

## REPORT TO CITY COUNCIL

**DATE:** SEPTEMBER 27, 2011  
**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL  
**FROM:** GREG RAMIREZ, CITY MANAGER  
**BY:** KIMBERLY RODRIGUES, CITY CLERK  
**SUBJECT:** RE-ADOPT ORDINANCE NO. 11-389

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At the August 10, 2011, City Council meeting, the Council introduced, read by title only, and waived further reading of Ordinance No. 11-389, and adopted Resolution No. 11-1639.

Ordinance No. 11-389 was then adopted by the City Council at the regular meeting held on August 24, 2011.

In compliance with Government Code Section 36933, the ordinance was set for publication within 15 days of adoption, however, there was an error and the publication did not take place.

In order to meet compliance, and for the ordinance to be valid, the City Council will need to re-adopt the ordinance.

Attached for your reference is a copy of the proposed ordinance.

### RECOMMENDATION

Staff recommends the City Council re-adopt Ordinance No. 11-389; amending Chapter 5 of Article VIII of the Agoura Hills Municipal Code, by replacing Chapter 5 (Arterial Street System Development Fee), in its entirety, and adding a new Chapter 5 (Transportation Impact Fees more commonly referred to as the "Transportation Impact Fee" or "TIF"), to update the current TIF rates, and direct the City Clerk to publish the ordinance within 15 days of adoption.

Attachment: Ordinance No. 11-389

**ORDINANCE NO. 11-389**

**AN ORDINANCE OF THE CITY OF AGOURA HILLS,  
CALIFORNIA, ADOPTING A TRANSPORTATION IMPACT FEE  
PROGRAM AND AMENDING THE AGOURA HILLS  
MUNICIPAL CODE**

THE CITY COUNCIL OF THE CITY OF AGOURA HILLS DOES HEREBY  
ORDAIN AS FOLLOWS:

Section 1. The City Council makes the following findings and determinations  
in connection with the adoption of this Ordinance:

A. On August 10, 2011, the City Council held a duly noticed public hearing  
regarding the proposed adoption of the 2011 Capital Improvements Plan and the adoption  
of the proposed Transportation Development Fee, as required by Government Code  
Section 66018. Following the receipt of all staff reports, public testimony and other  
evidence, the public hearing was closed.

B. All other prerequisites to the adoption of this Ordinance, the approval of  
the Transportation Impact Fee Report, the 2011 Capital Improvements Plan, and the  
proposed Transportation Impact Fee, as specified by the Mitigation Fee Act (California  
Government Code Section 66000 *et seq.*) and other applicable laws have been satisfied.

C. City staff has evaluated the potential environmental impacts of the  
adoption of this Ordinance, the approval of the Transportation Impact Fee Report, the  
proposed 2011 Capital Improvements Plan, and the proposed Transportation Impact Fees  
pursuant to the California Environmental Quality Act (“CEQA”). City staff has  
determined that these actions do not constitute a “project” under CEQA pursuant to State  
CEQA Guidelines Section 15378(b)(4) because these actions involve the creation of a  
government funding mechanism which does not involve any commitment to any specific  
project which may result in a potentially significant physical impact on the environment.  
In addition, City Staff has determined that these actions are categorically exempt from  
CEQA under CEQA guidelines Section 15273(a)(4) because these actions and documents  
are merely establishing a fee to obtain funds for those capital projects necessary to  
maintain service within existing service areas and these actions do not provide for the  
creation of new service areas. The capital projects described in the Transportation Impact  
Fee Report will maintain the level of service currently provided by the City’s existing  
transportation system by ensuring that the impacts of new development will not  
negatively impact existing service levels.

D. The City Council concurs with City staff’s determination that the adoption  
of this Ordinance, the approval of the Transportation Impact Fee Report, the adoption of  
the 2011 Capital Improvements Plan, and the adoption of the proposed Transportation  
Impact Fees do not constitute a project under CEQA pursuant to CEQA Guidelines

Section 15378(b)(4). The City Council additionally concurs with City staff's determination that the Adoption of this Ordinance, the approval of the Transportation Impact Fee Report, the adoption of the 2011 Capital Improvements Plan and the adoption of the transportation impact fees are statutorily exempt from CEQA pursuant to CEQA Guidelines Section 15273(a)(4). City staff is therefore directed to prepare and file a Notice of Exemption with the County Clerk pursuant to CEQA Guidelines Section 15062 within five (5) days of the date that this Ordinance is adopted.

