



**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE AMENDING the procedure for El Dorado County to collect and disburse development impact mitigation fees on behalf of special districts.

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

**Section 1.** Ordinance No. 4404, adopted December 19, 1995, which added Chapter 13.30 of Title 13 of the El Dorado County Ordinance Code entitled “CSD and Parks and Recreation Impact Mitigation Fees” is hereby rescinded and repealed in its entirety and shall be of no further force and effect.

**Section 2.** Ordinance No. 3991, adopted December 13, 1988, which added Chapter 13.20 of Title 13 of the El Dorado County Ordinance Code entitled “Development Fees for Fire Protective Service” is hereby entitled “Development Impact Mitigation Fees for Special Districts” and amended to read as follows:

**CHAPTER 13.20**

**DEVELOPMENT IMPACT MITIGATION FEES FOR SPECIAL DISTRICTS FIRE PROTECTION SERVICE**

**Section 13.20.010. - Purpose.**

This chapter sets forth the requirements for the establishment and administration of development impact mitigation fees collected by the County of El Dorado on behalf of a Special District within the County. For purposes of this chapter, “Special District” includes a fire improvement district, a community services district, a recreation and park district, or any other public agency authorized by law to provide fire protection, public recreation, or any other community service. A Special District may request the establishment and administration of a development impact mitigation fee under this chapter only if the Special District lacks statutory authority to independently impose a development impact mitigation fee.

~~In order to implement the goals and objectives of the County's general plan, and to mitigate the impacts caused by new development within the various fire improvement districts within the County ("district" herein), certain public fire protection equipment and facilities must be or had to be constructed or purchased. The Board of Supervisors has determined that a development impact fee is needed in order to finance these public improvements and equipment, and to pay for the development's fair share of the construction costs of these improvements and the acquisition costs of the equipment. In establishing the fee described in this chapter, the Board of Supervisors has found the fee to be consistent with its general plan and, pursuant to Government Code § 65913.2, has considered the effects of the fee with respect to the County's housing needs as established in the housing element of the general plan.~~

**~~Section 13.20.020. - Fire district improvement fee Establishment of fee.~~**

At the request of the Special District and in compliance with the Mitigation Fee Act, California Government Code sections 66000-66025, the Board of Supervisors may, in its sole discretion, establish a development impact mitigation fee collected on behalf of the Special District upon the issuance of all building permits for development within the Special District. The Special District shall propose the amount of any new or modified fee, which shall be based on a study and written report that demonstrates and allows the Board of Supervisors to independently evaluate the appropriate nexus between the fee and the purpose for which it is to be charged. The fee revenue and any interest accrued thereon may only be used as provided in the Mitigation Fee Act.

~~A fire district improvement fee is established on the issuance of all building permits for development within the district to pay for public improvements and fire equipment. The Board of Supervisors shall, in a Board of Supervisor's resolution, set forth the specific amount of the fee, describe the benefit and impact area on which the development fee is imposed, list the specific public improvements or equipment to be financed, describe the estimated cost of these facilities, describe the reasonable relationship between this fee and the various types of new developments and set forth time for payment. As described in the fee resolution, this development fee shall be paid by each developer prior to issuance of a building permit for the commercial or industrial project or the respective dwelling units in a residential project. On an annual basis, the Board of Supervisors shall review this fee to determine whether the fee amounts are reasonably related to the impacts of development and whether the described public facilities or equipment are still needed.~~

**~~Section 13.20.030. - Limited use of fees Agreement required.~~**

The County may only collect and disburse fees on behalf of a Special District pursuant to a written agreement between the County and Special District that has been approved as to form by County Counsel. Even if a fee was created before enactment of this chapter, the County shall not disburse any fee on behalf of a Special District until the agreement required by this section is duly executed by the County and Special District. At a minimum, the agreement shall clearly define the rights and duties of each party and, to the fullest extent allowed by law, shall provide for the Special District to defend, indemnify, and hold the County, its officers, agents, and employees harmless from and against any and all liability, loss, damage, claims, judgments, costs, staff time, losses, expenses, and any other costs of defense arising out of, resulting from, or

related to the creation, establishment, modification, collection, or disbursement of fees on behalf of the Special District or any other obligation of the Special District or County under the agreement to collect and distribute fees on behalf of the Special District, the Mitigation Fee Act, or this chapter. The agreement shall also provide that the Special District shall ensure that any fee collected on its behalf complies with the Mitigation Fee Act.

