be interpreted to exempt any developer or other person from any requirement otherwise imposed upon that

person by or pursuant to this code or other applicable law. For example, the fees do not replace other subdivision map exactions or other measures required to mitigate site-specific impacts of a development project, including, but not limited to, mitigations pursuant to the California Environmental Quality Act (CEQA); regulatory and processing fees; fees required pursuant to a development agreement; citywide impact fees; community benefits; funds collected pursuant to a reimbursement agreement that exceed the developer's share of public improvement costs; or assessment district proceedings, benefit assessments, or taxes. Similarly, the fees are not intended to replace or limit requirements to provide mitigation of impacts not mitigated by the fee and created by a specific project; or requirements imposed upon development projects as part of the development review process; or site-related improvements, including, but not limited to, required dedications in fee or easement, utility work, or improvements necessary to serve the site; or community benefits.

SEC. 47.5. - Payment.

a. Except as otherwise provided in this Section, each fee shall be paid prior to the issuance of a building permit for the development project. The city shall not issue a building permit for a development project unless the fees have been paid. If no building permit is required, the fee shall be paid before a conversion of use of an existing building may take place.

b. The fees for a development project shall be calculated at the time of payment based on the rate then in effect, unless the use of a lower rate has vested for the project under applicable law.

c. If applicable state law does not permit the city to require payment of the fees for a development project on the schedule set forth in subsection a of this Section, then the fees for that development project shall be paid on the earliest possible schedule that the city is permitted to require such payment under state law. If payment is to be delayed pursuant to this subsection (c), the city shall not issue a building permit to the developer until: (1) the developer and the city enter into a contract for delayed payment as authorized by Section 66007(c) of the California Government Code; (2) such contract is recorded in the manner set forth in that section; and (3) unless the developer is specifically exempt from such requirement under state law, the developer posts a performance bond or a letter of credit from a federally insured, recognized depository institution to guarantee payment of the fees.

SEC. 47.6. - Credit for redevelopment.

Where the development project involves the replacement of an existing land use, the developer shall be entitled to a credit against each fee. A separate credit shall be calculated for each fee to which this Section applies. Each credit shall be equal to the fee that would be charged for the development of the existing land use to be replaced, calculated at the rate in effect at the time of payment, unless the use of a lower rate has vested for the project under applicable law. In no event shall: (i) the amount of the credit reduce a fee for the development project below zero dollars; (ii) a credit for one (1) development project be applied against a different

development project; or (iii) a credit for one (1) fee (for example, a precise plan transportation improvements fee) be applied against another fee (for example, a precise plan sewer improvements fee) charged to the same development project, even if both fees are imposed pursuant to the same article of this chapter. All development projects that are a part of a single master plan approved by the city council shall be treated as a single-development project for purposes of the previous sentence. For reference, master plan, as used in this Section, is intended to mean a plan, designated a master plan by the city council, that is subordinate to a precise plan and is adopted prior to, or concurrent with, the issuance of zoning permits for the purpose of achieving key precise plan objectives, such as creating new publicly accessible streets, while allowing projects flexibility and an administrative process focusing on key development objectives.

SEC. 47.7. - Improvement agreement.

a. The city may, but is not required to, enter into an improvement agreement with a developer pursuant to which the developer will construct, pursuant to city standards and requirements, one (1) or more public improvements that would otherwise be eligible for funding with the proceeds of a fee, and receive a fee credit as described in this Section.

b. The credit amount shall be the engineering and construction costs that would be reasonably incurred by the city in building the public improvement and shall not exceed the amount set forth in the improvement agreement.

c. The credit will be available to the developer upon execution of a binding improvement agreement.

d. The credit may be applied only to the fee that would otherwise be eligible to fund the public improvement. For example, a credit awarded for construction of a transportation facility serving a precise plan area may be applied only against the transportation facilities impact fee for that precise plan area.

e. The improvement agreement must be approved by the city manager and may include any additional terms as the city manager finds to be necessary or useful.

SEC. 47.8. - Appeals.

Appeals of fee conditions made by the zoning administrator shall be filed in accordance with Sec. 36.56. The city council shall hold a public hearing to consider any appeals in accordance with the procedures of Sec. 36.56.

