



# City of Palo Alto

## Finance Committee Staff Report

(ID # 7151)

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Report Type: Action Items

Meeting Date: 9/20/2016

**Summary Title: Impact Fee Muni Code Update**

**Title: Adoption of an Ordinance Updating and Standardizing the Procedure for Collection of Impact Fees by Amending Palo Alto Municipal Code (PAMC) Title 16 (Building Regulations), Chapters 16.45 (Transportation Impact Fee for New Nonresidential Development in the Stanford Research Park/El Camino Real CS Zone), 16.46 (Approval of Projects with Impacts on Traffic in the San Antonio/West Bayshore Area), 16.47 (Approval of Projects with Impacts on Housing), 16.57 (In-Lieu Parking Fee For New Nonresidential Development in the Commercial Downtown (CD) Zoning District), 16.58 (Development Impact Fees), 16.59 (Citywide Transportation Impact Fee), 16.60 (Charleston Arastradero Corridor Pedestrian and Bicyclist Safety Impact Fee), 16.61 (Public Art for Private Developments), 16.64 (Development Fee and In-Lieu Payment Administration), and Title 21 (Subdivisions and Other Divisions of Land), Chapter 21.50 (Parkland Dedication or Fees In-Lieu Thereof), and Finding the Action Exempt from Review under the California Environmental Quality Act**

**From: City Manager**

**Lead Department: Planning and Community Environment**

### **Recommendation**

Staff recommends that the Finance Committee recommend the City Council adopt the attached draft ordinance which implements 2015 Parking Funds Audit recommendations and updates and standardizes collection of impact fees by amending Palo Alto Municipal Code (PAMC) Titles 16, 18 and 21 (Attachment A).

### **Executive Summary**

This report transmits a draft ordinance containing proposed amendments to the Palo Alto Municipal Code (PAMC) Titles 16, 18 and 21. These changes represent an effort to update the code to:

- Provide uniformity amongst impact fees for rate calculations
- Provide uniformity amongst impact fees to annual inflationary adjustments

- Improve administration
- Create uniform payment timing
- Clarify ambiguous code language
- Implement uniform protest procedures

As each impact fee was approved, new municipal codes were adopted. This has resulted in an overly complicated impact fee calculation and update process. The proposed ordinance strives to simply the process and to align the calculation and annual inflationary adjustments for as many impact fees as possible. The actual fees being charged would not change, although some fees would be collected at a different point in the application process, so the amount due could be affected by separately enacted changes to the fee schedule.

## **Background**

Impact fees are designed to offset the impact of new development and resulting additional residents on the City's infrastructure and services. The City has four transportation impact fees: Citywide Transportation Impact Fee, Stanford Research Park/El Camino Real impact fee, San Antonio/West Bayshore Area impact fee, and the Charleston Arastradero Corridor Pedestrian and Bicycle Safety impact fee. Other development impact fees include: Parks or Parkland, Community Centers, Libraries, Public Safety Facilities, and General Government Facilities. The City also has in-lieu fees when required parking, housing, or public art are not provided as part of a development project.

As impact and in-lieu fees were considered and approved by Council, new municipal codes were adopted. Each code has specific, but separate instructions for calculation rates, annual adjustments, and requirements for when and where fees were to be paid. This has resulted in overly complicated impact fee calculation, administration, and update processes.

The action recommended by Staff will standardize the collection of impact and in lieu fees and simplify the process for determining and adjusting fees. The attached ordinance (Attachment A) reflects recommended changes.

## **Discussion**

The attached ordinance includes several modifications to the Municipal Code. Although a few of the amendments are administrative in nature, meaning they correct typographical errors, correct cross section references, or omit staff titles no longer in existence, the majority of the changes bring uniformity to the procedures for collecting our impact fees.

### Fee Calculation Date

The calculation date for impact fees is currently inconsistent. Although the rates are set in the Municipal Code, the date the fees are calculated needs clarification. Depending on the fee, current code sets the calculation date at entitlement, building permit application, or is silent to the date to be used. Given the number of impact fees, uniformity of calculation date is important to reduce the possibility of errors, reduce confusion, and make it easier to program

the impact fees into the automated permitting system. Staff recommends a calculation date at the time of fee payment. (See new Section 16.64.020.)

#### Due Date

Current code requires that some fees are to be paid at building permit issuance some are to be paid prior to building permit issuance and the code is silent as to time of payment for others. Staff recommends the payment of fees on or before first building permit issuance, whenever possible. If there is no building permit for the project, the fee will be based upon issuance of the first city permit or change in use. In accordance with State law, the Code allows payment of residential development impact fees to be deferred until the date of the final building inspection. (See new Section 16.64.030.)

#### Location of Payment

Utilizing our Accela permitting system, fees are paid at the Development Center. When funds are taken in to cover items not included in the Accela system, those payments are made at Revenue Collections in the lobby. Current code requires some payments to be made in the Transportation Division. Since Transportation is not set up to receive payments, staff requests the removal of that requirement from the Municipal Code. This change will allow these fees to be collected across the counter, in the same manner as other impact fees.