~~The revenues raised by payment of this fee shall be placed in a separate and special account and such revenues, along with any interest earnings of the account, shall be used solely to:~~

~~A. — Pay for the fire district's future construction of facilities or the acquisition of facilities or the acquisition of equipment described in the resolution enacted by the Board, or to reimburse the fire district for those described or listed facilities constructed or equipment acquired by the fire district with funds advanced by the fire district from other sources; or~~

~~B. — Reimburse developers who have been required or permitted to install such listed facilities which are oversized with supplemental size, length, or capacity.~~

#### **Section 13.20.040. - Developer construction of facilities.**

Whenever a developer is required, as a condition of approval of a development permit, to construct a public facility described in a resolution adopted pursuant to this chapter which facility is determined by the Special District to have supplemental size, length, or capacity over that needed for the impacts of that development, and when such construction is necessary to ensure efficient and timely construction of the facilities network, a reimbursement agreement with the developer and a credit against the fee, which would otherwise be charged pursuant to this chapter on the development project, shall be offered. The reimbursement amount shall not include the portion of the improvement needed to provide services or mitigate the need for the facility or the burdens created by the development.

#### **Section 13.20.050. - Reductions and Appeals.**

- A. Reduction and/or appeals of a fee described in this chapter may be granted by the Chief Administrative Officer to a developer of any project under any one of the following scenarios:
1. The requirements of this chapter have been incorrectly applied to the development project; and/or
  2. That application of the requirements of this chapter to the 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. Application for reduction and/or appeals of a fee described in this chapter 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 the fee. 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 Chief Administrative Officer. 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. The Chief Administrative Officer 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 within 30 days of the appeal. Within 10 days of receiving the final, written determination from the Chief Administrative Officer, the applicant may appeal the Chief Administrative Officer's decision to a Hearing Officer appointed under Chapter 12.28. The Hearing Officer shall issue a written decision within 30 days and the Hearing Officer's decision is final and not administratively appealable. The 30-day deadlines for decisions in this section may be extended by the County if the complexity of an application necessitates additional time.
- D. If a reduction, adjustment, or waiver is granted, any change in use within the project shall invalidate the waiver, adjustment, or reduction of the fee.
- E. Failure to timely submit an application for reduction and/or appeal of a fee under this section and a protest under California Civil Code section 66020 shall constitute a failure to exhaust administrative remedies that shall preclude such person from challenging the fee in court.

~~A developer of any project subject to the fee described in this chapter may apply to the Board of Supervisors for a reduction or adjustment to that fee, or a waiver of that fee, based upon the absence of any reasonable relationship or nexus between the fire facilities or equipment and impacts of the development and either the amount of the fee charged or the type of facilities to be financed. The application shall be made in writing and filed with the County Clerk not later than (a) ten days prior to the public hearing on the development permit application for the project, or (b) if no development permit is required, at the time of the filing of the request for a building permit. The application shall state in detail the factual basis for the claim of waiver, reduction, or adjustment. The Board of Supervisors shall consider the application at the public hearing on the permit application or at a separate hearing held within 60 days after the filing of the fee adjustment application. The matter may be referred to the Board of the district for their recommendation. The decision of the Board of Supervisors shall be final. If a reduction, adjustment, or waiver is granted, any change in use within the project shall invalidate the waiver, adjustment, or reduction of the fee.~~

Pursuant to California Government Code section 25123, this ordinance shall become effective 30 days from the date of final passage.

PASSED AND ADOPTED by the Board of Supervisors of the County of El Dorado at a regular meeting of said Board, held the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by the following vote of said Board:

ATTEST

JAMES S. MITRISIN

Clerk of the Board of Supervisors

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Deputy Clerk

Ayes:

Noes:

Absent:

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Chair, Board of Supervisors

**APPROVED AS TO FORM  
MICHAEL J. CICCOTZI  
COUNTY COUNSEL**

By: \_\_\_\_\_

Breann M. Moebius  
Deputy County Counsel