Section 2. Chapter 5 of Article VIII of the Agoura Hills Municipal Code is hereby amended by repealing Chapter 5 (Arterial Street System Development Fee) in its entirety and adding a new Chapter 5 (Transportation Impact Fees) to read as follows:

**“Chapter 5 - TRANSPORTATION IMPACT FEES**

- 8500. FINDINGS AND INTENT.
- 8501. RESIDENTIAL TRANSPORTATION IMPACT FEES REQUIRED.
- 8502. NON-RESIDENTIAL TRANSPORTATION IMPACT FEES REQUIRED.
- 8503. TRANSPORTATION IMPACT FEES – EXEMPTION, REDUCTION, OR INSTALLMENT PAYMENT OPTIONS.
- 8504. APPEALS.
- 8505. USE OF FUNDS.
- 8506. FEE AMOUNT APPLICABLE TO PENDING PROJECTS.
- 8507. PERIODIC ADJUSTMENT OF FEE AMOUNT.

**8500. FINDINGS AND INTENT.**

A. New residential and non-residential development in the City of Agoura Hills (the “City”) has attracted and will continue to attract employees and residents to the City, and there is a causal connection between such development projects and the increased need for transportation facilities.

B. Failure to enhance the ability of the City’s transportation system to accommodate increased traffic by improving traffic flow will make it more difficult for residents, employers, and employees to access residences and places of employment and could cause unacceptable harm to the quality of life in the City.

C. Sources of City revenue other than transportation impact fees, including tax revenues which will be paid by new residential and non-residential development, will be needed for many public purposes and therefore will not be sufficient to offset the burdens on transportation facilities created by new development.

D. It is the intent of the City to require every person or organization that develops land to mitigate the impacts of that development on the City's transportation system. The City may therefore require developers to mitigate transportation impacts caused by their development and to pay a transportation impact fee that will be used to mitigate those impacts by constructing transportation facilities pursuant to the most current 2011 Capital Improvements Plan.

E. The amount of transportation impact fees collected pursuant to this Chapter shall be limited to the cost of transportation impact mitigation attributable to new development. The amount of transportation impact fees collected shall not include the cost of transportation impact mitigation measures made necessary by existing development.

#### **8501. RESIDENTIAL TRANSPORTATION IMPACT FEES REQUIRED.**

A. Except as provided in Section 8503, the required transportation impact fee for a residential building shall be paid in an amount established by resolution of the City Council. The required transportation impact fee shall be due and paid on a lump-sum basis on the date the first dwelling in the development or development phase receives its final building inspection, or certificate of occupancy, whichever occurs first.

B. The City Engineer, or his or her designee, shall be responsible for calculating the amount of the transportation impact fee required for each development project based on the applicable land use category and corresponding rate specified in the resolution which adopts the transportation impact fee. In calculating such fee, the City Engineer shall utilize the fee rate that is assigned to the land use category that is most applicable to the development project.

C. For the purposes of this section, "final building inspection" shall mean the physical inspection of the building by the Building & Safety Division of the Community Development Department of the City of Agoura Hills for compliance with all applicable building codes and the issuance by all applicable City, county, regional, state and federal agencies of their respective clearances for occupancy.

D. For the purposes of this section, "certificate of occupancy" shall mean a document issued by the proper authority allowing the occupancy or use of a building and certifying that the structure, building or development conforms with all applicable provisions of the Agoura Hills Municipal Code, ordinances and conditions of approval.

**8502. NON-RESIDENTIAL TRANSPORTATION IMPACT FEES REQUIRED.**

A. Except as provided in Section 8503, the required transportation impact fee for a nonresidential development shall be paid in an amount established by resolution of the City Council. The required transportation impact fee shall be due and paid on a lump-sum basis on the date of the final building inspection of the building, or the date the certificate of occupancy is issued, whichever occurs first.

B. The City Engineer, or his or her designee, shall be responsible for calculating the amount of the transportation impact fee required for each development project based on the applicable land use category and corresponding rate specified in the resolution which adopts the transportation impact fee. In calculating such fee, the City Engineer shall utilize the fee rate that is assigned to the land use category that is most applicable to the development project.