#### Rate Adjustments

Current rate adjustment procedures are inconsistent amongst fees. Some fees are to be adjusted by the change in the San Francisco Construction Cost Index from the prior year. Others are to be adjusted by the change in the San Francisco Construction Cost Index from the year the fee was enacted. Still others are to be adjusted by the change in the Consumer Price Index from the prior year. The Municipal Code for a few impact fees is silent on the method for annual adjustment. Staff recommends uniformly changing the code to adjust fees by the change in the San Francisco Construction Cost Index from the prior year, wherever possible. (See new Section 16.64.110.)

#### Responsibility

The Municipal Code section for the Parking In Lieu fee currently requires the Chief Transportation Official (CTO) to annually adjust the fee. Staff recommends changing the code so that fee adjustment is consistent with other impact and in-lieu fees. This corrects a problem identified during the 2015 Parking Funds Audit.

#### Citations

Three of the Transportation impact fees authorize certain City officials to issue citations. The listed position titles are outdated. Since staff positions change over time, Staff recommends broadening this language to give authority to the Directors of Planning and Community Environment and Development Services, or their designees.

#### Exemption Loophole

Residential Subdivision developments are subject to Quimby Act parkland dedication fees rather than park impact fees. Accordingly, residential subdivisions are exempt from park impact fees. The new ordinance clarifies that this exemption only applies to park impact fees and not to other impact fees. (See Section 16.58.030.)

### Reporting

The Parking In Lieu fee currently requires the Chief Transportation Official (CTO) to annually review the estimated cost of parking, the continued need for parking, and the reasonable relationship between need and pending or anticipated development. Staff recommends removing this language so the process is similar to other impact fee reporting, which is included as part of the City Manager's annual review of impact fees. This also addresses a problem identified in the 2015 Parking Funds Audit.

### Protest Rights

This section is an addition to the code and covers the rights and processes for protest. The Mitigation Fee Act, the State law governing impact fees, requires the City to provide a protest procedure. In the past, this has been handled on an ad hoc basis. The new ordinance provides a multi-step appeal process designed to address any mis-calculation errors at the Director or City Manager level without the need for unnecessary litigation. (See new Sections 16.64.070 and 16.64.080.)

### Calculation of Parking In Lieu Fee

The parking in lieu fee is based on the design and construction costs of the most recent parking structure. In the event a new parking garage is constructed, the new ordinance allows the eligible design and construction costs to also include bond financing costs, if applicable. (See Section 16.57.030.)

## **Resource Impact**

Budget implications will be minimal. Revenues may increase slightly if impact fees at building permit issuance are higher than they would be at entitlement due to separately adopted changes to the fee schedule. There would be no impact on expenses.

## **Environmental Impact**

This action is exempt from environmental review under Sections 15061 of the California Environmental Quality Act Guidelines.

## **Timeline**

Since the changes suggested could impact some fee calculations because of the time those calculations take place (i.e. later in the process), the proposed ordinance will become effective 60 days after adoption.

### **Attachments:**

- Attachment A: Ordinance Amending Fee Procedures (PDF)

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Ordinance No. \_\_\_\_\_

Ordinance of the Council of the City of Palo Alto Amending Palo Alto Municipal Code (PAMC) Title 16 (Building Regulations), Chapters 16.45 (Transportation Impact Fee for New Nonresidential Development in the Stanford Research Park/El Camino Real CS Zone), 16.46 (Approval of Projects with Impacts on Traffic in the San Antonio/West Bayshore Area), 16.47 (Approval of Projects with Impacts on Housing), 16.57 (In-Lieu Parking Fee For New Nonresidential Development in the Commercial Downtown (CD) Zoning District), 16.58 (Development Impact Fees), 16.59 (Citywide Transportation Impact Fee), 16.60 (Charleston Arastradero Corridor Pedestrian and Bicyclist Safety Impact Fee), 16.61 (Public Art for Private Developments), and Title 21 (Subdivisions and Other Divisions of Land), Chapter 21.50 (Parkland Dedication or Fees In-Lieu Thereof) and Adding 16.64 (Development Fee and In-Lieu Payment Administration),

The Council of the City of Palo Alto does ORDAIN as follows:

SECTION 1. Subdivision (d) of Section 16.45.060 Calculation of Transportation Impact Fee of Chapter 16.45 (Transportation Impact Fee for New Nonresidential Development in the Stanford Research Park/El Camino Real CS Zone) of the Palo Alto Municipal Code is amended to read as follows:

**16.45.060 Calculation of Transportation Impact Fee.**

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(d) Payment. The fee shall be paid as set forth in Chapter 16.64 of this Code ~~in full to the city building inspection division prior to issuance of the building permit for the development. If no building permit is required for a change of use, the fee shall be paid in full prior to issuance of a certificate of use and occupancy.~~

