

ORDINANCE NO. 2007- 17
(uncodified)

(Adoption of Park Impact Fees)

The Contra Costa County Board of Supervisors ordains as follows:

SECTION I. **SUMMARY.** This ordinance provides for the adoption of fees to be used for the acquisition of parkland and development of parks and recreation facilities required to serve new residential development in unincorporated areas of Contra Costa County.

SECTION II. **AUTHORITY.** This ordinance is enacted pursuant to the Mitigation Fee Act (Gov. Code, § 66000 et seq.) and Article 11, section 7 of the California Constitution.

SECTION III. **NOTICE AND HEARING.** This ordinance was adopted pursuant to the procedure set forth in Government Code sections 54986 and 66017-66018 and all required notices have been properly given and public hearing held.

SECTION IV. **DEFINITIONS.** As used in this ordinance:

A. “Project applicant” means a property owner, or duly designated agent of the property owner, who has submitted to the County a request for approval of a development project on the property.

B. “Development project” means any project undertaken for the purpose of development. “Development project” includes a project involving the issuance of a permit for construction or reconstruction, but not a permit to operate.

C. “Public facilities” includes public improvements, public services and community amenities.

D. “Dwelling unit” means a building or a portion thereof, or a mobile home, designed for residential occupation by one person or a group of two or more persons living together as a domestic unit.

E. “Parkland” means land that is used or is to be used as a park.

SECTION V. **PURPOSE OF FEES; USE OF FEE REVENUE.**

A. The purpose of the fees described in this ordinance is to generate funds to acquire parkland and develop parks and recreation facilities to serve new residential development in unincorporated areas of the County.

B. All fees collected pursuant to this ordinance will be used to acquire parkland and develop the parks and recreational facilities identified in the Contra Costa County Parks Capital Improvement Plan, dated January 2007, as adopted by the Board of Supervisors and as may be amended from time to time (“Parks CIP”).

SECTION VI. FINDINGS. The Board of Supervisors finds and determines as follows:

A. The February 2007 Park Impact Fees Nexus Study prepared by SCI Consulting Group (“Nexus Study”) establishes the legal and policy basis for the imposition of park impact fees on residential development projects within the unincorporated area of the County.

B. The Parks CIP, as adopted and as may be amended by the Board from time to time, identifies the public facilities to be financed with the park impact fees.

C. The Nexus Study and the Parks CIP contain sufficient information for the Board to make the findings set forth herein, and the Board declares that it has relied thereon in reaching its conclusions set forth herein.

D. The nexus findings, in conformance with Government Code section 66001, contained in the Nexus Study, are incorporated herein by reference. As set forth in more detail in the Nexus Study:

1. There is a reasonable relationship between the use of the fees and the types of development projects that are subject to the fees in that the fee revenues will be used to acquire, construct and rehabilitate park and recreational facilities to accommodate the additional demand for parks and recreation services generated by new residential development.

2. There is a reasonable relationship between the need for the new park and recreational facilities and type of development project on which the fees are to be imposed, in that new residents from new residential developments will increase the demand for park and recreational services and the associated need for park and recreational facilities to serve those developments.

3. There is a reasonable relationship between the amount of the fees and the cost of the park and recreational facilities, or portion of the facilities attributable to the developments on which the fees are to be imposed, in that the fees are determined by applying the total cost of the facilities per capita to four residential land uses according to their respective household size.

SECTION VII. FEE ADOPTION AND COLLECTION.

A. Park impact fees are hereby adopted to fund the park and recreational improvements identified in the Parks CIP. Except as otherwise provided herein for specifically described territory, and subject to Sections IX and X, park impact fees shall be imposed upon and collected from all residential development projects in the unincorporated areas of the County per dwelling unit, as follows:

Dwelling Unit	Fee
Single-family Detached	\$7,238
Townhome	\$5,757
Multi-Family	\$5,213
Mobile Home	\$4,859

B. Within the territory in the unincorporated area of the County within the territorial jurisdiction of the East County Regional Planning Commission, described in Section 26-2.1512 of the County Ordinance Code, and subject to Sections IX and X, park impact fees shall be imposed upon and collected from all residential development projects per dwelling unit, as follows:

Dwelling Unit	Fee
Single-family Detached	\$5,891
Townhome	\$4,686
Multi-Family	\$4,243
Mobile Home	\$3,955

C. The fees specified herein shall be a condition of approval of all new non-exempt residential development projects involving the addition of at least one dwelling unit to the real property where the development project is located.

D. The project applicant shall pay to the County the fee imposed on the development project in the amount established by this ordinance. The fee shall be collected prior to the issuance of a building permit.

E. All fees collected hereunder shall be transmitted to the County Auditor-Controller within thirty (30) days of receipt for deposit into a separate capital facilities account or fund, and for investment, accounting and expenditure in accordance with the provisions of this ordinance and the Mitigation Fee Act.

SECTION VIII. FEE CREDITS. If the County requires a project applicant, as a condition of project approval, to dedicate land or pay fees in lieu of dedication pursuant to Division 920 of the Contra Costa County Ordinance Code, or to construct any portion of any of the public facilities identified in the Parks CIP, as amended, the value of the dedicated land, the total amount of in-lieu fees paid and/or the cost of construction of the public facilities, as determined by the Community Development Director, shall be applied as a credit against the payment of fees required by this ordinance. For purposes of calculating the amount of the credit, the project applicant shall have the sole burden of demonstrating land values and costs of construction to the satisfaction of the Community Development Director.

SECTION IX. FEE WAIVERS.

