

ORDINANCE NO. 650

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FOSTER CITY ADOPTING A TRANSPORTATION IMPACT MITIGATION FEE, ADOPTING A PUBLIC SAFETY IMPACT FEE, AND ADOPTING A PARK FACILITIES IMPACT FEE TO BE IMPOSED ON NEW DEVELOPMENT PROJECTS IN THE CITY OF FOSTER CITY

CITY OF FOSTER CITY

WHEREAS, the Mitigation Fee Act contained in Government Code 66000 et seq., permits the City to impose development impact fees on new development for the purposes of funding the public facilities necessary to serve that new development; and

WHEREAS, the City desires to adopt a Park Facilities Impact Fee on new development to fund the costs associated with increased demand for community and neighborhood parks and recreational facilities created by that new development. The City's General Plan includes a number of policies to maintain and increase the amount of available park and recreational areas; and

WHEREAS, the City Council has determined additional funds are necessary for maintaining and operating the City's Public Safety activities; and

WHEREAS, the City Council desires to acquire vehicles and transportation-related equipment and improve, replace and/or construct one or more public safety facilities to serve new development in the City; and

WHEREAS, the City Council has determined that the creation of a Public Safety Fee on new development within the City would provide the necessary funding for police and fire services related to new development; and

WHEREAS, the City's General Plan calls for strategies to provide an efficient, reliable, and convenient transit system; improved bicycle routes; and a balanced street system to serve automobiles, pedestrians, bicycles, and transit; and

WHEREAS, it is appropriate for new development to pay for improvements and developments to the transportation network proportionate to the demands the new development places on the City's transportation infrastructure; and

WHEREAS, the City desires to impose a Transportation Impact Mitigation Fee on new development to fund the costs associated with maintaining adequate street and transportation facilities related to new development; and

WHEREAS, pursuant to Government Code sections 66016, 66016.5, 66018, and 6062a, the City must adopt the specific fees only after notice and public hearing; and

WHEREAS, pursuant to Government Code section 6062a, a notice of a public hearing on the proposed fee update was published on June 1, 2022 and June 8, 2022 in the Foster City Islander, a newspaper of general circulation; and

WHEREAS, pursuant to Government Code sections 66016.5, notice of the time and place of the meeting, including a general explanation of the matters to be considered and a statement that required data is available was provided at least 30 days prior to the meeting to those members of the public who filed a written request with the City; and

WHEREAS, at least ten (10) days prior to the public hearing referenced above, the City made available for public inspection information required under government Code section 66000, *et. seq.*; and

WHEREAS, on June 20, 2022 the City Council held a noticed public hearing to consider the City's proposed new development fees at which time all interested persons were given an opportunity to comment.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF FOSTER CITY DOES FIND AND HEREBY ORDAIN as follows:

Section 1. Chapter 3.50 (Park and Recreation Facilities) is hereby added to the City of Foster City Municipal Code as set forth in Attachment 1, attached hereto, and incorporated herein by reference.

Section 2. Chapter 3.60 (Public Safety Fee) is hereby added to the City of Foster City Municipal Code as set forth in Attachment 2, attached hereto, and incorporated herein by reference.

Section 3. Chapter 3.70 (Transportation Impact Mitigation Fee) is hereby added to the City of Foster City Municipal Code, as set forth in Attachment 3, attached hereto, and incorporated herein by reference.

Section 4. Validity. The above recitations are true and correct, are material to the adoption of this ordinance, and are incorporated herein by reference.

Section 5. Findings. The City Council finds that the impact fees and charges imposed by this Ordinance are necessary and reasonable to implement the goals and objectives of the City's General Plan and are permitted by California state law.

Section 6. Environmental review. The City Council finds that this Ordinance is not subject to the California Environmental Quality Act ("CEQA"). This action is not a project within the meaning of the CEQA Guidelines Section 15378 and 15061(b)(3) as it has no potential for physical effects on the environment because it involves an adoption of certain fees and/or charges imposed by the City, does not commit the City to any specific project, and said fees and/or charges are applicable to future development projects and/or activities, each of which future projects and/or activities will be fully

evaluated in full compliance with CEQA when sufficient physical details regarding said projects and/or activities are available to permit meaningful CEQA review (see CEQA Guidelines, Section 15004(b)(1)). Pursuant to CEQA Guidelines section 15378(b)(4), the creation of government funding mechanisms which do not involve any commitment to any specific project which may cause significant effect on the environment, is not defined as a “project” under CEQA. Therefore, approval of the fees and/or charges is not a “project” for purposes of CEQA, pursuant to CEQA Guidelines, Section 15378(b)(4); and, even if considered a “project” under CEQA, is exempt from CEQA review pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that approval of the fees and/or charges may have a significant effect on the environment.

