

## **ORDINANCE NO. 17-20**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ORANGE AMENDING CHAPTER 15.41 OF THE ORANGE MUNICIPAL CODE TO UPDATE THE PROGRAM AREAS SUBJECT TO TRANSPORTATION SYSTEMS IMPROVEMENT PROGRAM FEES, AND MODIFY THE YEARLY ADJUSTMENT METHOD FOR TRANSPORTATION SYSTEMS IMPROVEMENT PROGRAM FEES.**

#### **APPLICANT: CITY OF ORANGE**

**WHEREAS**, the Mitigation Fee Act requires that Transportation Systems Improvement Program (“TSIP”) fees assessed on new development projects in the City are proportionate to the burden on the transportation facilities and infrastructure necessary to serve them and bear a rational relationship to the reasonable cost of providing transportation services occasioned by the new development; and

**WHEREAS**, the TSIP fee Program Areas were last updated in 1988 by Ordinance No. 17-88, and the TSIP fees were last updated in 2008 by City Council Resolution No. 10284; and

**WHEREAS**, the City commissioned a comprehensive study of its development impact fees for transportation facilities that evaluated the impact on transportation services by all types and locations of development and established the level of fees reasonably needed to provide transportation facilities and infrastructure as required by new development; and

**WHEREAS**, improvements to transportation services and facilities outside of the Program Areas formerly designated as “A,” “B” and “C” will provide City-wide benefits including benefits to the area from which the TSIP fees were collected.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ORANGE DOES HEREBY ORDAIN AS FOLLOWS:**

#### **SECTION I:**

Chapter 15.41, “Transportation Systems Improvement Program,” of the Orange Municipal Code is hereby deleted in its entirety and replaced with new Chapter 15.41 to read as follows:

#### **Chapter 15.41 - TRANSPORTATION SYSTEMS IMPROVEMENT PROGRAM**

##### **15.41.010 - Findings and Purpose.**

The City Council of the City of Orange finds and declares that all recitals set forth in the preamble of the ordinance codified in this chapter are true and such recitals are incorporated in

this chapter and set forth as findings of the City Council; and the City Council does further find and declare as follows:

- A. The State of California, through the enactment of Section 66000 et seq. of the Government Code of the State of California, also known as the Mitigation Fee Act, has determined the nexus that must be established in the enactment of development impact fees.
- B. The imposition of development impact fees is one of the preferred methods of ensuring that development bears a proportionate share of the cost of public facilities and services necessary to accommodate such development. This must be done in order to promote and protect the public health, safety and welfare.
- C. This chapter recognizes that new development projects within the City will result in additional growth and that such growth will place additional burdens on transportation facilities, infrastructure and services, necessitating the acquisition of land and construction of transportation facilities and expansion of services and infrastructure in order to meet and accommodate new development projects.
- D. New development projects should bear a proportionate financial burden in the construction and improvement of transportation facilities necessary to serve them.
- E. The cost of providing transportation facilities occasioned by new development projects exceeds the revenue generated by fees exacted from the development projects.
- F. In adopting fees authorized by this chapter, the City shall establish the fees based upon the costs generated through the need for new transportation facilities and other capital acquisition costs required, incrementally, by new development.
- G. The fees established by this chapter shall not exceed the reasonable cost of providing transportation facilities occasioned by new development projects.
- H. The fees established by this chapter shall bear a rational relationship to the reasonable cost of providing transportation facilities occasioned by new development projects.
- I. The fees established by this chapter are consistent with the goals and objectives of the City's general plan and are designed to mitigate the impacts caused by new development throughout the City. Development impact fees are necessary in order to help finance the required transportation facilities and to pay for new development's fair share of the costs.
- J. Imposition of fees to finance transportation facilities required by new development is necessary in order to avoid adversely impacting existing transportation facilities and services.

