



ORDINANCE NO. 5045

**AN ORDINANCE AMENDING CHAPTER 12.28 OF THE ORDINANCE
CODE FOR EL DORADO COUNTY, CALIFORNIA, PROVIDING FOR
A GENERAL PLAN TRAFFIC IMPACT MITIGATION FEE PROGRAM**

**THE BOARD OF SUPERVISORS OF THE COUNTY OF EL DORADO
DOES ORDAIN AS FOLLOWS:**

Section 1. Findings

WHEREAS, since the late 1980's, El Dorado County has had an ongoing program in place to review, amend and adopt a County-wide Capital Improvement Program (CIP), and review and amend (if necessary) the County's Traffic Impact Mitigation (TIM) Fee program, in order to implement the County's General Plan and accommodate new development. The County's process is driven both by state law (e.g. California Government Code 66000 et. seq.) and requirements put in place via local initiatives; and

WHEREAS, since 2004, the County reviewed, amended and adopted an updated CIP on an ongoing basis to ensure compliance with the General Plan and state law. The County has also filed a Traffic Impact Fee Program Annual Report for each Fiscal Year from 2002/03 through 2015/16 in compliance with California Government Code Section 66006. In addition, the Board reviewed the TIM Fee program in 2005, 2006, 2007, 2008, 2009, 2010, 2012 and 2016 and adopted resolutions amending the TIM Fee as appropriate; and

WHEREAS, General Plan Implementation Measure TC-B requires that the fee program(s) shall be updated annually for changes in project costs, and at least every five years with revised growth forecasts, revised improvement project analysis and list, and revised construction cost estimates to ensure the programs continue to meet the requirements of the General Plan [Policies TC-Xa, TC-Xb, and TC-Xg]; and

WHEREAS, fees shall be adjusted annually by an increase or decrease by either actual project costs or by Engineering News Record- Building Cost Index as appropriate. TIM Fees shall be set and updated by a resolution as adopted by the Board of Supervisors, and administered via a TIM Fee Administration Manual adopted by resolution; and

WHEREAS, the County has conducted a full review of the project pursuant to the California Environmental Quality Act (CEQA) and has, through Resolution 189-2016, certified a Programmatic Environmental Impact Report which documents the potential impacts identified in the 2016 Environmental Impact Report.

Section 2. Title 12 – Streets, Sidewalks and Public Places, Chapter 12.28 of the El Dorado County Ordinance Code is hereby amended as follows:

Chapter 12.28 – Traffic Impact Mitigation (TIM) Fee

- 12.28.010 – Purpose
- 12.28.020 – Definitions
- 12.28.030 – Applicability
- 12.28.040 – Establishment of TIM Fees
- 12.28.050 – Amount of TIM Fees
- 12.28.060 – Payment of TIM Fees
- 12.28.070 – Reductions and Appeals
- 12.28.080 – Priorities
- 12.28.090 – Enforcement
- 12.28.100 – Traffic Impact Mitigation Fee Funds
- 12.28.110 – Credits and Reimbursement for Developer Constructed Facilities
- 12.28.120 – Transfers
- 12.28.130 – Conflicting Provisions
- 12.28.140 – Other Applicable Sections of County Code
- 12.28.150 – Severability

12.28.010 – Purpose

The TIM Fee Program is used to fund transportation improvements needed to accommodate growth anticipated by the County’s General Plan. Improvements funded by the TIM Fee Program include, but are not limited to, new roadways, roadway widenings, roadway intersection improvements and transit. A TIM Fee program is legally required to meet guidelines as established by Assembly Bill 1600 (California Government Code Sections 66000-66008).

The fee requirements established in this chapter shall be applicable to all New Development located within the boundaries of the County. The fee requirements are reflected in the TIM Fee Program Schedule adopted by Resolution.

12.28.020 - Definitions

For the purpose of this section, certain terms or words used herein shall be defined as follows:

- A. **“Applicant”** means any individual, person, firm, partnership, association, joint venture, corporation, limited liability company, entity, combination of entities or authorized representative thereof, who undertakes, proposes or applies to the County for any Development Project.

- B. **“Approval”** means an actual use entitlement granted by El Dorado County, not an acceptance of an application as complete.