Section 7. Actions to effectuate and codification. The City Manager is hereby authorized and directed to take other actions on behalf of City, which are not expressly and specifically reserved for the City Council, to implement and effectuate this ordinance. The City Clerk is directed to codify this ordinance in a manner which best reflects the legislative intent of the City Council in enacting this ordinance. The City Clerk is directed to resolve any numbering conflicts accordingly.

Section 8. Severability. Should any section, subsection, paragraph, sentence, clause, or phrase of this ordinance be declared unconstitutional or invalid for any reason, such declaration shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

Section 9. Effective date. This ordinance shall be in full force and effective 30 days after its adoption, and shall be published or posted as required by law.

Section 10. Publication. The City Clerk is hereby ordered and directed to certify the passage of this Ordinance by the City Council of the City of Foster City, California and cause the same to be published in accordance with State law.

City Ordinance No. 650

The Ordinance was introduced at a regular meeting of the City Council on the 20th day of June 2022, and adopted at a regular meeting of the Council held on the 18th day of July, 2022, by the following vote:

AYES: Councilmembers Froomin, Gehani, Hindi, Sullivan, and Mayor Awasthi

NOES: None

ABSENT: None

ABSTAIN: None

DocuSigned by:  
*Richa Awasthi*  
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RICHAWASTHI, MAYOR

ATTEST:

DocuSigned by:  
*Yelena Cappello*  
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PRISCILLA SCHAUS, CITY CLERK  
BY: YELENA CAPPELLO, DEPUTY CITY CLERK

**Chapter 3.50  
PARK FACILITIES IMPACT FEE**

Sections:

3.50.010	Findings and Intent.
3.50.020	Purpose.
3.50.030	Definitions.
3.50.040	Establishment of a Park Facilities Impact Fee.
3.50.050	Exemptions.
3.50.060	Determination of Required Fees.
3.50.070	Payment of Fees.
3.50.080	Park Facilities Fee Fund and Accounting.
3.50.090	Fee Adjustments.
3.50.100	Fee Refunds.
3.50.110	Fees in Effect When Application Complete.

**3.50.010 Findings and Intent.**

The City Council hereby finds and declares that:

- A. New Development increases demand on existing Park Facilities and creates the need for expanded or new facilities to serve New Development. The purpose of this Chapter is to enable the collection of mitigation fees to be used for the purpose of developing new or expanding existing Park Facilities.
- B. It is the City's intent and desire to require that New Development contribute their fair share toward the purchase, development and/or improvement of Park Facilities.
- C. The imposition of impact fees is one of the customary methods of ensuring that development bears a proportionate share of the cost of capital facilities necessary to accommodate such development in order to promote and protect the public health, safety and welfare.
- D. The provisions of this Ordinance are enacted pursuant to the City of Foster City General Plan and sections 66000, *et seq.* of the California Government Code (the "Mitigation Fee Act").

**3.50.020 Purpose.**

The purpose of the Park Facilities Impact Fee is to fund the creation and improvement of Park Facilities, including, but not limited to, the planning, designing, developing, and improving of existing and newly acquired Park Facilities related to New Development and ensure that New Development pays for its fair share of park and recreational facilities.

### **3.50.030 Definitions.**

For the purposes of this chapter, the following terms shall be defined as follows:

- A. "Certificate of Occupancy" as used in this Chapter, has the same meaning as in California Government Code section 66007(e).
- B. "Park Facilities" shall mean any public improvements deemed necessary by the City to develop, improve or expand land and facilities for park and recreational purposes. Such improvements may include, but are not limited to: grading; landscaped areas for active and passive recreational use, trails and sports fields; irrigation and drainage systems; lawn, shrubs and trees; facilities for recreational community gardening; walkways; bicycle facilities and park lighting; playground or other recreational equipment; picnic facilities; community center or other buildings, swimming pools; volleyball, basketball, tennis, racquetball and other courts; vehicle driveways and parking areas and any other facilities which may hereafter be authorized by state law or approved by the City.
- C. "Park Facilities Fee" shall mean the mitigation fee imposed on New Development for the purpose of funding park and recreational facilities related to New Development.
- D. "New Development" shall mean all new building construction, conversion to a use that intensifies existing Park Facilities demands, and any other new construction that creates additional impacts on Park Facilities. New Development shall include new residential and nonresidential development.
- E. "Building Permit" includes full structural building permits as well as partial permits such as foundation-only permits or tenant improvements.