C. For the purposes of this section, “certificate of occupancy” shall mean a document issued by the proper authority allowing the occupancy or use of a building and certifying that the structure, building or development conforms to all the applicable building codes, the Agoura Hills Municipal Code, and conditions of approval.

**8503. TRANSPORTATION IMPACT FEES – EXEMPTION, REDUCTION, OR INSTALLMENT PAYMENT OPTIONS**

A. The following uses and types of developments may be exempted from the payment of transportation impact fees:

1. Any residential development that does not increase the number of permanent housing units on the parcel where the construction takes place, such as remodeling or rebuilding existing units.

2. The remodeling or rebuilding of an existing non-residential structure, provided the remodeling or rebuilding does not do any of the following: (i) increase the square footage of the structure above that of the previously existing structure; (ii) increase the building footprint above that of the previously existing structure; (iii) change the use to which the property or structure is to be put; or (iv) increase the average daily trips generated from the property above the amount generated by the prior use of the property.

3. City owned facilities, including but not limited to, public libraries, and public parks.

4. Facilities serving the health and safety of the public, including but not limited to, police, fire and safety facilities.

B. A developer may be exempted or allowed a reduction in fees from the transportation impact fee requirements of Sections 8501 and 8502 if the developer enters into a development agreement with the City pursuant to which transportation impact fees are assessed to the developer, or equivalent or comparable transportation improvements are implemented by the developer.

C. A developer may be entitled to a reduction in the amount of the transportation impact fee required by Sections 8501 and 8502 if the developer constructs transportation improvements pursuant to the most current 2011 Capital Improvements Plan. The transportation impact fee may be reduced by the amount of transportation improvement costs that would be reasonably incurred by the City in building those same transportation improvements. The amount of such reduction shall be subject to the approval of the City Engineer prior to construction of the transportation improvement.

D. A developer may be entitled to a reduction in the amount of the transportation impact fee required by Sections 8501 and 8502 if the development is located in an assessment district that has been formed to construct facilities pursuant to the most current 2011 Capital Improvements Plan. The transportation impact fee may be reduced by the amount of the total assessment placed upon the development for the costs of transportation improvements. The amount of such reduction shall not exceed the amount of the transportation impact fee required by Sections 8501 and 8502.

E. If a fee exemption or a fee reduction is granted pursuant to this Section 8503, any subsequent change or intensification of the use or uses of the property or any expansion of the structures on the property, shall invalidate the fee exemption or fee reduction, and the applicant shall be subject to the transportation impact fee requirement applicable to the entire development based on the fee in effect at the time of the change or expansion, less any amount previously paid.

F. Notwithstanding the provisions of this chapter, commercial or industrial development projects required to contribute two hundred thousand dollars (\$200,000) or more in fees under this chapter are eligible to utilize an alternative payment method and pay the fees required by this chapter in the following amount and manner:

- (1) In order to be entitled to utilize the alternative payment method provided by this section, the developer or property owner shall enter into a written agreement with the City, in the form required by the City, setting forth the amount of the fees required to be paid and the method of payment. This agreement shall include a promissory note and deed of trust recorded against the subject property, securing the developer's or property owner's obligations under this chapter. In the event of a default by the developer or property owner of its obligations under this section, and the agreement, the City shall have recourse against the deed of trust and shall have the right to exercise any other remedies to which it is entitled under law.

- (2) The fees required by the transportation impact fee resolution shall be paid within ten (10) days of the executed alternative payment method agreement, and prior to the issuance of a building permit for the commercial or industrial development project, in up to three (3) installments, with the first installment paid prior to the issuance of a building permit and the remaining two installments, subject to the Average Annual Local Agency Investment Fund Monthly Apportionment Rate for the twelve (12) months prior to the date of the agreement, paid annually thereafter.
- (3) The written alternative payment method agreement required by this section shall be approved by the City Council for any commercial or industrial development project that is required to contribute two hundred thousand dollars (\$200,000) or more in fees under this chapter.

