

ORDINANCE NO. 704

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA, REPEALING CHAPTER 3.28 (PUBLIC SAFETY FEE) AND CHAPTER 17.10 (SPECIAL IMPACT FEES), ADDING CHAPTER 3.26 (SCHOOL IMPACT FEES), AND ADDING CHAPTER 3.28 (DEVELOPMENT IMPACT FEES) OF THE CALISTOGA MUNICIPAL CODE TO PROVIDE FOR THE COLLECTION OF DEVELOPMENT IMPACT FEES

WHEREAS, capital facilities and equipment investments associated with City-provided police, fire, cultural/recreational, administrative, and transportation functions are required to serve growth in the city during the next 20 years; and

WHEREAS, the City has determined that sources of City revenue other than development impact fees, including tax revenues that would be paid by new development, will be used for many public purposes and therefore will not be sufficient to offset the burdens on public facilities created by new development. Therefore it is necessary to impose one-time charges on new development to cover its proportional cost of capital equipment and facilities that are required to serve it; and

WHEREAS, the updating and collection of the development impact fees would meet numerous objectives and policies, and fulfill multiple actions of the Calistoga General Plan, and

WHEREAS, the City's existing development impact fees for these capital equipment and facilities were adopted 15 to 20 years ago and need to be updated to reflect the anticipated costs of capital equipment and facilities over the next 20 years and the potential development that may occur during that time; and

WHEREAS, it is to the benefit of the public health, safety and welfare of all parties that the development impact fees be consistent with current projections of land use, infrastructure and cost to assure that each development pays its fair share of needed facilities; and

WHEREAS, the development impact fees provided for herein are based on the Development Impact Fee Study ("Study") dated September 26, 2014, prepared by Economic & Planning Systems, Inc. and W-Trans, Inc., consistent with the most recent relevant case law and the principles of AB 1600 (the Mitigation Fee Act) and Government Code Section 66000 et seq; and

WHEREAS, for at least fourteen (14) days prior to the public hearing, a copy of the Study was available for public review at the Office of the City Clerk; and

WHEREAS, the facts and evidence presented in the Study establish that there exists a reasonable relationship between the need for police, fire, cultural/recreational, City administrative, and transportation functions, and the impacts of the types of new development and redevelopment for which a corresponding fee is charged, and that a reasonable relationship also exists between the fee's use and the type of new development and redevelopment for which the fee is charged; and

WHEREAS, in establishing the development impact fees, the City Council accepts the Study as an accurate document and finds the fees to be consistent with state law (California Government Code Section 66000 et seq.); and

WHEREAS, the City Council held public study sessions on July 29, 2014 and September 23, 2014 to receive public input on the proposed development impact fees; and

WHEREAS, the City Council of the City of Calistoga reviewed and considered this ordinance at a public hearing on November 18, 2014, noticed in accordance with state and local law, and which included the written and oral staff report, and comments received from the general public and interested parties.

NOW, THEREFORE, THE CALISTOGA CITY COUNCIL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION ONE

Findings.

A. The above recitals are incorporated herein as if set forth herein in full and each is relied upon independently by the City Council for its adoption of this ordinance. The Council further finds and determines as follows:

B. The Study complies with California Government Code 66001 by establishing the basis for imposition of fees on new development. In particular, the Study:

1. Identifies the purpose of the fees;
2. Identifies the use to which the fees will be put;
3. Shows a reasonable relationship between the fee's use and the type of development project on which the fee is imposed;
4. Shows a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed because the new facilities are sized to accommodate the increased impact that will be generated by each type of development; and
5. Shows a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the new development on which the fee is imposed because the proposed fees are proportional to the new impacts generated by each type of development.

C. The City will obtain and allocate funding from various other sources for the fair share of the costs of improvements.

SECTION TWO

Repeals. Title 3, Chapter 3.28 Public Safety Fee and Title 17, Chapter 17.10 Special Impact Fees are hereby repealed in their entirety.

SECTION THREE

Adoption of Chapter 3.26. A new Chapter 3.26, to be entitled, School Impact Fees, is hereby added to Title 3 and shall read and be codified as follows:

Chapter 3.26 School impact fees.