#### **15.41.020 – Transportation Systems Improvement Program (TSIP) Fee.**

- A. The City Council shall, by resolution, set forth the specific amount of the TSIP fee, which fee shall include an amount to recover the cost of preparation of the study and administrative overhead costs, to be set as a percentage of the TSIP fees which are collected pursuant to this chapter.
  - 1. The amount of the fee shall not exceed the maximum amount established by a transportation nexus analysis. The amount of the fee is based on the projected net increase in vehicle miles traveled (VMT) determined as the product of daily trip-ends generated by each land use category and an average trip length. In this ordinance, the terms “trip” and “trip-end” are used to capture this relationship.
- B. The TSIP fee required by this chapter shall be due upon the following:
  - 1. All Nonresidential Development. Upon the issuance of a building permit.
  - 2. Residential Development. On the date of final inspection or certificate of occupancy for each unit, whichever occurs first. The rate at which the fee shall be charged for residential development shall be based upon the rate that was in place at the time a building permit was issued for each unit.
    - a. “Residential development” means any project undertaken for the purpose of developing real property with one or more dwelling units, including a subdivision, apartment houses, dormitory-style housing, fraternity and sorority houses, room and board facilities, mobile homes, manufactured housing or structures, and structures moved into the City.
    - b. “Dormitory-style housing” means student housing facilities for individual or group accommodation owned or operated, or authorized to be acquired, constructed, furnished, equipped and operated, by a college, university or private entity for use by students, faculty members, or other employees of any college or university.
  - 3. Hospitals and Other Health Facilities Issued Building Permits by the State. As a condition precedent to approval of a grading plan, which requirement shall appear in any CUP issued for such a facility.
- C. The Director of Public Works may require specific transportation system improvements to be made and additional street rights-of-way dedicated and improved as an immediate condition of development or redevelopment of property. In this event, the cost of such improvements and street rights-of-way, upon verification of actual cost by the Department of Public Works, may be credited to the TSIP fee otherwise payable under this chapter if said improvement replaces those defined in the fee program.

#### **15.41.030 - Building Permits and Conditional Use Permits Requiring Payment of Fee.**

The payment of a TSIP fee, including an administrative fee to offset the operational oversight and administration of the impact fee program, shall be required when the application indicates the following:

- A. A construction or improvement project will result in an increase of floor, sales, storage or other usable area.
- B. A construction or improvement project will increase traffic demand from and to the site of the improvement.
- C. A change in facility use to a use that results in an increase of floor, sales, storage or other usable area or increases traffic demand from and to the site.

#### **15.41.040 – Exemptions, Special Provisions and Application of Fees.**

- A. The following categories of projects are exempt from the application of TSIP fees:
  - 1. An addition or modification to an existing single family residence which shall continue to be used as a single family residence.
  - 2. A tenant improvement to a non-residential building with no change to the structure or facility use, in whole or in part, to a higher traffic generating use.
  - 3. Conversion of a building or facility to a lower traffic-generating use.
  - 4. Replacement of a building of the same or smaller size and use as the result of condemnation, fire, earthquake, flood or other acts of God or of the public enemy.
- B. The following categories of projects are subject to the partial application of TSIP fees:
  - 1. Additional residential units constructed or created shall be subject to the full per unit base fee rate for the new additions only, to the extent authorized by state law.
  - 2. An addition to an existing non-residential building shall be subject to the appropriate fee for the addition only.
  - 3. Construction of additional non-residential buildings shall be subject to the appropriate fee rate for the new construction only.
  - 4. A change in a building or facility use, in whole or in part, to a higher traffic-generating use, shall cause the proportionate square footage to be subject to the appropriate fee rate.

5. A change in a building or facility use, in whole or in part, to a higher traffic-generating use shall be subject to a fee equal to the difference between any fee previously paid and the fee rate for the higher traffic-generating use.
6. Temporary structures, trailers or facilities shall be subject to the appropriate base fee rate. Credit shall be given for subsequent removal to permit the construction of permanent facilities.