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SECTION 2. Subdivision (e) of Section 16.45.070 Penalties of Chapter 16.45 (Transportation Impact Fee for New Nonresidential Development in the Stanford Research Park/El Camino Real CS Zone) of the Palo Alto Municipal Code is amended to read as follows:

**16.45.070 Penalties**

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(e) Persons employed in the following designated employee positions are authorized to exercise the authority provided in the California Penal Code Section 836.5 and are authorized to

issue citations for violations of this chapter: development services director, director of planning and community environment and their designees. ~~chief building official, assistant chief building official, and ordinance compliance inspector.~~

SECTION 3. Subdivision (d) of Section 16.46.040 Calculation of Transportation Impact Fee of Chapter 16.46 (Approval of Projects with Impacts on Traffic in the San Antonio/West Bayshore Area) of the Palo Alto Municipal Code is amended to read as follows:

**16.46.040 Calculation of Transportation Impact Fee.**

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(d) Payment. The ~~traffic impact~~ fee shall be paid as set forth in Chapter 16.64 of this Code ~~in full to the city of Palo Alto before the first grading or building permit for a project is issued. If no grading or building permit is required for a conversion of use, the fee shall be paid in full before a certificate of use and occupancy permit is issued.~~

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SECTION 4. Subdivision (e) of Section 16.46.060 Penalties of Chapter 16.46 (Approval of Projects with Impacts on Traffic in the San Antonio/West Bayshore Area) of the Palo Alto Municipal Code is amended to read as follows:

**16.46.060 Penalties**

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(e) Persons employed in the following designated employee positions are authorized to exercise the authority provided in the California Penal Code Section 836.5 and are authorized to issue citation for violations of this chapter: development services director, director of planning and community environment and their designees. ~~chief building official, assistant chief building official and ordinance compliance inspector.~~

SECTION 5. Subdivision (e) of Section 16.47.040 Housing Requirements of Chapter 16.47 (Approval of Projects with Impacts on Housing) of the Palo Alto Municipal Code is amended to read as follows: ***[Note: This section will be deleted if Council adopts a pending ordinance consolidating the housing fees into a new Chapter.]***

**16.47.040 Housing Requirements.**

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(e) The in-lieu payment ~~shall~~ ~~must~~ be paid as set forth in Chapter 16.64 of this Code ~~prior to issuance of the first grading or building permit for a project. Any permit issued prior to payment~~

~~shall be null and void. For a phased project, payments may be made for each portion of a phased project prior to issuance of the first grading or building permit for that phase.~~

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SECTION 6. Subdivision (e) of Section 16.47.050 Penalties of Chapter 16.47 (Approval of Projects with Impacts on Housing) of the Palo Alto Municipal Code is amended to read as follows:

**16.47.050 Penalties**

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(e) Persons employed in the following designated employee positions are authorized to exercise the authority provided in the California Penal Code Section 836.5 and are authorized to issue citation for violations of this chapter: development services director, director of planning and community environment and their designees~~chief building official, assistant chief building official, and ordinance compliance inspector.~~

SECTION 7. Section 16.57.030 Calculation of In-Lieu Payment, 16.57.040 Timing of Payments and Section 16.57.070 Fee Review of Chapter 16.57 (In-Lieu Parking Fee For New Nonresidential Development in the Commercial Downtown (CD) Zoning District) of the Palo Alto Municipal Code are amended to read as follows:

**16.57.030 Calculation of in-lieu payment.**

(a) Initial Fee. The fee for each two hundred fifty square feet of gross floor area in a development shall equal the sum of the construction, land acquisition, if any, and administrative costs attributable to the provision of one new parking space, as established by the city council on the basis of calculations made under this chapter~~by the chief transportation official~~. The fee shall be \$30,250.00 per two hundred fifty square feet of gross floor area, and has been calculated based upon the feasibility study.

(b) Recalculated Fee. In the event the city council approves the construction of a public parking structure or structures, the city~~chief transportation official~~ shall adjust the fee as follows:

(i) At the time the construction contract is awarded, the fee shall be adjusted to reflect the actual "design costs" incurred by the city for the construction project as of the date the construction contract is awarded, plus "construction costs" based on the construction contract award.

(ii) At the time the final payment is made upon completion of the construction project, the fee shall be adjusted to reflect the actual "design costs" and "construction costs" incurred by the city for the construction project.

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(iii) The fee as recalculated pursuant to subsection (b)(i) or (b)(ii) may be higher or lower than the initial fee.

(iv) In the event that a construction project involves the construction of more than one parking structure, the recalculation of the fee shall be based on the structure with the highest cost per net new parking space.

(c) The rate of the fee shall be subject to annual adjustment for inflation pursuant to Section 16.64.110.

