

ORDINANCE NO.

AN ORDINANCE ADDING CHAPTER 43 TO THE MOUNTAIN VIEW CITY CODE
TO ENACT A TRANSPORTATION IMPACT FEE ON CITYWIDE DEVELOPMENT

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

Section 1. Chapter 43 is hereby added to the Mountain View City Code, to read as follows:

“CHAPTER 43

CITYWIDE TRANSPORTATION IMPACT FEE

SEC. 43.1. Authority.

This chapter is enacted pursuant to Government Code Sec. 66000 through 66008 and the charter city authority provided by the Constitution of the State of California.

SEC. 43.2. Application.

This chapter applies to fees charged as a condition of development approval to defray the cost of certain transportation improvements required to serve new development within the City of Mountain View. This chapter does 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; 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.

SEC. 43.3. Intent and purpose.

a. Adequate transportation infrastructure is needed to protect the health, safety, and general welfare of the citizens to facilitate access to jobs, homes, schools, goods, and services; and to promote economic well-being within the city. Transportation improvements are provided for residents, businesses, and employees within the city. Individual transportation improvements are part of an integrated transportation system serving and providing benefits to the entire city. New development within the city will

create an additional burden on the existing street system. The Santa Clara County Congestion Management Program sets performance standards for arterial and regional streets, and sets requirements for multimodal improvements that are required to offset impacts to those streets. The city is required to comply with the Congestion Management Program, which is operated by the Santa Clara Valley Transportation Authority. Improvements to the existing multimodal transportation system in the city are needed both to mitigate the cumulative impacts of new development and to accommodate future development by maintaining the appropriate level of service on streets and intersections, or providing offsetting transit, pedestrian, and bicycle improvements to meet Congestion Management Program requirements.

b. All types of development require and use the multimodal transportation system. There are not adequate public funds available to maintain designated levels of service at all intersections in the city, or to provide all multimodal improvements required under the Congestion Management Program. In order to ensure compliance with the Congestion Management Program, and to promote the health, safety, and general welfare of the community, it is necessary that new development pay a fee representing a fair and equitable share of improvement costs. The transportation impact fee is based upon the evidence that new development generates additional residents, employees, and structures which, in turn, place an additional cumulative burden upon the local transportation system and should be expected to pay a share of the new infrastructure improvements.

c. The purpose of this fee is to help provide adequate transportation-related improvements to serve cumulative development within the city, and to maintain compliance with the Congestion Management Program. However, the fee does not replace the need for all site-specific transportation improvements that may be needed to mitigate the impact of specific projects upon the city's transportation system. The transportation improvements for which the fee will be used are identified in the city's capital improvement program (CIP) and/or in the most recently approved transportation impact fee nexus study.

SEC. 43.4. Definitions.

The following terms shall have the following meanings:

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

b. **Existing land use.** A site's legally existing gross floor area, dwelling units, lodging rooms and uses at the time of application for a zoning permit, or building permit if no zoning permit is required, or a site's legally existing gross floor area, dwelling units, lodging rooms, and uses that were demolished not more than one (1)

year prior to the filing of the application for a zoning permit, or building permit if no zoning permit is required.

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

d. **Low trip-generating use.** A use that generates fewer than 25 percent of the trips assumed for similar uses in the transportation impact fee nexus study, according to trip generation rates contained in the most current edition of the Institute of Transportation Engineers (ITE) Trip Generation Manual.

e. **Transportation improvement.** Any physical infrastructure or land necessary for public access and mobility, including, for example, streets, intersections, sidewalks, bikeways, pedestrian and bicycle bridges, transit stops, and equipment. "Transportation improvement" also includes the architectural, administrative, engineering, legal, planning, environmental and other services required in connection with the implementation of such infrastructure.

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

SEC. 43.5. Fee requirement.

a. **General.** A citywide transportation impact fee is hereby imposed on traffic-generating development meeting the requirements of this section. The amount of the fee shall be established periodically by resolution of the city council and 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. The fee shall be based on the percentage of the cost of the new transportation improvements attributable to new development as determined in a transportation impact fee nexus study, which is incorporated in this chapter by this reference.

b. **Use-based fees.** Projects shall pay the fee based on land use categories established in the transportation impact fee nexus study, except as provided in this section. The zoning administrator or city council shall have authority to render final determinations regarding the appropriate classification of land use and the correct calculation of gross building floor area, number of lodging rooms, and/or number of dwelling units for a particular development project based on similarity of use and peak-hour trip characteristics of the use.

1. **Residential (single-family and multi-family).** Fee shall be charged for each new dwelling unit.

2. **Hotels and motels.** Fee shall be charged for each new rentable room, suite, or unit. Accessory commercial uses, such as restaurants, shall be charged a fee on a per-square-foot basis for all new gross floor area.

3. **Commercial, office, R&D, industrial.** Fee shall be charged on a per-square-foot basis for all new gross floor area, including additions where floor area is increased. Fee shall also be charged on a per-square-foot basis for changes of use.