C. The following categories of projects are subject to special application of TSIP fees:

1. Up to twenty-five percent (25%) of the floor area of a general industrial structure facility on a parcel may be used for any combination of retail sales and/or office provided it is accessory to the permitted use established on the parcel. The general industrial fee will apply to this area. Any floor use for retail or office in excess of twenty-five (25%) shall be charged at the higher applicable fee.
2. Credit to the TSIP may be allowed for structures that are demolished and removed from a property to permit the construction of new structures or facilities, provided:
  - a. The structure was usable and could be occupied within the previous ten years of issuance of a new building permit;
  - b. The credit is limited to the amount of the TSIP fee for the replaced structure;
  - c. The credit for a replaced structure can only be taken once whether or not the full amount of credit is used;
  - d. Any increase in square footage of the new structure or facility or conversion to a higher traffic generating use shall be subject to the applicable proportionate fee as provided for in this chapter.

It shall be the property owner or applicant's responsibility to apply for this credit and document any demolitions or removals, along with evidence that the structure was usable and could be occupied within the previous ten years.

D. The following categories of projects are subject to City Traffic Engineer evaluation:

1. Special uses where the trip generation rate is substantially lower than that of the general land use category. The City Traffic Engineer may make a finding that a particular use is unique and it is inequitable to assess TSIP fees based on the general land use category. In such a case, the City Traffic Engineer shall review the fee and recommend a waiver or adjustment of the fee.
2. Improvements where the added floor area will not generate additional trip ends on a continuing basis. The City Traffic Engineer may make a finding that the

following improvements will not generate additional trips and recommend waiver or adjustment of the fee:

- a. Recreational rooms in a residential planned unit development, townhouse, condominium, etc.;
  - b. Non-manned facilities such as equipment rooms, cellular telephone stations, pumping stations, switching stations, etc.;
  - c. Open air weather protection for existing areas of use or material storage;
  - d. Support equipment such as conveyor platforms, etc.;
  - e. Parking structures;
  - f. Restroom additions to an existing facility;
  - g. Temporary trailers with a guaranteed removal date such as construction trailers, residential sales trailers, and temporary special event structures (example-Street Fair), etc.;
  - h. Outdoor lounges, patios or eating areas, provided they are accessory to and not an expansion of the permitted use established on the property and not generally available to the public.
3. Atypical uses with a disproportionate floor area square footage compared to trip ends generated. The City Traffic Engineer may make a finding that the following improvements will not generate typical trip ends compared to the floor area and recommend waiver or adjustment of the fee:
- a. Projects or facilities where the relationship between floor area and trips generated is unusually high or low.
  - b. Projects or facilities where trips may not be generated on a regular basis or schedule.
  - c. Examples include drive-in theaters, batch mix plants, auto/truck rental facilities, auction facilities, golf courses, used car lots, indoor arenas, sports and gymnastic training centers, etc. When, in the opinion of the City Traffic Engineer, individual evaluation is required, fees on these types of development shall be based on the approved base cost per trip end with the trip end established through an approved traffic impact analysis.

E. Other applications of TSIP fees are as follows:

1. Conversion of a single family residence in whole or in part to a non-residential use shall cause such conversion to be subject to the applicable fee rate.
2. Non-residential outdoor sales and related activities, dining, or manufacturing areas, even though not improved by a structure, shall be subject to the applicable TSIP fee.
3. A single fee, which represents the primary structure or facility use, shall be used to determine the required TSIP for the total structure or facility.
4. There shall be no fee exemption for projects or uses involving other governmental organizations or agencies, private schools, non-profit organizations, charitable organizations, churches, synagogues or City facilities.
5. An existing residential unit moved to a new lot shall be subject to the applicable full TSIP fee. Any TSIP fee credit shall remain with the original parcel.

#### **15.41.050 - Disposition of TSIP Fees – Fund Created.**

All fees collected under this chapter shall be promptly transferred for deposit into a special fund of the City entitled “Transportation Systems Improvement Program.” The fund shall be used only for the purposes stated in Section 15.41.010.