~~The fee, whether calculated in accordance with subsection (a) or subsection (b) shall be adjusted annually by the chief transportation official, by an amount equal to the change in the construction cost index for the preceding year, as determined for the San Francisco Bay Area by the "Engineering News Record," the McGraw Hill Construction Weekly.~~

~~If the fee is recalculated during the year, the next annual adjustment shall be prorated based on the change in the construction cost index between the date the fee was recalculated and the date of the annual adjustment.~~

(d) For the purposes of this section, the following definitions shall apply:

(i) "Construction costs" shall mean and include the construction costs, as bid, including any authorized contingency or as paid, based upon actual construction. "Construction costs" shall ~~not~~ include bond financing costs, if applicable.

(ii) "Design costs" shall mean and include architect fees, engineering fees and other consultant fees, as proposed or as paid, based upon actual performance. "Design costs" shall ~~not~~ include bond financing costs, if applicable.

~~(iii) "Feasibility study" shall mean and refer to the study entitled "Downtown Parking Structure Feasibility Study, dated January 16, 1997.~~

(iv) "Net new parking space" cost shall mean the cost to provide one new parking space in a public parking structure, and shall equal the sum of the construction, land acquisition, if any, and administrative costs of the structure attributable to each space in the structure.

**16.57.040 Timing of Payments.**

The fee shall be paid as set forth in Chapter 16.64 of this Code. ~~In accordance with the provisions of Section 16.57.010, the obligation to pay the fee established by this chapter shall accrue as of the date the first discretionary approval is given for the development, or if no discretionary approval is required, as of the date a complete application is submitted for a building permit for the development. Fees shall be due and payable to the City of Palo Alto at the transportation division prior to issuance of a building permit for the development, and shall be calculated at the rate of the fee in effect as of the date the obligation to pay the fee accrued. Payment of the fee may be deferred to the date of final building inspection approval of the development, provided the owner of the real property for which the fee has been required enters into an agreement with the city prior to issuance of the building permit for the development.~~

~~—The agreement shall provide that the amount of the fee shall be calculated at the rate of the fee in effect on the date the deferred payment is actually made. The agreement shall further provide that final occupancy approval shall not be given until the fee is paid. The agreement shall also provide that in any action to collect the fee or any portion thereof the city shall be entitled to all of its costs of enforcement and collection, including reasonable attorneys fees. The director of planning and community environment shall be authorized on behalf of the city to execute the agreement described in this section, in a form acceptable to the city attorney~~

**16.57.070 Fee review.**

The uses proposed for expenditure of the moneys in the fund shall be reviewed annually by the city council along with its review of the city's capital improvement program, and the moneys from the fund shall be appropriated for such expenditure in the manner provided by the Palo Alto City Charter and Municipal Code for adoption of the annual budget.

~~On an annual basis following the enactment of this chapter, the chief transportation official shall review the estimated cost of the described parking, the continued need for that parking and the reasonable relationship between such need and the impacts of pending or anticipated nonresidential development within the assessment district. The chief transportation official shall report his or her findings to the city council at a noticed public hearing and recommend any adjustment to these requirements as may be needed.~~

SECTION 8. Section 16.58.030 Exemptions and 16.58.040 Timing of Payments of Chapter 16.58 (Development Impact Fees) of the Palo Alto Municipal Code is amended to read as follows:

**16.58.030 Exemptions.**

The provisions of this chapter shall not apply to the following:

\* \* \*

(g) Any residential subdivision for which land dedication or fees in lieu thereof are required pursuant to Chapter 21.50 of the Palo Alto Municipal Code. This exemption shall only apply to the park development fee described in Section 16.58.020(a).

**16.58.040 Timing of Payments.**

~~The fee shall be paid as set forth in Chapter 16.64 of this Code. (a) The obligation to pay the fees established by this chapter shall accrue as of the date the first discretionary approval is given for the development, or if no discretionary approval is required, as of the date a complete application is submitted for a building permit for the development. Fees shall be due and payable as of the date a complete application is submitted for a building permit for the development. Fees shall be due and payable to the City of Palo Alto prior to issuance of a building permit for the development, and shall be calculated at the rate of the fees in effect as of the date the obligation to pay the fees accrued.~~

~~(b) Payment of the fees may be deferred, for residential development only, to the date of final building inspection approval of the development, provided the owner of the real property for which the fees are required enters into a recordable agreement with the city prior to issuance of the building permit for the development, which from the date of recordation, shall constitute a lien on the property and shall be enforceable against successors in interest to the property owner. The agreement shall provide that final occupancy approval shall not be given until the fees are paid. The agreement shall also provide that in any action to collect the fees or any portion thereof the city shall be entitled to all of its costs of enforcement and collection, including reasonable attorneys fees. The director of planning and community environment shall be authorized on behalf of the city to execute the agreement described in this section, in a form acceptable to the city attorney.~~

SECTION 9. Section 16.58.090 Annual Rate Adjustment is added to Chapter 16.58 (Development Impact Fees) of the Palo Alto Municipal Code to read as follows:

**16.58.090 Annual Rate Adjustment.**

The rate of the fee shall be subject to annual adjustment for inflation pursuant to Section 16.64.110.