SEC. 47.9. - Refund of fee.

If a building permit or use permit expires, is canceled or is voided and any fees paid pursuant to this Chapter have not been expended, no construction has taken place and the use has never

occupied the site, the public works director may, upon the written request of the applicant, order return of the fee, less administrative costs.

SEC. 47.10. - Regulations.

The public works director may promulgate such interpretive regulations for the application of this Chapter as the public works director finds necessary or useful.

SEC. 47.11. - Environmental review.

Prior to the approval of any improvement to be funded with fees pursuant to this Chapter, all necessary environmental review required by the California Environmental Quality Act (CEQA) shall be completed. Adoption of these fees in no way limits the city's discretion in completing environmental review of the planned improvements. The planned improvements may be modified to provide for the use of additional federal, state and local funds; to account for unexpected revenues, whether greater or lesser; to modify, add or delete a project or program from city plans, consistent with the Mitigation Fee Act; to maintain consistency with the city's general plan; or to take into consideration unforeseen circumstances, including, without limitation, circumstances that may come to light as a result of subsequent CEQA environmental review.

ARTICLE 2.
EAST WHISMAN PRECISE PLAN DEVELOPMENT IMPACT FEE

SEC. 47.12. - Authority.

This Article is enacted pursuant to the Mitigation Fee Act (Government Code Section 66000 *et seq.*) and the charter city authority provided by the Constitution of the State of California.

SEC. 47.13. - Intent and purpose.

a. The purpose of this Article is to impose fees upon development projects in the East Whisman Precise Plan Area that fully or partially offset the costs of public transportation, potable water, sewer and recycled water facilities within or serving the East Whisman Precise Plan Area that are needed to serve demand created by that development project. The amount of fees will not include the costs attributable to demand generated by existing development or the costs attributable to existing deficiencies in public facilities.

b. The fees imposed by this Article do not replace the need for all site-specific improvements that may be needed to mitigate the impact of specific projects upon the city's infrastructure.

c. The types of improvements for which the fees imposed by this article can be used are identified in the East Whisman Precise Plan Development Impact Fee Nexus Study and the city's Capital Improvement Program, as each has been adopted and may be amended from time to time. The improvements funded by the fees imposed by this Article are not duplicative of the improvements funded from other citywide impact mitigation fees charged upon new development. For example, while property may be subject to both the transportation impact fee imposed by this Article and a citywide transportation impact fee, the transportation impact fee imposed by this Article will fund improvements of a more local nature that are generally designed to facilitate trips that begin or end within the East Whisman Precise Plan Area and connect with the citywide system of improvements that is funded by the citywide impact fee.

SEC. 47.14. - Definitions.

In addition to the definitions set forth in Sec. 47.3 of this Chapter, the following terms shall have the following meanings in this Article:

a. **EWPP area.** The territory of the City of Mountain View that is subject to the East Whisman Precise Plan.

b. **EWPP Nexus Study.** The nexus study approved by the city council for the fees imposed by this Article, including such amendments to such study that may be subsequently adopted.

SEC. 47.15. - Fee Imposed.

Except as otherwise provided in this Article, the following fees are hereby imposed upon the developer of each development project in the EWPP area as a condition of development:

East Whisman Transportation Facilities Impact Fee
East Whisman Potable Water Facilities Impact Fee
East Whisman Sewer Facilities Impact Fee
East Whisman Recycled Water Facilities Impact Fee

SEC. 47.16. - Rate.

a. The rate of each fee shall be set by the city council by ordinance or resolution. At the time it sets a rate, the city council shall make each of the findings required by Section 66001(a) of the California Government Code.

b. The rate may be adjusted as part of the city's annual budget process by the percentage change in the San Francisco Engineering News-Record Construction Cost Index (ENR-CCI) for the previous year or successor or subsequently identified index.