- C. **“Board”** means the El Dorado County Board of Supervisors.
- D. **“Building permit”** means the permit required by El Dorado County to do or cause to be done any work regulated by the County’s building codes.
- E. **“CDA”** means the Community Development Agency.
- F. **“County”** means the County of El Dorado.
- G. **“Change of Intensification of Use”** means a Nonresidential Project that will change the use of building floor area, as defined in the California Building Standards Code, from one Use Fee Category to a higher Use Fee Category. Change of Intensification of Use can also include a project which may not require a building permit, however adds traffic to the County roadway network.
- H. **“Changed and Intensified Square Feet”** means the square feet of building floor area, as defined in the California Building Standards Code, of an existing building involved in a Change and Intensification of Use project.
- I. **“Complete Building Permit Application”** means an application for a building permit meeting the minimum submittal requirements as determined by the El Dorado County CDA Building Services Division.
- J. **“Development Project”** means any activity for new construction, any Change of Intensification of Use of an existing building or development of lot, or any Additional Housing Units in a new or existing building requiring the issuance of a building permit by the County or a project which may not require a building permit, however adds traffic to the County roadway network.
- K. **Developer Constructed Facilities”** are transportation improvements constructed by the applicant building a new development.
- L. **“Director”** means the El Dorado County CDA Director or designee.
- M. **“Discretionary Project”** is a project which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations.

- N. **“District”** means any of the several local fee areas within the El Dorado County road network boundaries, as shown in the El Dorado County TIM Fee Program Schedule.
- O. **“Fee per Housing Unit”** means the Impact Fee per housing unit applicable to the Development Project imposed under this chapter in the TIM Fee Program Schedule.
- P. **“Fee per Square Foot”** means the Impact Fee per square foot applicable to the Development Project imposed under this chapter as contained in the County’s TIM Fee Program Schedule.
- Q. **“Hearing Officer”** means the person appointed by the Board of Supervisors whom is deemed to have sufficient knowledge of the Mitigation Fee Act (Government Code Section 66000-66008) and the administrative process.
- R. **“New Development”** means the original construction of residential buildings, original construction of commercial, industrial or other nonresidential buildings, or, the expansion, alteration, enlargement, conversion or replacement of existing buildings or the construction of new accessory buildings. New development includes a change in building use that results in an increase in AM or PM peak-hour usage of the road network. “New Development” can also include a project which may not require a building permit, however adds traffic to the County roadway network.
- S. **“TIM Fee”** shall mean the Traffic Impact Mitigation (TIM) Fee imposed under this chapter as set forth in the County’s TIM Fee Program Schedule as adopted by Resolution. Fees may be adjusted for inflation pursuant to Section 12.28.050.
- T. **“TIM Fee Program”** shall mean a fee program levied by El Dorado County to ensure that New Development projects pay for all or a portion of the costs of providing public infrastructure or services to the new development.
- U. **“TIM Fee Program Schedule”** shall mean the zone boundary, roadway project list, and fee schedule on file with the Director and as adopted by Resolution.

12.28.030 - Applicability

The regulations, requirements and provisions of this chapter shall apply to any Development Project, unless exempt from this chapter. The Applicant for any Development Project, unless exempt from this chapter as a condition of its building permit or other use permit by the County which warrant a TIM fee as determined by the Director, must pay to the County the required TIM Fees, or comply with the requirements for Developer Constructed Facilities as set forth in

Section 12.28.110. The TIM Fee Administration Manual and TIM Fee Program Schedule provide further guidance regarding TIM Fee categories and applicable fees.

12.28.040 – Establishment of TIM Fees

The TIM Fee Program Schedule is determined by analyzing what roadway improvements are required as a result of growth for a period of 20 years. These roadway improvements necessary to maintain Level of Service as defined in General Plan Policy TC-Xd become part of the County's Capital Improvement Program (CIP). Once these roadways are identified and placed in the County's CIP, the County shall implement the roadway construction as follows:

- A. Project priorities for the El Dorado County CIP shall be established by the Board.
- B. The Board shall allocate the funds collected pursuant to this section.
- C. Land development projects within the El Dorado County CIP Boundary shall be required to construct roadways, dedicate rights-of-way, adjust or relocate building sites, modify proposed parking and circulation, provide parking lot connectors between adjacent developments, and otherwise accommodate projects which are a part of the adopted CIP for the El Dorado County TIM Fee Program.