SECTION 10. Section 16.59.050 Timing of Payments of Chapter 16.59 (Citywide Transportation Impact Fee) of the Palo Alto Municipal Code is amended to read as follows:

**16.59.050 Timing of Payments.**

(a) The fee shall be paid as set forth in Chapter 16.64 of this Code~~Except as otherwise required by Government Code Section 66007, the fee shall accrue when the first discretionary approval is given for a new development after the effective date of this section, or if no such discretionary approval is required subsequent to the effective date of this section, when an application is submitted for a building permit for that new development. In either case, the fee shall be payable when an application is submitted for a building permit for the new development. A fee shall be calculated at the rate in effect when the fee accrues.~~

~~(b) Payment of the fee may be deferred, for residential development only, to the date of final building inspection approval of the development, provided the owner of the real property for which the fees are required enters into a recordable agreement with the city prior to issuance of the building permit for the development, which from the date of recordation, shall constitute a lien on the property and shall be enforceable against successors in interest to the property owner. The agreement shall provide that final occupancy approval shall not be given until the fees are paid. The agreement shall also provide that, in any action to collect the fees or any portion thereof, the city shall be entitled to all of its costs of enforcement and collection, including reasonable attorney's fees. The director of planning and community environment may execute the agreement on behalf of the city in a form acceptable to the city attorney. Any~~

~~deferral granted pursuant to this paragraph (b) shall be consistent with the requirements of Government Code Section 66007.~~

(~~eb~~) A credit against the fee may be given for dedications of eligible citywide transportation capacity enhancements constructed or provided at private expense and for the value of land dedicated to the city that is necessary or useful to an eligible citywide transportation capacity enhancement. Such credit will be granted only if the city council determines that: (i) the city will experience a substantial cost savings or service quality improvement as a result of private construction or provision of the capacity enhancement or the dedication of land, (ii) the capacity enhancement can be expected to immediately and significantly relieve citywide traffic congestion, and (iii) the grant of the credit, in lieu of the fee, will not cause the city to delay the implementation of elements of the city's transportation plan that are of higher priority, in the judgment of the city council, than the land or capacity enhancement that will be dedicated. The credit shall be applied at the time the city accepts the land or capacity enhancement. Where the city council has made the determinations required by this subdivision, payment of a portion of the fee equal to the amount of an expected credit against the fee may be deferred to the date of final building inspection approval of the development, provided the owner of the real property for which the fees are required enters into a recordable agreement with the city prior to issuance of the building permit for the development, which from the date of recordation, shall constitute a lien on the property and shall be enforceable against successors in interest to the property owner. The agreement shall provide that final occupancy approval shall not be given until the fees are paid or the credit issued. The agreement shall also provide that, in any action to collect the fees or any portion thereof, the city shall be entitled to all of its costs of enforcement and collection, including reasonable attorney's fees. The director of planning and community environment may execute the agreement on behalf of the city in a form acceptable to the city attorney. Any deferral granted pursuant to this paragraph (b) shall be consistent with the requirements of Government Code Section 66007. Where a credit is given for the provision of a service that is an eligible capacity enhancement, the deferral of the fee, and the application of the credit, may be according to a schedule set forth in the recorded agreement, which schedule shall be designed to ensure that no credit is applied in advance of the provision of services for which the credit is made.

SECTION 11. Section 16.59.060(f) Calculation of Fee of Chapter 16.59 (Citywide Transportation Impact Fee) of the Palo Alto Municipal Code is amended to read as follows:

**16.59.060 Calculation of Fee.**

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(f) The rate of the fee shall be subject to annual adjustment for inflation pursuant to Section 16.64.110. Beginning July 1, 2005, and on each July 1 thereafter, the rate of the fee shall be automatically adjusted according to the following formula:

~~—Council Approved Rate = Most Recent ENR / ENR at Council Approval~~

~~Where the "Council Approved Rate" is the rate most recently set by resolution or ordinance of the city council, "Most Recent ENR" is the most recently published construction cost index when the calculation is made and "ENR at Council Approval" is the construction cost index published for the month in which the council approved the "Council Approved Rate."~~

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SECTION 12. Section 16.59.090(e) Penalties of Chapter 16.59 (Citywide Transportation Impact Fee) of the Palo Alto Municipal Code is amended to read as follows:

**16.59.090 Penalties**

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(e) Persons employed in the following designated employee positions are authorized to exercise the authority provided in the California Penal Code Section 836.5 and are authorized to issue citation for violations of this chapter: development services director, director of planning and community environment and their designees~~chief building official, assistant chief building official, and ordinance compliance inspector.~~

SECTION 13. Section 16.60.050 Timing of Payments of Chapter 16.60 (Charleston Arastradero Corridor Pedestrian and Bicyclist Safety Impact Fee) of the Palo Alto Municipal Code is amended to read as follows:

**16.60.050 Timing of Payments.**

(a) The fee shall be paid as set forth in Chapter 16.64 of this Code~~Except as otherwise required by Government Code Section 66007, the fee shall accrue when the first discretionary approval is given for a new development after the effective date of this section, or, if no such discretionary approval is required subsequent to the effective date of this section, when an application is submitted for a building permit for that new development. In either case, the fee shall be payable when an application is submitted for a building permit for the new development. A fee shall be calculated at the rate in effect when the fee accrues.~~

(b) ~~Payment of the fee may be deferred, for residential development only, to the date of final building inspection approval of the development, provided the owner of the real property for which the fees are required enters into a recordable agreement with the city prior to issuance of the building permit for the development, which from the date of recordation, shall constitute a lien on the property and shall be enforceable against successors in interest to the property owner. The agreement shall provide that final occupancy approval shall not be given until the fees are paid. The agreement shall also provide that, in any action to collect the fees or any portion thereof, the city shall be entitled to all of its costs of enforcement and collection, including reasonable attorney's fees. The director of planning and community environment may execute the agreement on behalf of the city in a form acceptable to the city attorney. Any deferral granted pursuant to this paragraph (b) shall be consistent with the requirements of Government Code Section 66007.~~

(e) A credit against the fee may be given for dedications of eligible safety enhancements constructed or provided at private expense and for the value of land dedicated to the city that is necessary or useful to an eligible safety enhancements. Such credit will be granted only if the city council determines that: (i) the city will experience a substantial cost savings or service quality improvement as a result of private construction or provision of the eligible safety enhancements or the dedication of land, (ii) the eligible safety enhancements can be expected to immediately and significantly improve bicyclist or pedestrian safety, and (iii) the grant of the credit, in lieu of the fee, will not cause the city to delay the implementation of elements of the Program that are of higher priority, in the judgment of the city council, than the land or eligible safety enhancement that will be dedicated. The credit shall be applied at the time the city accepts the land or eligible safety enhancement. Where the city council has made the determinations required by this subdivision, payment of a portion of the fee equal to the amount of an expected credit against the fee may be deferred to the date of final building inspection approval of the development, provided the owner of the real property for which the fees are required enters into a recordable agreement with the city prior to issuance of the building permit for the development, which from the date of recordation, shall constitute a lien on the property and shall be enforceable against successors in interest to the property owner. The agreement shall provide that final occupancy approval shall not be given until the fees are paid or the credit issued. The agreement shall also provide that, in any action to collect the fees or any portion thereof, the city shall be entitled to all of its costs of enforcement and collection, including reasonable attorney's fees. The director of planning and community environment may execute the agreement on behalf of the city in a form acceptable to the city attorney. Any deferral granted pursuant to this paragraph (b) shall be consistent with the requirements of Government Code Section 66007. Where a credit is given for the provision of a service that is an eligible safety enhancement, the deferral of the fee, and the application of the credit, may be according to a schedule set forth in the recorded agreement, which schedule shall be designed to ensure that no credit is applied in advance of the provision of services for which the credit is made.

SECTION 14. Section 6.60.060(e) Calculation of Fee of Chapter 16.60 (Charleston Arastradero Corridor Pedestrian And Bicyclist Safety Impact Fee) of the Palo Alto Municipal Code is amended to read as follows:

**16.60.060 Calculation of Fee.**

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(e) The rate of the fee shall be subject to annual adjustment for inflation pursuant to Section 16.64.110. Beginning July 1, 2006, and on each July 1 thereafter, the rate of the fee shall be automatically adjusted according to the following formula:

— Council Approved Rate = Most Recent ENR / ENR at Council Approval

Where the "Council Approved Rate" is the rate most recently set by resolution or ordinance of the city council, "Most Recent ENR" is the most recently published construction cost index

~~when the calculation is made and "ENR at Council Approval" is the construction cost index published for the month in which the council approved the "Council Approved Rate."~~

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SECTION 15. Section 16.60.090(e) Penalties of 16.60 (Charleston Arastradero Corridor Pedestrian and Bicyclist Safety Impact Fee) of the Palo Alto Municipal Code is amended to read as follows:

**16.60.090 Penalties**

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(e) Persons employed in the following designated employee positions are authorized to exercise the authority provided in the California Penal Code Section 836.5 and are authorized to issue citation for violations of this chapter: ~~development services director, chief building inspector, chief transportation official, and director of, planning and community environment director and their designees~~ chief building official, assistant chief building official, and ordinance compliance inspector.

SECTION 16. Section 16.61.090 Developer's Option to Pay Fees to Public Art Fund In-Lieu of Providing On-Site Art of Chapter 16.61 (Public Art for Private Developments) of the Palo Alto Municipal Code is amended to read as follows:

**16.61.090 Developer's option to pay fees to public art fund in-lieu of providing on-site art.**

In lieu of installation of on-site public art, the developer may elect to make a monetary contribution to the Palo Alto Public Arts Fund. The amount of the contribution shall be the cost of the public art required by Section 16.61.040. A developer who elects to satisfy the requirements of this chapter through a contribution to the Fund must complete the payment in-lieu prior to the issuance of any building permit for the development project. The payment shall be made as set forth in Chapter 16.64 of this Code.