- A. The Calistoga Joint Unified School District has adopted a school facilities impact fee in accordance with Government Code Section 53080. The impact fee is collected to assist the District in providing and maintaining capital facilities.
- B. The Calistoga Joint Unified School District shall collect the fee and provide each developer with written receipt of payment thereof. The fee shall be assessed per development in a manner adopted by resolution of the School Board.
- C. Proof of payment shall be required prior to the issuance of building permits for all residential, commercial and industrial development projects as defined in Government Code Section 65995.

SECTION FOUR

Adoption of Chapter 3.28. A new Chapter 3.28, to be entitled, Development Impact Fees, which is attached hereto and incorporated herein as Exhibit A, is hereby adopted and shall be codified.

SECTION FIVE

Environmental Review. This ordinance is not a project within the meaning of Section 15378 of the State CEQA (California Environmental Quality Act) Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemptions contained in CEQA Guidelines section 15273 (a) (4), because it constitutes the establishment of charges for the purpose of obtaining funds for capital projects necessary to maintain service within existing service areas, and CEQA Guidelines section 15061 (b) (3), because it can be seen with certainty to have no possibility of a significant effect on the environment.

SECTION SIX

Severability. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional, or invalid, or ineffective.

SECTION SEVEN

Judicial Action to Challenge this Ordinance. Any judicial action or proceeding to attack, review, set aside, void or annul this Ordinance shall be brought within 120 days of the date of adoption of this Ordinance.

SECTION EIGHT

Effective Date. This Ordinance shall take effect sixty (60) days after its passage and before the expiration of fifteen (15) days after its passage, shall be published in accordance with law, in a newspaper of general circulation published and circulated in the City of Calistoga.

THIS ORDINANCE was introduced with the first reading waived at the City of Calistoga City of Council meeting of the **18th day of November, 2014**, and was passed and adopted at a regular meeting of the Calistoga City Council on the **2nd day of December, 2014**, by the following vote:

AYES: Councilmember Barnes, Vice Mayor Dunsford,
Councilmembers Kraus and Lopez-Ortega and Mayor Canning
NOES: None
ABSENT: None
ABSTAIN: None



Chris Canning, Mayor



Kathy Flamson, City Clerk

Exhibit A

Chapter 3.28 Development Impact Fees

Sections:

- 3.28.010 Authority.
- 3.28.020 Application.
- 3.28.030 Definitions.
- 3.28.040 Establishment of development impact fees.
- 3.28.050 Calculation and payment of development impact fees.
- 3.28.060 Exemptions, credits and adjustments.
- 3.28.070 Refund of development impact fees.
- 3.28.080 Annual findings and reporting.
- 3.28.090 Fee monitoring and update.

3.28.010 Authority.

The ordinance codified in this Chapter is enacted pursuant to Government Code Sections 66000 and following.

3.28.020 Application.

- A. It is intended that every person who develops or redevelops land in the city pay development impact fees established by this Chapter in an amount equal to the fees in effect at the time that an Applicant submits a complete building permit application for such development.
- B. Except as specifically provided herein, this Chapter does not replace subdivision map exactions or other measures and exactions required to mitigate site-specific impacts of a development project; other regulatory, development and processing fees; school impact fees; utility demand fees and connection charges; funding required pursuant to a development agreement; funds collected pursuant to a reimbursement agreement for amounts that may exceed a development's share of public improvement costs; assessment district proceedings; benefit assessments; property taxes or fees required under Title 3, Chapter 3.20 (Excise Tax); Title 13, Sections 13.18.020 (Water rates and charges) and 13.18.030 (Wastewater rates and charges); and Title 17, Sections 17.08.020(B) (Nonresidential housing linkage fee) and 17.36.110 (In-lieu parking) of this Code,
- C. No developer, property owner or other person or entity shall be eligible to receive a building permit unless such developer, property owner or other person or entity has first complied with all applicable provisions of this Chapter. The requirements of this Chapter shall be imposed prior to the issuance of each building permit.

3.28.030 Definitions.

The following terms shall have the following meanings as used in this Chapter:

- A. "Applicant" means the person(s) or legal entity or entities, who may also be the property owner, who is applying for a building permit.