12.28.050 – Amount of TIM Fees

The TIM Fees shall be calculated for each New Development project, Change of Intensification of Use project, and/or projects involving Changed and Intensified Square Feet following the process in the TIM Fee Program Administrative Manual and as stated in the latest TIM Fee Program Schedule detailed in the TIM Fee Program Schedule Resolution.

The TIM Fee amounts shall be adjusted for inflation no later than the end of the 3rd fiscal quarter of each year in accordance with the percentage change published by the Engineering News Record Cost Index, or if such index ceased to be published, by an equivalent index chosen by the Director, with appropriate adjustments for regional and local construction costs as necessary.

The Director shall review the estimated cost of projects included in the CIP, the continued need for such improvements, and the reasonable relationship between such need and the impacts of the various types of new developments, both pending and anticipated. The Director shall notify the Board at a public meeting of the proposed fee adjustment. No fee adjustment shall be effective until approved by the Board. Any fee adjustment approved by the Board shall be effective on July 1st of the year in which the action is taken, or at such other time as is provided by law.

12.28.060 – Payment of TIM Fees

Payment of TIM Fees shall be due in one installment prior to the issuance of a building permit for New Development projects, Change of Intensification of Use projects, and/or projects

involving Changed and Intensified Square Feet as determined by the Director, and shall be in the amount of one hundred percent (100%) of the TIM Fee.

Except as provided elsewhere in this chapter, no building permit or other Discretionary Project permit may be issued for any New Development project subject to this chapter unless the TIM Fee is paid to the County.

12.28.070 – Reductions and Appeals

- A. Reduction and/or appeals of the TIM Fees may be granted by the Director to a Development Project under any one of the following scenarios:
 - 1. The requirements of this chapter have been incorrectly applied to a Development Project; and/or
 - 2. That application of the requirements of this chapter to a development Project is unlawful under and/or conflict with federal, state, or local law and/or regulation including constituting an unlawful taking of property without just compensation.
- B. Applications for reductions and/or appeals. Application for reduction and/or appeals of the TIM Fee must be made no later than the date of application for the building permit for the Development Project on a form provided by the County, and shall include payment of fees as established in TIM Fee Program Schedule. The burden of establishing by satisfactory factual proof the applicability and elements of this Section shall be on the Applicant. The Applicant must submit full information in support of their submittal as requested by the Director. Failure to raise each and every issue that is contested in the application and provide appropriate support evidence will be grounds to deny the application and will also preclude the Applicant from raising such issues in court. Failure to timely submit such an application shall constitute a failure to exhaust administrative remedies that shall preclude such person from challenging the TIM Fees in court. The Director may require at the expense of the Applicant, review of the submitted materials by a third party.
- C. The County shall mail the Applicant a final, written determination on the application for a reduction and/or appeal. The Applicant may appeal the Director's decision to the Hearing Officer. The Hearing Officer's decision is final and not administratively appealable.

12.28.080 – Priorities

El Dorado County's CDA shall review the El Dorado County road network CIP during the division's annual budget preparation period. Such review shall be for the purpose of recommending to the Board funding priorities for the coming fiscal year among the projects identified in the CIP.

12.28.090 - Enforcement

A. Failure to comply with any of the provisions of this chapter is declared to be prima facie evidence of an existing major violation and shall be abated by the Director in accordance with the provisions of this chapter. Any person in violation will be subject to civil penalties, civil action and/or other legal remedies.

B. If the Applicant fails to comply with any provisions of this chapter including failure to timely pay the TIM Fee, the County may take any of the following actions:

1. Withhold issuance of the building-related permits;
2. Record a Special Assessment or other lien or liens against the real property which is the subject of the Development Project for the amount of the TIM Fee;
3. Revoke or suspend the temporary certificate of occupancy and/or certificate of occupancy for the Development Project;
4. Take any other action necessary and appropriate to secure payment, with interest accruing from the date of nonpayment;
5. Assess civil penalties against an Applicant and/or associated parcel owner who fails to comply with this chapter, including failure to pay the TIM Fee.