SECTION 17. Chapter 16.64 (Development Fee and In-Lieu Payment Administration) is added to the Palo Alto Municipal Code to read as follows:

**CHAPTER 16.64 DEVELOPMENT FEE AND IN-LIEU PAYMENT ADMINISTRATION**

Sections:

- 16.64.010      Applicability
- 16.64.020      Due Date
- 16.64.030      Deferred Payment
- 16.64.040      Calculation of Fees
- 16.64.050      Adoption of Fee Schedule
- 16.64.060      Notice of Protest Rights

<u>16.64.070</u>	<u>Informal Hearing</u>
<u>16.64.080</u>	<u>Appeal of Director's Determination</u>
<u>16.64.090</u>	<u>Cost of Protest</u>
<u>16.64.100</u>	<u>Administration</u>
<u>16.64.110</u>	<u>Inflation Adjustment</u>

**Section 16.64.010**    **Applicability**

This Chapter 16.64 applies to any fee or in-lieu payment imposed under any provision of this code that states that that payment of the fee or in-lieu payment shall be made pursuant to this Chapter 16.64. For purposes of this chapter the term "fee" shall be used to refer to any such fee or in-lieu payment, regardless of how denominated elsewhere in this code.

**Section 16.64.020**    **Due Date**

A fee shall be paid on or before the issuance of the first building permit for the project. For a phased project, payments may be made for each portion of a phased project prior to issuance of the first building permit for that phase. If there is no building permit for the project, the fee shall be paid upon issuance of the first city permit or other approval. If no city permit or other approval is required, and the obligation to pay the fee is triggered by a change in use, payment of the fee must be made before the change in use occurs.

**Section 16.64.030**    **Deferred Payment**

For residential development only, payment of a fee may be deferred to the date of final building inspection approval of the development, provided the owner of the real property for which the fees are required enters into a recordable agreement with the city prior to issuance of the building permit for the development, which from the date of recordation, shall constitute a lien on the property and shall be enforceable against successors in interest to the property owner. The agreement shall provide that final occupancy approval shall not be given until the fees are paid. The director of planning and community environment may execute the agreement on behalf of the city in a form acceptable to the city attorney.

**Section 16.64.040**    **Calculation of Fee**

A fee shall be payable at the rate specified in the council-adopted Municipal Fee Schedule in effect on the date the fees are paid, except that the applicant for a vesting tentative map for a development project shall pay the fees in effect on the date the application for the vesting tentative map is deemed complete.

**Section 16.64.050**    **Adoption of Fee Schedule**

The City Council can revise the rate of any fee by amending, by ordinance or resolution, the rate set forth in the Municipal Fee Schedule. Any inflation-adjustment provided in this code with respect to a fee shall go into effect upon approval by the city council of a change to the Municipal Fee Schedule reflecting the adjusted amount of the fee.

**Section 16.64.060 Notice of Protest Rights**

(a) Each applicant is hereby notified that, in order to protest the imposition of any impact fee required by this chapter, the protest must be filed in accordance with the requirements of this chapter and the Mitigation Fee Act. Failure of any person to comply with the protest requirements of this chapter or the Mitigation Fee Act shall bar that person from any action or proceeding or any defense of invalidity or unreasonableness of the imposition.

(b) On or before the date on which payment of the fee is due, the applicant shall pay the full amount required by the city and serve a written notice to the director of planning and community environment with all of the following information: (1) a statement that the required payment is tendered, or will be tendered when due, under protest; and (2) a statement informing the city of the factual elements of the dispute and the legal theory forming the basis for the protest.

(c) The applicant shall bear the burden of proving, to the satisfaction of the director, entitlement to a fee adjustment.

**Section 16.64.070 Informal Hearing**

(a) The director shall schedule an informal hearing regarding the protest, to be held no later than 60 days after the imposition of the impact fees upon the development project, and with at least 10 days' prior notice to the applicant (unless either dates are otherwise agreed by the director and the applicant).

(b) During the informal hearing, the director shall consider the applicant's protest, relevant evidence assembled as a result of the protest, and any additional relevant evidence provided during the informal hearing by the applicant and the city. The director shall provide an opportunity for the applicant to present additional evidence at the hearing in support of the protest.

(c) The Director shall issue a written determination regarding the protest. The director's determination shall support the fee imposed upon the development project unless the applicant establishes, to the satisfaction of the director, entitlement to an adjustment to the fee.

**Section 16.64.080 Appeal of Director's Determination**

(a) Any applicant who desires to appeal a determination issued by the director shall submit a written appeal to the director and the city manager. A complete written appeal shall include a complete description of the factual elements of the dispute and the legal theory forming the basis for the appeal of the director's determination. An appeal received by the city manager more than 10 calendar days after the director's determination may be rejected as late. Upon receipt of a complete and timely appeal, the city manager shall appoint an independent hearing officer to consider and rule on the appeal.

