

ORDINANCE NO. 17-2168

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF CUPERTINO ADDING CHAPTER 14.02
TO THE CUPERTINO MUNICIPAL CODE TO ADOPT AND IMPLEMENT
THE CITY'S TRANSPORTATION IMPACT FEE PROGRAM**

WHEREAS, Mitigation Fee Act (AB 1600/ Government Code Section 66000 et seq.) enables cities to charge fees for transportation facilities; and

WHEREAS, the City adopted an amended General Plan known as "General Plan: Community Vision 2015 - 2040" (The General Plan) on December 4, 2014; and

WHEREAS, the General Plan identifies the buildout land use and growth projections and is based on a horizon year of 2040; and

WHEREAS, the General Plan identifies impacts on transportation and traffic impacts from the potential future development associated with the 2040 buildout ; and

WHEREAS, the City has retained Economic Planning Systems, Inc. to develop the Transportation Impact Fee Nexus Study; and

WHEREAS, the Transportation Impact Fee Nexus Study provides the City of Cupertino with the necessary technical documentation to support the adoption of a new Citywide Transportation Impact Fee Program.

NOW, THEREFORE, THE CITY COUNCIL OF THE OF CITY OF CUPERTINO DOES ORDAIN AS FOLLOWS:

Title 14 of the Cupertino Municipal Code is hereby amended to add Chapter 14.02, the "Transportation Impact Fee Program" to be numbered and entitled to read as shown in Exhibit 1, which is incorporated herein by reference as part of this ordinance.

Effective Date. This Ordinance shall take effect thirty days after adoption as provided by Government Code Section 36937.

Certification. The City Clerk shall certify to the passage and adoption of this Ordinance and shall give notice of its adoption as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be published and posted in lieu of publication and posting of the entire text.

INTRODUCED at a regular meeting of the Cupertino City Council the 19th day of September 2017 and **ENACTED** at a regular meeting of the Cupertino City Council on this 3rd day of October 2017 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Grace Schmidt
City Clerk

Savita Vaidhyanathan
Mayor, City of Cupertino

CHAPTER 14.02 -TRANSPORTATION IMPACT FEE PROGRAM

SECTION 1. The Title of this Chapter shall be known as “The Transportation Impact Fee Program.”

SECTION 2. Chapter 14.02 is hereby added to the Cupertino Municipal Code as set forth below:

- 14.02.010 Purpose
- 14.02.020 Definitions
- 14.02.030 Authority
- 14.02.040 Applicability
- 14.02.050 Transportation Impact Fee Program
- 14.02.060 Exemptions
- 14.02.070 Fee Credit
- 14.02.080 Disposition of TIF Program Revenue and TIF Capital Project Construction

14.02.010 Purpose

The City recognizes that new development, additions to existing structures or change in use within the City will create additional demand on the City’s existing transportation infrastructure and identifies the implementation of a Transportation Impact Fee (TIF) Program as a mitigation measure. The purpose of the TIF Program is to generate revenue that the City can use as a funding source for the costs of the transportation improvements required to serve new development.

14.02.020 Definitions

Unless otherwise defined in this section, all terms used in this Chapter shall be as defined as in Chapter 19.08, Definitions.

- A. “Transportation Impact Fee” or “TIF” means the fee established pursuant to this Chapter 14.02. Impact fees are one-time charges on new development, additions to existing structures, change in use, or similar construction activity that requires a building permit, collected and used by the City to cover the cost of capital facilities and infrastructure that are required to serve new growth.
- B. “Transportation Impact Fee Program” or “TIF Program” means the impact fee established by this Chapter and the process and programmatic steps for appropriating and applying TIF funds for the purposes intended.

- C. “TIF Capital Project” means any one of the list of projects identified in the “TIF Nexus Study” to be funded through the TIF Program required to mitigate new growth.
- D. “TIF Nexus Study” means the most current Technical Report prepared pursuant to California Government Code, Section 66000 et seq., the Mitigation Fee Act, to support the adopted TIF.

14.02.030 Authority

- A. This chapter is enacted pursuant to the Mitigation Fee Act, California Government code Section 66000 et seq.
- B. The Director of Public Works, or his/her designee, is authorized to levy and collect the TIF and make all determinations required by this Chapter.

14.02.040 Applicability

Except as otherwise expressly provided by this Chapter, the TIF required hereunder shall be payable prior to building permit issuance, for all new development, additions to existing structures, changes in land use within the city for which building permits or other entitlements are required, consistent with the authority provided under this Chapter.

Any increase in square footage and/or change in land use or development type shall pay the established applicable fee rate on the new use based on the net increase.

14.02.050 Transportation Impact Fee Program

- A. Establishment of Fee: The amount of the TIF shall be established by land use type and shall be adopted by separate resolution of the City Council, as amended from time to time.
- B. The TIF amount shall be automatically adjusted on an annual basis at the beginning of each fiscal year (July 1) based on the Cupertino Construction Cost index. The Cupertino Construction Cost index is developed based upon Construction Cost Index (CCI) cost indices for San Francisco produced by Engineering News Record (ENR) and reported on the ENR website. Cupertino’s CCI is calculated by taking the

average percent change (%CHG) of each month from the prior year (January through December).

- C. TIF Capital Projects may be modified to provide for the use of additional Federal, State and local funds; to account for unexpected revenues, whether greater or lesser; to modify, add, or delete a project from the TIF Program, consistent with the Mitigation Fee Act; to maintain consistency with the City's General Plan; or to take into consideration unforeseen circumstances, including, without limitation, circumstances that may come to light as a result of subsequent CEQA environmental review.

14.02.060 Exemptions

The following shall be exempt from the TIF Program Fee:

- A. The rehabilitation, reconstruction and/or expansion of any legal, residential unit and/or the replacement of a previously existing legal dwelling unit that does not cause the addition of vehicular trips as defined by the Institute of Traffic Engineers.
- B. The rehabilitation and/or reconstruction of non-residential unit where there is no net increase in square footage and/or change in development type/land use (e.g. office to retail).
- C. Residential accessory buildings as defined in Chapter 19.08 of the Cupertino Municipal Code.
- D. Cupertino public facilities, including but not limited to, buildings, structures and outdoor recreational areas.

14.02.070 Fee Credit

- A. A fee credit may be granted to developers who fund and construct TIF Capital Projects, subject to review and approval by the Director of Public Works. The fee credit may not exceed the most current cost estimate of the TIF Capital Project (as defined by annual cost review or other recent evaluation of cost) regardless of the actual cost to construct or the actual costs of construction of the TIF Capital Project.

14.02.080 Disposition of TIF Program Revenue and TIF Capital Project Construction

All fees collected hereunder shall be deposited in a TIF Account/Fund. The TIF Fund and any interest income earned shall be used exclusively to finance TIF Capital Projects and pay for incidental administrative and programmatic costs.

SECTION 3. Severability. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.