12.28.100 - Traffic Impact Mitigation Fee Funds

The Board, with recommendations from the Director, shall establish TIM Fee Funds to receive all TIM Fees collected pursuant to this chapter.

The fee collected shall be used for the following purposes:

1. To pay for capital improvements listed in the TIM Fee Program Schedule, including planning, design, administration, environmental compliance, and construction;
2. To acquire right-of-way for capital improvements listed in the TIM Fee Program for which funding is expressly provided for right-of-way acquisition;
3. To reimburse El Dorado County for construction of such capital improvements listed in the TIM Fee Program;
4. To reimburse other development projects for construction of such capital improvements listed in the TIM Fee Program Schedule.

Funding for the fee program for any improvement project is limited to the amounts shown in the TIM Fee Program Schedule, unless expressly approved by the Board.

Funds may also be used to cover reasonable administrative or related expenses of the County not reimbursed through processing fees. Funds may also be used for costs reasonably related to preparation and revision of plan, policies, and studies including nexus studies required to make any necessary findings and determinations required by the Mitigation Fee Act.

12.28.110 – Credits and Reimbursement for Developer Constructed Facilities

Reimbursement Agreements. Reimbursement Agreement shall be considered for new development projects, which are required to fund or construct improvements included in the CIP which provide capacity significantly in excess of project needs. Such agreements shall include a provision for El Dorado County to recapture preparation and administration costs attributable to these agreements. Reimbursement agreements shall apply only to the value of improvements that exceeds the new development project's fee obligation. The fee obligation shall be exclusive of amounts to be recaptured by reimbursement. Reimbursement agreements shall be processed by the Director and approved by the Board. Details of the reimbursement agreements shall be in

accordance to the Board approved Reimbursement Guidelines, which is included in the TIM Fee Administration Manual.

Credit Against Fee Obligation. A request for credits by the applicant for construction of improvements as described in the current CIP by new development may be granted against the TIM fees owed and shall be calculated by the Director and approved by the Board. The amount of such credit shall be calculated using actual costs. The Director shall determine the basis for calculating the amount of credit for other improvements (such as intersections, signalization, etc.). For all improvements, such credit shall be limited to amounts shown in the current CIP. Further detail on administration and use of Credits are provided in the TIM Fee Administration Manual.

12.01-120 – Transfers

Transfers and/or noninterest earning loans shall be allowed between the different TIM Fee Zone funds upon the recommendation of the Director and shall comply with the following:

1. The transfer or loan is to provide funding for a specific capital improvement project already contained within the TIM Fee zone of one of the other districts;
2. Transferred or loaned funds will be repaid as funds become available;
3. The Board is notified of and approves the transfer through the annual budget process pursuant to the Mitigation Fee Act requirements; and
4. The Director determines in writing that special circumstances exist to justify the loan. “Special circumstances” shall include, but is not be limited to, opportunities to obtain grants or other funding, coordination with other project(s) and/or project timing. The Board is notified of and approves the loan pursuant to the Mitigation Fee Act requirements.

12.28.130 – Conflicting Provisions

Where a conflict exists between the requirements in this chapter and applicable requirements contained in other chapters of this Code, the applicable requirements of this chapter shall prevail.

12.28.140 - Other Applicable Sections of County Code

This chapter does not supersede, replace, or invalidate other applicable sections of County Code (such as the zoning ordinance, street improvement ordinance, etc.).

12.28.150 – Severability

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The Board hereby declares that it

would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable. Section 2. This ordinance shall become effective 60 days following adoption hereof.

PASSED AND ADOPTED by the Board of Supervisors of the County of El Dorado at a regular meeting of said Board, held on the 13th day of December, 2016, by the following vote of said Board:

Ayes: Brian K. Veerkamp, Michael Ranalli, Ron Mikulaco,
Shiva Frentzen, Sue Novasel

ATTEST
JAMES S. MITRISIN
Clerk of the Board of Supervisors

Noes: None
Absent: None

By /s/ Kim Dawson
Deputy Clerk

/s/ Ron Mikulaco
Ron Mikulaco, Chair, Board of Supervisors

APPROVED AS TO FORM
MICHAEL J. CICCOTZI
COUNTY COUNSEL

By /s/ David A. Livingston
David A. Livingston
Chief Assistant County Counsel