

ORDINANCE NO. 777

**CITY OF MILLBRAE, COUNTY OF SAN MATEO
STATE OF CALIFORNIA**

**AN ORDINANCE ADDING ARTICLE XXXI "DEVELOPMENT IMPACT FEES" TO
CHAPTER 10.05 OF TITLE 10 OF THE MILLBRAE MUNICIPAL CODE TO ESTABLISH A
PROGRAM OF FEES TO MITIGATE THE IMPACTS OF NEW DEVELOPMENT**

WHEREAS, the City of Millbrae ("City") provides a variety of services and amenities to its residents, businesses, and visitors, such as libraries, bicycle and pedestrian infrastructure, and recreational facilities; and

WHEREAS, new residential and nonresidential development increases the demand for the services and amenities that the City provides, burdening existing facilities and infrastructure; and

WHEREAS, the City desires to impose fees on new development to finance the capital costs of new development's fair share of the new facilities and infrastructure necessary to accommodate that new development; and

WHEREAS, the Mitigation Fee Act (Gov. Code §§ 66000 *et seq.*) places limitations on the City's ability to impose fees.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MILLBRAE, CALIFORNIA,
DOES ORDAIN as follows:**

SECTION 1. FINDINGS. The City Council of the City of Millbrae finds that the recitals stated herein are true and correct.

SECTION 2. ESTABLISHMENT OF DEVELOPMENT IMPACT FEE PROGRAM. Title 10, Chapter 10.05, Article XXXI "Development Impact Fees," of the Millbrae Municipal Code is added and stated in its entirety to read as set forth below:

10.05.3100 Authority.

This article is enacted pursuant to the police power granted to the city in the Constitution of the State of California, and consistent with Government Code Sections 66000 *et seq.*

10.05.3105 Definitions.

For purposes of this article, the following terms, phrases, words and their derivations shall have the meanings respectively ascribed to them by this section:

"Accessory dwelling unit" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated.

“Applicant” means any person who, after the effective date of the ordinance codified in this article, seeks to develop land within the City requiring issuance of a building permit.

“Building permit” means any permit, such as electrical, plumbing, or moving permit, required for construction, reconstruction, remodeling, or moving a structure within or into the city.

“Development” or “development project” means any project within the City that requires a building permit. The term “development” or “development project” also includes projects for the erection of manufactured housing or structures, and structures moved into the city which require city permits.

“Development impact fee” or “fee” means a monetary exaction, other than a tax or special assessment, which is charged by the city to an applicant in connection with approval of a development for the purpose of defraying all or a portion of the cost of facilities related to a development project within the City, but does not include MSASP area fees, school fees, fees specified in Section 66477 of the California Government Code, fees for processing applications for governmental regulatory actions or approvals, fees collected under development agreements adopted pursuant to Article 2.5 (commencing with Section 65864 of Article 4, Division 1, Title 7 of the California Government Code) or fees collected pursuant to any agreement with the former redevelopment agency.

“Mitigation Fee Act” means Chapter 5 of Division 1 of Title 7 of the Government Code, beginning with Section 66000, as may be amended from time to time.

10.05.3110 Purpose.

The city council finds that the impact of anticipated development within the city will result in unacceptable decreases in the level of public services and additional burdens on existing city facilities and infrastructure. To prevent these undesirable consequences, the city has determined that certain facilities must be provided at a rate that will accommodate this expected growth. The city council also desires to ensure that this new development will pay its fair share of the cost of these facilities necessitated by that new development.

10.05.3115 Application.

This article applies to fees charged as a condition of development approval within the City to defray the cost of the facilities required to serve new development within the city. This article does not replace other city-wide fees, exactions imposed pursuant to the Subdivision Map Act, or other measures required to mitigate site-specific impacts of a development project, including, but not limited to, mitigations pursuant to the California Environmental Quality Act; regulatory and processing fees; fees required pursuant to a development agreement; funds collected pursuant to a reimbursement agreement that exceed the applicant’s share of public improvement costs; or assessment district proceedings, benefit assessments, or taxes.

10.05.3120 Establishment of development impact fees and providing for their adoption by resolution of the city council.

A. The city council may establish development impact fees on the issuance of all building permits for development within the city to finance the cost of additional public facilities necessary to mitigate the impacts upon existing public facilities caused by new development in the city.

B. The city council shall from time to time adopt, after a noticed public hearing, the resolution establishing specific development impact fees. In adopting the resolution, the city council shall:

1. Identify the purpose of the fee;

2. Identify the use to which the fee is to be put. If the use is financing public facilities, the facilities shall be identified as required by the Mitigation Fee Act;
3. Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed;
4. Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed; and
5. Determine how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.
6. Establish a fee schedule.