- B. "City" means the City of Calistoga, including its future boundaries.
- C. "Director" or "Planning and Building Director" means the Director of the Planning and Building Department and any person(s) within the Department designated by the Director to exercise or carry out any of the Director's powers, authority and responsibilities under this Chapter.
- D. "Development Impact Fee Study" and "Study" mean the Development Impact Fee Study prepared by Economic and Planning Systems, Inc., and W-Trans, Inc., dated September 2014 and numbered EPS #131015, and any amendments, additions, and updates to said Study, all of which are deemed included in such definitions as used in this Chapter, which is on file with the Planning and Building Department and the City Clerk.
- E. "Development impact fee" means a fee charged in connection with the issuance of a building permit to defray the cost of certain public facilities and equipment required to serve new development within the City of Calistoga.
- F. "Capital facilities and equipment" means the capital facilities and equipment identified in the Study that may be funded by development impact fees.

3.28.040 Establishment of development impact fees.

- A. Except as otherwise provided in this Chapter, an Applicant for a building permit shall pay the following fees according and pursuant to the procedures set forth in this Chapter:
 - 1. Police Development Impact Fee
 - a. Purpose. Police development impact fees are intended to cover new development's share of the costs associated with the replacement of the Calistoga Police Department's capital equipment. Each new development project will add to the incremental use of existing police equipment and vehicles. The existing set of equipment and vehicles will require more frequent replacement due to the greater use levels associated with new development (and associated service population) in the city. The Police Development Impact Fee will help ensure adequate replacement intervals for department equipment and vehicles.
 - b. Use of fee. Fee revenue will be used to replace capital equipment, including patrol vehicles, protective equipment and communications technology, after a period of use.
 - c. Proportionality. The replacement costs of equipment are allocated proportionately between new and existing development based on their relative share of demand. Replacement costs associated with new development are similarly allocated between land uses proportional to their relative generation of demand, as measured by service population.
 - d. Police Development Impact Fee Fund. There is established and created a fund of the City entitled "Police Development Impact Fee Fund" and all revenues derived from and moneys collected under this section, including

accrued interest thereon, shall be deposited in such fund. The Police Development Impact Fee Fund is established for the sole purpose of providing monies for the replacement of capital equipment needed for the Calistoga Police Department in providing police services.

2. Fire Development Impact Fee

- a. Purpose. Fire development impact fees are intended to cover new development's share of the costs associated with the replacement of the Calistoga Fire Department's capital equipment. Each new development project will add to the incremental use of existing department equipment and vehicles. The existing set of equipment and vehicles will require more frequent replacement due to the greater use levels associated with new development (and associated service population) in the city. The Fire Development Impact Fee will help ensure adequate replacement intervals for equipment and vehicles.
- b. Use of fee. Fee revenue will be used to replace department capital equipment, such as fire vehicles, protective equipment and communications technology, after a period of use.
- c. Proportionality. The replacement costs of equipment are allocated proportionately between new and existing development based on their relative share of demand. Replacement costs associated with new development are similarly allocated between land uses proportional to their relative generation of demand, as measured by service population.
- d. Fire Development Impact Fee Fund. There is established and created a fund of the City entitled "Fire Development Impact Fee Fund" and all revenues derived from and moneys collected under this section, including accrued interest thereon, shall be deposited in such fund. The Fire Development Impact Fee Fund is established for the sole purpose of providing monies for the replacement of capital equipment needed for the Calistoga Fire Department in providing fire services.

3. Cultural/Recreational Development Impact Fee

- a. Purpose. Cultural/Recreational development impact fees are intended to cover the costs associated with new cultural and recreational facilities required to serve future growth in Calistoga. New development will add to the incremental need for cultural and recreational facilities.
- b. Use of fee. Fee revenue will contribute funding towards cultural and recreational facilities.
- c. Proportionality. The cultural and recreational facilities and costs allocated to new development are based on the ratio between capital facilities (parkland and cultural/recreation facilities) and service population existing at the time the City of Calistoga Development Impact Fee Study was prepared. The scale of the capital facilities and associated costs are directly proportional to the

expected levels of new development. As a result, the costs of these facilities are applied to new development based on the existing service standard for modified service population. This standard is primarily based on population but also captures employee- and visitor-demand.