A. Partial Waiver for Affordable Housing Units

1. Upon written request of the project applicant, the Community Development Director may waive fifty (50) percent of the park impact fees for dwelling units that the Community Development Director determines, in a written finding, fit into one of the following categories: (1) Rental units affordable to households earning less than 80% of the area median income; or (2) ownership units affordable to households earning less than 120% of the area median income.

2. As a condition of such waiver, the project applicant shall enter into a regulatory agreement with the County, guaranteeing the use, occupancy, affordability, and term of affordability of such dwelling units. Rental units for which a waiver is granted under this section shall be restricted to that use for a minimum of 55 years. Ownership units for which a waiver is granted under this section shall be restricted to that use for a minimum of 30 years.

B. Partial Waiver for Inclusionary Housing Units. In lieu of the partial fee waiver for affordable housing units as set forth in Section IX.A, development projects that are subject to Chapter 822-4 of the County Ordinance Code shall be eligible for a partial fee waiver as follows:

1. Fifty percent of the park impact fees shall be waived for each rental unit to be developed and rented as an inclusionary unit under the terms and conditions of Section 822-4.410(a) of the County Ordinance Code.

2. Fifty percent of the park impact fees shall be waived for each for-sale unit to be developed and sold as an inclusionary unit under the terms and conditions of Section 822-4.410(b) of the County Ordinance Code.

3. If a fee is paid in lieu of constructing some or all inclusionary units in a development project, pursuant to Section 822-4.404 of the County Ordinance Code, 50 percent of the park impact fees shall be waived for the number of inclusionary units for which the in-lieu fee is paid.

SECTION X. EXEMPTIONS FROM FEE. The following types of development projects are exempt from the payment of park impact fees:

A. Development projects for which the County is the project applicant.

B. Development projects involving only the reconstruction or replacement of buildings following (1) damage or destruction by fire or other natural disaster, or (2) voluntary demolition by the owner, provided that the number of dwelling units within the reconstructed or replaced building is no greater than the number of dwelling units in the building prior to such damage, destruction or demolition.

C. Development projects involving only the construction of second units, as defined in Section 82-24.004 of the County Ordinance Code and Government Code section 65852.2.

D. Development projects with vested rights pursuant to an agreement by and between the project applicant and the County.

E. Development projects exempt under any provision of law.

SECTION XI. ADJUSTMENTS TO FEES. The fees established by this ordinance shall on March 1 of each year, beginning in 2008, be automatically increased or decreased from the amount then applicable by the same percentage as the percentage of increase or decrease in the Consumer Price Index for all Urban Consumers, All Items, for the San Francisco-Oakland-San Jose Metropolitan Area, as published by the U.S. Department of Labor or its successor, for the 12-month period ending December 31.

SECTION XII. REPORTING REQUIREMENTS.

A. Within 180 days after the last day of each fiscal year, the Community Development Director or his designee shall make available to the public a report regarding the capital facilities account or fund established for receipt of deposits of the fees collected pursuant to this ordinance. The report shall be reviewed by the Board at a regularly scheduled meeting in accordance with Government Code section 66006. The report shall contain the following information for the fiscal year:

1. A brief description of the type of fee in the account or fund.
2. The amount of the fee.
3. The beginning and ending balance of the account or fund.
4. The amount of the fees collected and the interest earned.
5. An identification of each public improvement on which fees were expended and the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with fees.
6. An identification of an approximate date by which the construction of the public improvement will commence if the Board determines that sufficient funds have been collected to complete financing on an incomplete public improvement, and the public improvement remains incomplete.
7. A description of each interfund transfer or loan from the account or fund, including the public improvement on which the transferred or loaned fees will be expended, and, in the case of an interfund loan, the date on which the loan will be repaid, and the rate of interest that the account or fund will receive on the loan.
8. The amount of refunds made pursuant to Government Code section 66001(e) and any allocations pursuant to Government Code section 66001(f).

B. For the fifth fiscal year following the first deposit into the capital facilities account or fund established for receipt of deposits of the park impact fees, and every five years thereafter, the Board shall make all of the following findings with respect to that portion of the account or fund remaining unexpended, whether committed or uncommitted, pursuant to Government Code section 66001:

1. Identify the purpose to which the fee is to be put.

2. Demonstrate a reasonable relationship between the fee and the purpose for which it is charged.

3. Identify all sources and amounts of funding anticipated to complete financing in incomplete improvements identified in the Parks CIP.

4. Designate the approximate dates on which the funding referred to in subparagraph 4 is expected to be deposited into the appropriate account or fund.

SECTION XIII. JUDICIAL REVIEW. Any judicial action or proceeding to attack, review, set aside, void, or annul the fees established by this ordinance shall be commenced within one hundred twenty (120) days after the effective date of this ordinance. Any action to attack an increase adopted pursuant to Section XI shall be commenced within one hundred twenty (120) days after the effective date of the increase.

SECTION XIV. SEVERABILITY. If any individual component of the park impact fee or any provision of this ordinance is held invalid or unenforceable by a court of competent jurisdiction, that holding shall not affect the validity or enforceability of the remaining fee components and/or ordinance provisions, and that Board declares that it would have adopted each part of this ordinance irrespective of the validity of any other part.

SECTION XV. EFFECTIVE DATE. This ordinance becomes effective 60 days after passage, and within 15 days after passage shall be published once with the names of the Supervisors voting for and against it, in the Contra Costa Times, a newspaper of general circulation published in this County.

PASSED AND ADOPTED on _____ by the following vote:

AYES:

NOTES:

ABSENT:

ABSTAIN:

ATTEST: JOHN CULLEN, Clerk of the Board of Supervisors
and County Administrator

By: _____
Deputy

_____ Board Chair

LW/