C. Unless otherwise provided in the resolution imposing the fee, on January 1 of each year after the enactment of each fee, the fee shall be automatically adjusted in accordance with the change in the Engineering Construction Cost Index, as most recently published by Engineer News Record, for the previous calendar year.

10.05.3125 Imposition of development impact fee.

Unless otherwise specified in the resolution imposing the fee, all applicants are required to pay the applicable development impact fees established pursuant to this article as follows:

- A. Residential Developments. Except as specified in Section 10.05.3130, the fee shall be charged for each new dwelling unit.
- B. Nonresidential Developments. Except as specified in Section 10.05.3130, the fee shall be charged on a per square foot basis for all new gross floor area, including additions where floor area is increased.
- C. Hotel. Notwithstanding subsection B, the fee shall be charged for each separately rentable hotel room.
- D. The community development director may set a fee consistent with the Mitigation Fee Act and the criteria set forth in the resolution imposing the fee for projects that do not squarely fit within the development categories listed in this Section.

10.05.3130 Exemptions.

A. Notwithstanding Section 10.05.3125, the following projects are exempted from payment of the development impact fee:

1. Alterations, renovations or expansion of an existing residential building or structure where no additional dwelling units are created and the use is not changed; provided, however, that the expansion of an existing commercial or industrial building or structure shall not be exempt from the fee established in this article. For purposes of this section, "expansion" is defined as any increase in the gross floor area of the existing building or structure and "change of use" is defined as the initiation of a use which requires approval of a conditional use permit, development plan or zoning change.
2. The replacement of a destroyed or partially destroyed or damaged building or structure with a new building or structure of the same size and use.

3. The remodeling or restoration of a nonresidential building or structure where the building or structure is improved or replaced, but the floor area is not increased.
4. Accessory dwelling units of less than 750 square feet. Accessory dwelling units of more than 750 square feet are charged proportionately in relation to the square footage of the primary dwelling unit.
5. City facilities, including, but not limited to, parks, buildings and infrastructure as well as any other public facilities which are entitled under state law to an exemption from development fees.

B. Any claim of exemption from the imposition of the development impact fee must be made no later than the time for application for fee refunds as set forth in MMC 10.05.1855(A).

10.05.3135 Timing of development impact fee payment.

- A. The development impact fee established pursuant to this article must be paid for each approved nonresidential development project at the time of the issuance of the first required building permit. No city official may issue a building permit for a nonresidential development project until the development impact fee with respect to any such development required by this article has been paid.
- B. All fee imposed on a residential development project with one unit must be collected prior to the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first. For residential developments containing more than one unit, all fees must be paid when the first unit in the development receives its final inspection or certificate of occupancy, whichever occurs first.
- C. Notwithstanding any other provision of this Article, the community development director may specify an earlier date for payment of fees imposed pursuant to this Article where permissible under Section 66007 of the Government Code.
- D. Upon issuance of a building permit for a residential development project that has not yet paid all fees imposed pursuant to this Article, the community development director may require the applicant for the building permit to enter into a contract to pay the fees within the time period specified in this Section, which will constitute a lien on the property as further detailed in Section 66007 of the Government Code.
- E. In no event may a city official issue a certificate of occupancy, or certify a final inspection, as the case may be, for a development which has not paid a required development impact fee.

10.05.3140 Authority for additional mitigation.

The development impact fee collected pursuant to this article is not intended to replace, satisfy the need for or limit any requirements for the mitigation of impacts which are not specifically identified in the resolution imposing the fee, which may result from a development project or which are imposed upon development projects as part of the development review process.

10.05.3145 Fee credits.

- A. Applicant Construction of Facilities.
 1. In-Lieu Fee Credits Due.
 - a. The community development director or designee may adjust the fee imposed pursuant to this article in consideration of certain facilities constructed or paid for by the applicant. At the discretion of the community development director or designee, an applicant may be entitled to a credit for the value of such

facilities to the extent they are identified in the resolution imposing the fee and the applicant: (i) constructs the facilities, (ii) finances the facilities by cash or pays the assessments of an assessment district or participates in the formation of a community facilities district, or (iii) a combination of the above.

b. An amount of in-lieu credit that is greater than the fee required under this article may be reserved and credited toward the fee of any subsequent phases of the same development, if determined appropriate by the community development director or designee. The community development director or designee may set a time limit for reservation of the credit.

2. No In-Lieu Fee Credits Due for Site-Related Improvements. Credit shall not be given for site-related improvements, including, but not limited to, traffic signals, right-of-way dedications, or providing paved access to the development, which are specifically required by the development project in order to serve it and which do not constitute facilities.