(b) The independent hearing officer shall, in coordination with the applicant and the director, set the time and place for the appeal hearing, and provide written notice thereof. The

independent hearing officer shall consider relevant evidence, provide an opportunity for the applicant and the city to present additional noncumulative evidence at the hearing, and preserve the complete administrative record of the proceeding.

(c) Within 30 days after the independent hearing officer closes the hearing and receives post-hearing briefs (if any), the independent hearing officer shall issue a written decision on the appeal hearing which shall include a statement of findings of fact in support of the decision. The independent hearing officer's discretion shall be limited to a determination that either supports the director's determination or orders the city to refund all or a portion of the impact fees to the applicant. The applicant shall bear the burden of proving entitlement to a fee adjustment. The decision of the hearing officer is final and conclusive, and is subject to judicial review.

#### **Section 16.64.090 Cost of Protest**

The applicant shall pay all city costs related to any protest or appeal pursuant to this chapter, in accordance with the fee schedule adopted by the city. At the time of the applicant's protest, and at the time of the applicant's appeal, the applicant shall pay a deposit in an amount established by the city to cover the estimated reasonable cost of processing the protest and appeal. If the deposit is not adequate to cover all city costs, the applicant shall pay the difference within 20 days after receipt of written notice from the director.

#### **Section 16.64.100 Administration**

The City Manager, or her/his designee, is authorized to adopt administrative regulations or guidelines that are consistent with and that further the terms and requirements set forth in this Code. All such administrative regulations or guidelines must be in writing. Such regulations or guidelines may interpret any provision of this chapter, as well as any provision of this code relating to the calculation of a fee.

#### **Section 16.64.110 Inflation Adjustment**

Where it is indicated in this code that a fee is subject to inflation adjustment pursuant to this section, on each July 1, the amount of the fee shall be recalculated according to the following formula:

Adjusted Rate = Prior Rate \* Most Recent ENR / ENR for Prior Rate  
Where the "Prior Rate" is the rate in effect prior at the time this adjustment is calculated, "Most Recent ENR" is the most recently published construction cost index when the adjustment is calculated and "ENR at Council-Approval" is the construction cost index (i) used to calculate the Prior Rate when it was set pursuant to this section or (ii) published for the month in which the council approved the "Prior Rate." "Construction cost index" means the construction cost index for the San Francisco Bay Area set forth in the Engineering News Record published by McGraw Hill and Associates. In the event the Engineering News Record ceases to calculate and publish this index, then the city manager may designate a comparable, alternative index to serve as the construction cost index.

The existing rate for a fee shall remain in effect until the recalculated rate is made adopted and effective pursuant to Section 16.64.050.

**SECTION 18.** Sections 21.50.060 Procedure and 21.50.070 Calculation of fair market value of Chapter 21.50 (Parkland Dedication or Fees In-Lieu Thereof) of the Palo Alto Municipal Code are added to read as follows:

**21.50.060 Procedure.**

(a) Payment of fees: Any fee due under this Chapter shall be paid as set forth in Chapter 16.64 of this Code.

(b) Land dedications. At the time of the filing of the final or parcel map, the subdivider shall dedicate the land to the City by a grant deed or other form acceptable to the City Attorney. The director of public works, director of planning and community environment or city council as appropriate, shall, upon approving a subdivision map, determine the conditions necessary to comply with the requirements for parkland dedication or fees in lieu thereof as set forth in this chapter, and said conditions shall be attached as conditions of approval.

**21.50.070 Calculation of fair market value.**

...

(c) The rate of the fee shall be subject to annual adjustment for inflation pursuant to Section 16.64.110. Beginning July 1, 2009, and on each July 1 thereafter, the dollar amount set forth in this section shall increase without further action by the city according to the following formula:

$$\frac{\text{—Most Recent ENR}}{\text{Council Approved Rate}^*} \frac{\text{—ENR at Council Approval}}{\text{Council Approved Rate}^*}$$

\*Where the "Council Approved Rate" is the rate set forth in subsection (b).

**SECTION 19.** Severability. If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed and adopted this Ordinance, and each and all provisions hereof, irrespective of the fact that one or more provisions may be declared invalid.

**SECTION 20.** The City Council finds that this ordinance is exempt from the provisions of the California Environmental Quality Act pursuant to Section 15061(b)(3) of the California Environmental Quality Act Guidelines, because it can be seen with certainty that there is no possibility of significant environmental effects occurring as a result of the adoption of this ordinance.

NOT YET APPROVED

SECTION 21. This ordinance shall become effective upon the commencement of the sixtieth day after the date of its adoption.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

APPROVED:

\_\_\_\_\_  
Senior Asst. City Attorney

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Director of Administrative Services

\_\_\_\_\_  
Director of Planning and Community  
Environment