#### **15.41.060 - Automatic Annual Adjustment.**

The TSIP fee shall be automatically adjusted on the first day of July of each year to reflect the percentage of increase or decrease in the Construction Cost Index as published by Engineering News-Record for the timeframe since the most recent increase. The adjusted fee, if any, shall be rounded to the nearest dollar for “per unit” fees and to the nearest one tenth of a cent for “per square foot” fees. The TSIP fee will be reviewed on an annual basis to determine if development and the corresponding transportation system improvements are proceeding as projected.

#### **15.41.070 - Amendment by Resolution.**

The TSIP fees referred to herein may be revised, deleted, or otherwise amended by resolution of the City Council.

#### **15.41.080 - Fee Adjustment Applications and Appeals.**

- A. TSIP Fee Appeals. There is hereby established an appeal procedure and appeal board to evaluate differences in application of the fee per this Ordinance.
  1. Appeal of the TSIP fee shall be in writing to the City Traffic Engineer. The appeal shall clearly state the basis for the appeal and include payment of a \$350.00 administrative appeal fee. Upon receipt of the above, an appeal hearing shall be

scheduled as soon as possible, but in no event later than 30 days after receipt of the written appeal by the City.

2. The appeal board shall consist of the City Manager, the City Finance Director and the Director of Public Works or their designee. The Director of Public Works shall chair the meeting. Support staff may include representatives of the City Attorney, City Traffic Engineer and Planning Department as needed. All decisions by the appeal board are final unless further appealed to the City Council within 15 days of the issuance of a written decision by the appeal board.
- B. The City Council may, from time to time, and as the need may arise, set forth, by resolution, specific limitations which will apply to reductions, adjustments or waivers of fees which may be made pursuant to this section. In this regard, this chapter shall be considered enabling and directory.
- C. A developer may also protest the imposition of fees as provided in Government Code Section 66020.

#### **15.41.090 - Payment.**

Payment Plan. Payment of TSIP fees is normally due for non-residential development, upon issuance of a building permit and for residential development, on the date of final inspection or certificate of occupancy for each unit, whichever occurs first. Periodically, special circumstances may warrant a deferred payment or installment payment agreement so that the proposed project may proceed. The Director of Public Works, in concurrence with the Finance Director, is hereby authorized to approve such agreements when an acceptable payment guarantee, such as a time certificate of deposit, can be secured, and when it is in the public's best interest.

#### **15.41.100 - Controlling State Law.**

The provisions of this chapter and any resolution adopted pursuant hereto shall at all times be subject and subordinate to the provisions of Chapter 5 (commencing with Section 66000), Division 2, of Title 7 of the California Government Code, as the same presently exists or may hereafter be amended from time to time, to the extent the same are applicable. In the event of any conflict between the provisions of this chapter and state law, the latter shall control.

#### **SECTION II:**

If any section, subsection, clause, or provision of this Ordinance is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The City Council hereby expressly declares that if would have passed this Ordinance, and each section, subsection, sentence, clause and phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.



**SECTION III:**

The City Clerk is hereby directed to certify the adoption of this Ordinance and cause a summary of the same to be published as required by law. This Ordinance shall take effect thirty (30) days from and after the date of its final passage.

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Mark A. Murphy, Mayor, City of Orange

**ATTEST:**

\_\_\_\_\_  
Pamela Coleman, City Clerk, City of Orange

STATE OF CALIFORNIA   )  
COUNTY OF ORANGE    )  
CITY OF ORANGE         )

I, PAMELA COLEMAN, City Clerk of the City of Orange, California, do hereby certify that the foregoing Ordinance was introduced at the regular meeting of the City Council held on the \_\_\_\_ day of \_\_\_\_\_, 2020, and thereafter at the regular meeting of said City Council duly held on the \_\_\_\_ day of \_\_\_\_\_, 2020, was duly passed and adopted by the following vote, to wit:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:

\_\_\_\_\_  
Pamela Coleman, City Clerk, City of Orange