- d. Cultural/Recreational Development Impact Fee Fund. There is established and created a fund of the City entitled "Cultural/Recreational Development Impact Fee Fund" and all revenues derived from and moneys collected under this section, including accrued interest thereon, shall be deposited in such fund. The Cultural/Recreational Development Impact Fee Fund is established for the sole purpose of providing monies for the development of cultural and recreational facilities.
4. City Administrative Facilities Development Impact Fee
 - a. Purpose. City administrative facilities development impact fees are intended to help maintain adequate levels of City administrative facilities services in Calistoga, including adequate city hall and community center space as well as associated land needs.
 - b. Use of fee. Fee revenue will be used to help fund land acquisition and construction of a new city hall and community center.
 - c. Proportionality. The cost of new City administrative capital facilities is allocated proportionately between new and existing development based on their relative share of demand (as measured by their relative share of service population) over a 20-year period. The cost share associated with new development is similarly allocated between land uses proportional to their relative generation of demand, as measured by service population.
 - d. City Administrative Facilities Development Impact Fee Fund. There is established and created a fund of the City entitled "City Administrative Facilities Development Impact Fee Fund" and all revenues derived from and moneys collected under this section, including accrued interest thereon, shall be deposited in such fund. The City Administrative Facilities Development Impact Fee Fund is established for the sole purpose of providing monies for land acquisition and construction of a new city hall and community center.
5. Transportation Development Impact Fee
 - a. Purpose. Transportation development impact fees are intended to cover new development's share of the costs associated with providing infrastructure improvements necessary to accommodate the increase in traffic and bicycle-associated improvements associated with new development.
 - b. Use of fee. Fee revenue will be used to help fund infrastructure improvements needed to maintain acceptable traffic operation and provide adequate access for users of alternative modes.
 - c. Proportionality. The cost of infrastructure improvements is allocated proportionately to PM trips that would be generated by new development. The

cost share associated with new development is based on the allocation that assigns a majority of the total cost to existing residents through other funding sources, many of which are funded through local taxes.

- d. Transportation Development Impact Fee Fund. There is established and created a fund of the City entitled "Transportation Development Impact Fee Fund" and all revenues derived from and moneys collected under this section, including accrued interest thereon, shall be deposited in such fund. The Transportation Development Impact Fee Fund is established for the sole purpose of providing monies for Vehicular Capacity and Pedestrian and Bicycle Improvements.
- B. The amount of each development impact fee shall be as established by resolution of the City Council.

3.28.050 Calculation and payment of development impact fees.

- A. Calculation of development impact fees. The amount of each development impact fee assessed on an Applicant for a building permit shall be calculated based on the fee schedule in effect at the time of issuance of the building permit.
- B. Time for payment of development impact fees. All development impact fees assessed on an Applicant shall be paid by the Applicant at the time of issuance of the building permit, except in the case of residential development, when the payment of such fees may be deferred until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first, pursuant to Government Code Section 66007.
- C. When a Project will include both residential and non-residential uses, the Director shall determine the development impact fee amounts by applying to each use the applicable fee for that individual use, and add the totals of fees applicable to all of the uses within the Project.

3.28.060 Exemptions, credits and adjustments.

- A. Exemptions. The following are exempt from the requirement to pay development impact fees:
 1. The demolition of one existing residential structure and the building of one new residential structure on the same site where any additional living area is 400 square feet or less and no additional dwelling units are created, provided the demolished structure was in use as a residential dwelling within two years prior to the issuance of the building permit for the new residential structure.
 2. The alteration, remodeling or reconstruction of a non-residential structure that does not increase the gross floor area above what was in existence and in use on the effective date of this Chapter, nor change the type of use to one with higher development impact fees per the adopted fee schedule.

B. Credits.

1. Where a building permit involves a change of use to one with higher development impact fees per the adopted fee schedule, credit shall be given against the obligation to pay development impact fees for the existing use of the space or structure.
2. The Director may grant in favor of an Applicant subject to the requirements of this Chapter a credit against the obligation to pay development impact fees for a building permit that involves the demolition of an existing structure and the construction of a new structure. The Applicant shall be entitled to a credit in the amount of the applicable development impact fees for the structure to be demolished, provided that such structure has been in use in the past two (2) years, and provided that no development impact fee shall be reduced below \$0.

C. Adjustments. An Applicant may apply to the Planning and Building Director for an adjustment to one or more of the development impact fees assessed pursuant to this Chapter. The following procedure shall be used to consider such an application.