3. Determination of Credit. The community development director or designee shall determine whether facilities are eligible for credit or reimbursement. The applicant seeking credit and/or reimbursement for construction of the facilities, or dedication of land or rights-of-way, shall submit such documentation, including, without limitation, engineering drawings, specifications, and construction cost estimates, and utilize such methods as may be appropriate and acceptable to the community development director or designee to support the request for credit or reimbursement. The community development director or designee shall determine credit for construction of the facilities based upon either these cost estimates or upon alternative engineering criteria and construction cost estimates if the director determines that such estimates submitted by the applicant are either unreliable or inaccurate.

4. Time for Making Claim for Credit. Any claim for credit must be made no later than the application for a building permit. Any claim not so made shall be deemed waived.

5. Transferability of Credit – Council Approval. Credits shall not be transferable from one development project to another without the approval of the city council.

B. Appeal of Determinations of community development director. Determinations made by the community development director or designee pursuant to the provisions of this section may be appealed to the city council by filing a written request with the city manager within ten days of the determination of the community development director or designee, together with the applicable fee established by resolution of the city council.

10.05.3150 Appeals and Refunds.

A. An applicant for a development project may file a written appeal regarding the imposition and/or calculation of the fee pursuant to the procedures set forth in MMC 10.05.1850. Unless expressly specified by the city council, the applicability of the decision in any appeal is limited to the project at issue.

B. An applicant for a development project may request a refund of a fee paid pursuant to the procedures set forth in MMC 10.05.1855.

10.05.3155 Accumulation and use of funds.

A. Revenues collected from development impact fees shall be used for the purpose of (1) paying the actual or estimated costs of constructing and/or improving the facilities specified in the resolution imposing the fee, including any required acquisition of land or rights-of-way therefor; (2) reimbursing the city for the development project's share of those facilities specified in the resolution imposing the fee

already constructed by the city or to reimburse the city for costs advanced, including, without limitation, administrative costs and costs of financing incurred to construct specific facilities; (3) reimbursing other developers who have constructed facilities specified in the resolution imposing the fee in lieu of payment of impact fees, where the scope of those facilities exceeded that needed to mitigate the impact of the applicant's development project; or (4) paying costs required for the administration of this article, including, without limitation, reasonable costs of outside consultant studies related thereto, costs of program development, and legal costs.

B. The city shall deposit, invest, account for, and expend the revenues from the development impact fees in accordance with the Mitigation Fee Act.

10.05.3160 Review of fee.

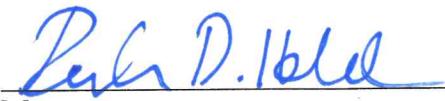
A. For each fee imposed pursuant to this article, no later than 180 days following the end of the city's fiscal year, the city manager must prepare a report to the city council ("report") at a regularly scheduled public meeting, in a form compliant with the Mitigation Fee Act, which must include the total amount of fees collected, the facilities constructed, and the facilities to be constructed.

B. Every fifth fiscal year following the first deposit of fees collected pursuant to this article, the city council shall do the following based on the report with respect to any fees remaining unexpended, whether committed or uncommitted: (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 was charged; (3) identify all sources and amounts of funding anticipated to complete financing the facilities; and (4) designate the approximate dates on which such funding is expected to be deposited into the appropriate fund. The unexpended portion of the fee, and any interest accrued thereon, for which need cannot be demonstrated pursuant to this section, shall be refunded to the then current record owner or owners of lots or units of the development project on a prorated basis where required by the Mitigation Fee Act.

Section 3. SEVERABILITY. In the event any section, clause or provision of this Ordinance shall be determined invalid or unconstitutional, such section, clause or provision shall be deemed severable and all other sections or portions hereof shall remain in full force and effect. It is the intent of the City Council that it would have adopted all other portions of this Ordinance irrespective of any such portion declared to be invalid or unconstitutional.

Section 4. PUBLICATION. At least five (5) days prior to its adoption and within fifteen (15) days after its adoption, the City Clerk shall cause a summary of the Ordinance to be posted in the City Clerk's office; posted on the City's website; and be published once in a newspaper of general circulation published in the County of San Mateo and circulated in the City of Millbrae.

Section 5. LEGISLATIVE HISTORY AND EFFECTIVE DATE. This Ordinance is introduced on May 26, 2020 with an adoption date of June 9, 2020 and shall be effective 30 days following enactment.


Peter D. Ibel
Mayor

ATTEST:


Angela Horis 6/15/2020
City Clerk

I do hereby certify that the foregoing Ordinance was duly and regularly passed and adopted by the City Council of the City of Millbrae this 9th day of June 2020, by the following vote:

AYES: COUNCILMEMBERS: Holober, Schneider, Oliva, Papan and Lee
NOES: COUNCILMEMBERS: None
ABSENT: COUNCILMEMBERS: None
ABSTAIN: COUNCILMEMBERS: None
EXCUSED: COUNCILMEMBERS: None

Angela Louis
CITY CLERK