SEC. 47.17. - Funds.

a. The following accounts or funds shall be established:

East Whisman Transportation Facilities Impact Fee Fund
East Whisman Potable Water Facilities Impact Fee Fund
East Whisman Sewer Facilities Impact Fee Fund
East Whisman Recycled Water Facilities Impact Fee

b. When the city receives payment of a fee pursuant to this Article, that payment shall be deposited in the appropriate account or fund established pursuant to this Section in a manner that avoids any commingling of the fees with other revenues and funds of the city, except for temporary investments.

c. Any interest income earned by moneys in an account or fund established pursuant to this Section shall also be deposited in that account or fund.

d. Moneys in the East Whisman Transportation Facilities Impact Fee Fund shall be expended by the city only for local transportation facilities serving the EWPP area, as described in the EWPP Nexus Study.

e. Moneys in the East Whisman Potable Water Facilities Impact Fee Fund shall be expended by the city only for potable water facilities serving the EWPP area, as described in the EWPP Nexus Study.

f. Moneys in the East Whisman Sewer Facilities Impact Fee Fund shall be expended by the city only for sewer facilities serving the EWPP area, as described in the EWPP Nexus Study.

g. Moneys in the East Whisman Recycled Water Facilities Impact Fee shall be expended by the city only for recycled water facilities serving the EWPP area, as described in the EWPP Nexus Study.

h. In addition to the uses set forth in this Section, moneys in the funds created by this Section may be used to fund costs associated with the administration of this Article, including any activity required to establish or set the rates of any fee established by this Article.

SEC. 47.18. - Administration.

The provisions of Article 1 of this Chapter 47 shall apply to any fee imposed by this Article, except to the extent such provision is inconsistent with a provision of this Article.

SEC. 47.19. - Exemptions.

The following are exempt from any fee imposed by this Article:

a. **Government and nonprofit facilities.** Public park facilities and buildings which are owned and at least seventy-five (75) percent occupied by governmental or nonprofit agencies and organizations.

b. **Affordable housing.** Because affordable housing is an important community need, the affordable housing units included in new development projects shall not be included in the total number of dwelling units used to calculate the fee. This exemption shall not include affordable housing units in otherwise market-rate developments, provided pursuant to density bonus law (under state law and as set forth in Chapter 36, Article IV, Division 11 of the city code).

c. **Neighborhood Commercial**. Neighborhood Commercial Uses, as defined in the East Whisman Precise Plan, and which may include retail, restaurants, recreation, personal services and similar neighborhood-serving commercial uses. This exemption shall only apply to properties with recorded agreements to identify use of the space for qualified businesses or uses, pursuant to the Precise Plan.

d. Accessory dwelling units, as defined in Chapter 36.

e. Temporary uses, as defined in Chapter 36.

f. Parking structures.

g. Residential additions where no new dwelling units are created.

h. Interior remodels and tenant improvements where no new dwelling units, hotel or motel rooms, or non-residential gross square footage are created and where no change of use is occurring.

i. Repair or replacement of a structure, where no new dwelling units, hotel or motel rooms, or non-residential gross square footage are created and where no change of use is occurring."

Section 3. Effective Date. The provisions of this Ordinance shall be effective thirty (30) days following the adoption of this Ordinance. However, no fee imposed by this Ordinance shall be effective prior to the later of: (i) sixty (60) days from the date of its adoption; or (ii) the effective date of the first resolution or ordinance setting the rates of any of the fees established herein.

Section 4. Previously Approved Development Projects. No fee imposed by this Ordinance shall apply to a development project that has received zoning permit approval prior to the

introduction of this Ordinance and that zoning permit remains in effect at the time that the fee would be due and payable under this this Ordinance, except for projects that have agreed to pay the fee as a term of an executed Development Agreement (DA), which shall pay the fee in accordance with the terms of the DA.

Section 5. Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the other remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

Section 6. Publication. Pursuant to Section 522 of the Mountain View City Charter, it is ordered that copies of the foregoing proposed ordinance be posted at least two (2) days prior to its adoption in three (3) prominent places in the City and that a single publication be made to the official newspaper of the City of a notice setting forth the title of this Ordinance, the date of its introduction, and a list of the places where copies of the proposed ordinance are posted.

Section 7. CEQA. This Ordinance is not subject to the California Environmental Quality Act ("CEQA") in that, pursuant to Section 15378(b)(4) of the CEQA Guidelines, the creation of government funding mechanisms which do not involve any commitment to any specific project which may cause a significant effect on the environment is not identified as a "project" under CEQA.

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