#### **8504. APPEALS.**

A. A developer subject to the transportation impact fee required by this Chapter for a particular project may apply to the City Engineer for: (1) a fee adjustment based upon a showing of substantial evidence of a lesser impact upon the traffic level of service; or (2) a land use category adjustment based upon a showing of substantial evidence that another land use category is more appropriate for a particular development. The application shall be made in writing and filed with the City Engineer not later than thirty (30) days prior to the public hearing on the development permit application for the project. If development review is not required for the development, then the application shall be made in writing and filed not later at the time of filing the request for a building permit. The application shall state in detail the factual basis for the request for reduction.

B. The City Engineer shall make a decision on the application for adjustment within thirty (30) calendar days after the application has been filed. Notice of the City Engineer's decision shall be mailed to the applicant.

C. The decision of the City Engineer may be appealed to the Planning Commission by filing an application for appeal with the City Engineer. The application must be filed within fifteen (15) calendar days after notice of the City Engineer's decision has been mailed to the applicant.

D. The Planning Commission shall consider the appeal at a public hearing to be held within sixty (60) calendar days after the appeal application has been filed. Notice of the Planning Commission's decision shall be mailed to the applicant.

E. The decision of the Planning Commission may be appealed to the City Council by filing an application for appeal with the City Clerk. The application must be filed within fifteen (15) calendar days after notice of the Commission's decision has been mailed to the applicant.

F. The City Council shall consider the appeal at a public hearing to be held within sixty (60) calendar days after the appeal application is filed. The decision of the City Council shall be final. The decision of the City Council shall be in writing and shall be mailed to the applicant.

G. If a fee exemption, a fee reduction or a land use category adjustment is granted pursuant to this Section 8504, any subsequent change or intensification of the use or uses of the property or any expansion of the structures on the property, shall invalidate the fee exemption, fee reduction or land use category adjustment, and the applicant shall be subject to the transportation impact fee requirement applicable to the entire development based on the fee in effect at the time of the change or expansion, less any amount previously paid.

H. If a fee exemption, fee reduction or land use category adjustment is not granted pursuant to this Section 8504, then upon the payment of the required fees, the City shall, pursuant to Government Code Section 66020, provide the applicant a written notice of the amount of the fees or a description of the dedications, reservations, or other exactions, and shall also provide notification that the 90-day protest period has begun.

**8505. USE OF FUNDS.**

Pursuant to California Government Code Section 66006, all transportation impact fees paid and collected pursuant to this Chapter shall be placed into one or more separate account(s) established for such fee and used solely for the purpose of constructing transportation improvements pursuant to the most current Capital Improvements Plan; provided, however, that if the City Engineer authorizes minor alterations to such plan, then those alterations shall not affect the ability of the City to use transportation impact fees collected pursuant to this Chapter for the purpose of constructing transportation improvements in accordance with the most current Capital Improvements Plan as altered or amended.

**8506. FEE AMOUNT APPLICABLE TO PENDING PROJECTS.**

Except as may otherwise be provided in the resolution which adopts the fee amount, an applicant subject to the payment of transportation impact fees required by Section 8501 or 8502 must pay the amount of the fee that is in effect when the fee becomes due as provided in Section 8501(A) for residential transportation impact fees or Section 8502(A) for non-residential transportation impact fees. The amount of the fee is the amount specified by resolution of the City Council, as amended from time to time. The fee imposed on a development project for which vested rights have been acquired through a vesting tentative subdivision map shall be the fee in effect at the time the rights became vested, plus any adjustment for inflation made between that date and the date the fee becomes due.



**8507. PERIODIC ADJUSTMENT TO FEE AMOUNT.**

The amount of the transportation impact fee may be annually adjusted for inflation as specified in the resolution which adopts the fee amount or by the periodic preparation of a new 2011 Capital Improvements Plan and required studies prepared and adopted pursuant to the Mitigation Fee Act.”

Section 3. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this Ordinance or any part thereof is for any reason held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid, or ineffective.

Section 4. The City Clerk shall certify to the passage of this Ordinance and shall cause this Ordinance to be published or posted as required by law.

PASSED, APPROVED, AND ADOPTED this 27<sup>th</sup> day of September 2011, by the following vote to wit:

AYES: (0)  
NOES: (0)  
ABSENT: (0)  
ABSTAIN: (0)

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Harry Schwarz, Mayor

ATTEST:

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Kimberly M. Rodrigues, City Clerk

APPROVED AS TO FORM:

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Craig A. Steele, City Attorney