### **3.50.040 Establishment of a Park Facilities Impact Fee.**

Except as otherwise provided in this chapter, developers of New Development shall pay a Park Facilities Fee in an amount established by resolution of the City Council in accordance with a nexus study that demonstrates the reasonable relationship between the fee's use and the type of development project on which the fee will be imposed and demonstrates the reasonable relationship between the need for Park Facilities and the type of development projects on which the fee will be imposed.

### **3.50.050 Exemptions.**

The following types of development shall not be required to pay a Park Facilities Fee:

- A. Alterations, renovations or expansion of an existing building or structure that do not add new square footage or dwelling units or intensify an existing use.

- B. Replacement of building square footage or dwelling units on the same lot that does not add new square footage or dwelling units or intensify an existing use.
- C. The replacement of a destroyed or partially destroyed or damaged building or structure that does not add new square footage or dwelling units or intensify an existing use.

**3.50.060 Determination of Required Fees.**

- A. The Community Development Director, or the Director's designee, shall be responsible for determining the fees required by this chapter. This determination shall be made at the time of application for the Building Permit.
- B. The Park Facilities Fee may be modified automatically on an annual basis in accordance with the change in the Engineering News Record ("ENR") Construction Cost Index for the San Francisco area. This adjustment shall not require any action of the City Council.

**3.50.070 Payment of Fees.**

- A. The fees required by this chapter from a developer shall be paid at the time the City issues a Building Permit for each New Development project, unless the developer of a residential development enters into an agreement with the City to pay the fees at the time the Certificate of Occupancy is issued, pursuant to Government Code section 66007(c). An agreement to defer payment until the issuance of a Certificate of Occupancy must be executed and recorded before the City will issue a Building Permit for the development project.
- B. If New Development changes or intensifies the existing use on the project site or adds additional square footage or dwelling units to an existing building, thereby requiring the payment of a new or additional Park Facilities Fee, the fee amount associated with the existing use on the project site shall be credited against the new total fee due, as determined by the Community Development Director; provided, however, that, in no event, shall the City refund the fees previously paid.

**3.50.080 Park Facilities Fee Fund and Accounting.**

- A. Park Facilities Fee Fund: Fees collected pursuant to this chapter shall be deposited in the Park Facilities Fee Fund, and shall be segregated and used and expended for the creation of Park Facilities related to New Development. Any interest accrued by the account shall be used solely for the purpose of funding Park Facilities.

- B. Park Facilities Fee Accounting: The City shall maintain accounts and prepare reports in accordance with California Government Code Section 66001 et seq.

### **3.50.090 Fee Adjustments.**

Any person subject to a fee required by this chapter may apply to the Community Development Director, or the Director's designee, for a reduction, adjustment or waiver of that fee based upon the absence of a reasonable relationship between the impact of that applicant's development project on Park Facilities in the City and the amount of the fee charged.

- A. Application. An applicant shall file a written request to adjust fees with the Community Development Director, not later than 10 days after the City notifies the developer of the amount of the fee to be charged. Additional time, as determined by the Community Development Director, or the Director's designee, will be allowed when significant additional information is required of the developer. The application shall provide evidence illustrating that the payment of the fee authorized by this chapter and imposed by implementing resolution bears no reasonable relationship or nexus with the impact of the development on the need for Park Facilities within the city and state in detail the factual basis for the request for reduction, adjustment or waiver. If an applicant desires to receive a Building Permit prior to the completion of the appeal process, applicant shall deposit the fee being appealed with the application. Such fee or portion thereof will be refunded if the appeal is successful.
- B. Decision of the Community Development Director. The Community Development Director, or the Director's designee, shall issue a decision on the application within 30 days after the application is filed with the Community Development Department. The Community Development Director's, or the Director's designee's, decision shall state his or her determination regarding the amount of the Park Facilities Fee that may reasonably be imposed on the New Development and include a brief description of the basis for the Director's decision.
- C. Appeal of the Decision of the Community Development Director. Decisions of the Community Development Director, or the Director's designee, may be appealed to the City Manager. Appeals must be filed within 10 days of the Community Development Director's, or the Director's designee decision. The City Manager shall review the application and evidence presented to the Community Development Director and issue a decision within 15 days. The decision of the City Manager is final and may be appealed or protested pursuant to Government Code section 66020.