1. The adjustment application shall be in writing and filed with the Director no later than ten (10) days before submittal of the building permit application. The application shall state in detail the factual and legal basis for the requested adjustment(s). The Applicant bears the burden of proof in presenting substantial evidence to support the application. The Applicant must present evidence, in the form of technical information, to show that a development impact fee, or the amount of a development impact fee, is inappropriate for the particular development, which evidence shall be comparable in detail to the technical information found in the Development Impact Fee Study.
2. The Director shall consider the following factors to determine whether or not to approve any adjustment to a development impact fee:
 - a. The characteristics of the development project which is the subject of this review procedure;
 - b. The appropriate land use category for the development project which is the subject of this review procedure;
 - c. The relationships between:
 - i. The purpose of the development impact fee and the nature of the Project and;
 - ii. The need for the public facilities funded by the development impact fee and the nature of the Project.
 - d. Whether the development impact fee is reasonably related in extent to the likely impacts of the development project.
3. The Director is authorized to reduce the amount of a development impact fee based upon the determination made pursuant to this Section.

4. The decision of the Director shall be appealable to the City Manager according to the following procedure.
5. A person appealing a decision of the Director made pursuant to this Section (the "Appellant") shall file a written appeal with the City Manager, stating the factual and legal basis of the appeal, within ten (10) calendar days following the decision of the Director. A person seeking judicial review shall first seek an appeal hearing under this section.
 - a. The City Manager, or a hearing officer appointed by the City Manager, shall set the time and place for the hearing, provide notice of the hearing as required by the California Government Code, notify the Appellant and any other relevant parties, conduct the appeal hearing, prepare written findings of fact and a written decision on the matter, and shall preserve the complete administrative record of the proceeding.
 - b. In making the decision to affirm or adjust the development impact fee(s), the hearing officer shall consider relevant evidence presented by the Appellant and by the Director and shall consider the factors listed in Section 3 above.
 - c. The decision of the City Manager shall be the final decision of the City.
 - d. This Section provides an administrative remedy that must be exhausted prior to compliance with the procedure provided in Government Code Sections 66020 and 66021.

3.28.070 Refund of development impact fees.

- A. If a building permit expires, is canceled, or is voided without the permitted construction thereunder having occurred, and any development impact fees paid pursuant to this Chapter have not been expended, the Director shall, upon the written request of the Applicant, order the refund of all development impact fees paid by the Applicant.
- B. A written refund request shall only be honored if actually received by the Director within a period of one (1) year from the date of the expiration, cancellation, or voiding of the building permit(s) for which the development impact fees were paid. Following the expiration of the one (1) year period, no refunds shall be granted on the basis of expired, cancelled or voided permits or approvals. If a partial refund is granted under the provisions of this Section, the property involved shall be credited with the amount paid but not refunded against any similar development impact fees due for the same or subsequent use.
- C. During the annual review of the development impact fees pursuant to Section 3.28.080 of this Chapter, the City Council shall make the findings required by Government Code Section 60001 (or any successor statute) with respect to any development impact fee revenue not expended five years or more after it was paid. If the City Council cannot make the required findings, it shall authorize a refund of the unexpended development impact fee revenue to the then current record owner of the property for which the development impact fee was paid, or otherwise allocate

the unexpended revenues, as provided in Government Code Section 66001 (or any successor statute).

3.28.080 Annual findings and reporting.

- A. Each year, on or before July 1, the City Council shall make the findings described in Government Code Section 66001(d)(1) for unexpended development impact fees collected pursuant to this Chapter.
- B. In accordance with state law (at Govt. Code. Sections 66001(c), 66006(b)(1)), the City's Administrative Services Department shall make the following information available to the public annually within 180 days of the last day of the fiscal year.
 - 1. A description of the type of fee in the account
 - 2. The amount of the fee
 - 3. The beginning and ending balance of the fund
 - 4. The amount of fees collected and interest earned
 - 5. Identification of the improvements constructed
 - 6. The total cost of the improvements constructed
 - 7. The fees expended to construct the improvement
 - 8. The percentage of total costs funded by the fee
- C. If sufficient fees have been collected to fund specific improvements, the City shall specify the approximate date for the development of that improvement.

3.28.090 Fee monitoring and update.

- A. A copy of the information provided by Section 3.28.080 shall be provided to and reviewed by the City Council. Because of the dynamic nature of growth and capital facilities and equipment requirements, the City shall monitor the need for capital facilities and equipment requirements, and the adequacy of the fee revenues and other available funding. As part of the annual review, staff shall recommend whether any adjustments to fees are warranted.
- B. At least every five years, the City Council shall conduct a comprehensive review of the development impact fees and increase or decrease the amount of the development impact fees established by this Chapter based on updated capital facilities and equipment requirements costs and needs and, available alternative revenue sources and other economic considerations. Failure to undertake this review shall not invalidate the imposition of the fees.