4. **Low trip-generating uses.** Through a zoning permit, the zoning administrator or city council shall have the authority to approve a transportation impact fee for low trip-generating uses charged on a per-trip basis. To use this section, the building shall be designed and built such that it cannot be converted to a use capable of generating a larger number of trips except by major reconstruction. The burden of proof shall be on the applicant. If a reduced fee is granted, a "Notice of Conditional Reduction of Transportation Impact Fee" shall be recorded in the Santa Clara County Office of the Recorder. If a subsequent change in the use or structure of the building occurs which may generate additional trips, the reduction granted herein shall be deemed revoked, subject to a hearing before the zoning administrator.

5. **Existing land uses.** Credit shall be given for existing land uses being replaced or demolished. Calculation of the credit shall be based on the use categories in this section. When the existing land use is a low trip-generating use, the credit shall be granted on a per-trip basis.

c. **Fee calculation and payment.** Transportation impact fees shall be calculated at the time of payment. Transportation impact fees shall be paid in full to the city before any building permit is issued or subdivision map is recorded. If no building permit is required, the fee shall be paid before a conversion of use of an existing building may take place.

SEC. 43.6. Authority for additional requirements.

Fees collected pursuant to this chapter are not intended to replace or limit requirements to provide mitigation of traffic 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 transportation improvements necessary to serve the site; or community benefits.

SEC. 43.7. Alternatives to fee.

a. **Authority.** Through a zoning permit, the zoning administrator or city council shall have the authority to approve a transportation improvement in lieu of paying the impact fee, under either of the following conditions:

1. The transportation improvement is included in the transportation impact fee nexus study, and the zoning permit application demonstrates to the satisfaction of the public works director that the cost to provide the transportation improvement is equal to or greater than the otherwise required transportation impact fee.

2. If the transportation improvement is not included in the nexus study, the transportation improvement shall, to the satisfaction of the public works director and the Valley Transportation Authority, satisfy the city's obligations under the Santa Clara County Congestion Management Program to an equal to or greater extent than the otherwise required transportation impact fee. Consideration should include both the cost of the transportation improvement and the improvement's benefit to the city's transportation system.

b. Prior to the issuance of building permit or recordation of a subdivision map, the applicant shall enter into an agreement with the City of Mountain View whereby in consideration of the approval of the application, the applicant agrees to furnish all necessary equipment and materials and to complete such work within the time specified within such agreement. The said agreement may, at the option of the city, be recorded.

SEC. 43.8. Exemptions and reductions.

a. The following are exempt from the fee:

1. **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.

2. **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 transportation impact 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).

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

4. Temporary uses, as defined in Chapter 36.
5. Because they are not the final origin or destination of trips, parking structures are exempt from the fee.
6. Residential additions where no new units are created.
7. Interior remodels and tenant improvements where no new dwelling units, lodging rooms or gross square footage are created, and where no change of use is occurring.
8. Repair or replacement of a structure, where no new dwelling units, lodging rooms or gross square footage are created, and where no change of use is occurring.
9. **Grandfathered projects.** Development projects for which a zoning permit application was submitted on or before July 1, 2018. This exemption shall expire for all projects that are not issued a building permit by January 1, 2021.

b. Reductions pursuant to Government Code Sec. 66005.1. To receive fee reductions pursuant to Government Code Sec. 66005.1, the zoning permit application shall show consistency with all required project characteristics. The fee reductions shall be based on a transportation impact analysis or alternative analysis as determined by the zoning administrator. The city may deny the reduction request if it adopts findings after a public hearing establishing that the housing development, even with the required characteristics, would not generate fewer automobile trips than a housing development without those characteristics.

SEC. 43.9. Appeals.

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

SEC. 43.10. Accumulation and use of funds.

a. **Citywide transportation impact fee fund.** A new fund shall be created, the citywide transportation impact fee fund, and all transportation impact fees collected under this chapter shall be deposited into this fund. The use of the fees shall be designated solely for transportation improvements. To allow for the fees to be collected at time of building permit, which is earlier than the date of the final inspection or when certificate of occupancy is issued, in accordance with Government Code Sec. 66007(b),

fees shall be deposited in the established fund and the funds shall be appropriated for improvements for which a proposed construction schedule or plan has been adopted.

b. **Use of funds.** The fees and interest earned on accumulated funds shall be used only to:

1. Complete the transportation improvement projects specified in the capital improvement program or to reimburse the city for such construction if funds were advanced by the city from other sources; or

2. Reimburse developers, pursuant to a reimbursement agreement, who have been required or permitted to install improvements pursuant to Sec. 43.7; or

3. Reimburse costs required for the administration of this chapter.

SEC. 43.11. Refund of fee.

a. 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. 43.12. Review.

The fee authorized by this chapter, implementing council resolutions and supporting documentation, including the transportation impact fee nexus study, may be reviewed periodically in order to make any findings required by state law.”

Section 2. Effective Date. The provisions of this ordinance shall be effective sixty (60) days from and after the date of its adoption.

Section 3. 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 4. 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 the ordinance, the date of its introduction, and a list of the places where copies of the proposed ordinance are posted.

Section 5. 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.

EA/7/ORD
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