### **3.50.100 Fee Refunds.**

Upon application, fees collected by the City pursuant to this chapter shall be refunded



under the following circumstances:

- A. Fees collected pursuant to this chapter are erroneously or illegally collected.
- B. The Building Permit expires, and no extension has been granted, for the development project upon which fees were imposed pursuant to this chapter. An application for refund pursuant to this subsection (B) shall be filed with the Community Development Director no later than 90 days after expiration of the Building Permit. The amount of refund shall be reduced by an amount to cover the cost to the City for processing the refund.

**3.50.110 Fees in Effect When Fee is Paid.**

Unless otherwise required by law, the amount of the fees to be paid under this chapter shall be in the amount of the fee in effect at the time the fee is paid.

**Chapter 3.60**  
**TRANSPORTATION IMPACT MITIGATION FEE**

Sections:

- 3.60.010 Findings and Intent.
- 3.60.020 Purpose.
- 3.60.030 Definitions.
- 3.60.040 Establishment of Transportation Impact Mitigation Fee.
- 3.60.050 Exemptions.
- 3.60.060 Determination of Required Fees.
- 3.60.070 Payment of Fees.
- 3.60.080 Transportation Fee Fund and Accounting.
- 3.60.090 Fee Adjustments.
- 3.60.100 Fee Refunds.
- 3.60.110 Fees in Effect When Application Complete.
- 3.60.120 Fee Credits for Implementation and Administration of Transportation Mitigation Measures and/or Construction of Transportation Facilities.
- 3.60.130 Fee Credits for Improvements Extra to the Project within Assessment Districts.
- 3.60.140 Development Agreement Projects Exempt.

**3.60.010 – Findings and Intent.**

The City Council hereby finds and declares that:

- A. New Development projects in the city have had and will continue to have significant citywide (other than site specific) impacts on the availability and adequacy of Transportation Facilities.
- B. It is the City’s intent and desire to provide efficient, reliable and convenient transit system, improved bicycle routes, and a balanced street system to serve automobiles, pedestrians, bicycles, and transit.
- C. The imposition of impact fees is one of the customary methods of ensuring that development bears a proportionate share of the cost of capital facilities necessary to accommodate such development in order to promote and protect the public health, safety, and welfare.
- D. The provisions of this Ordinance are enacted pursuant to the City of Foster City General Plan and section 66000, et seq. of the California Government Code (the “Mitigation Fee Act”).

**3.60.020 Purpose.**

The purpose of the Transportation Fee is to fund the planning, design, development, and construction of Transportation Facilities related to New Development and ensure that New Development pays for its fair share of Transportation Facilities.

**3.60.030 Definitions.**

For the purposes of this chapter, the following terms shall be defined as follows:

- A. "Certificate of Occupancy" as used in this Chapter, has the same meaning as in California Government Code section 66007(e).
- B. "Building Permit" includes full structural building permits as well as partial permits such as foundation-only permits or tenant improvements.
- C. "Governmental or public facilities" shall mean publicly owned buildings and structures used for the purposes of conducting city, county, state or federal government business. Such facilities shall include, but not be limited to, city halls, police and fire stations, offices, equipment yards, sanitation facilities, schools, recreation centers, and similar facilities. Private commercial development projects leasing publicly owned land shall not be considered governmental or public facilities.
- D. "Transportation Facilities" shall mean transportation system improvement projects that require physical alteration or expansion of the transportation system. Examples of Transportation Facilities include, but are not limited to, roadway improvements, signalization improvements, other public right-of-way improvements such as bus shelters, and multimodal improvements, such as bikeways and sidewalks.
- E. "Transportation Fee" shall mean the Transportation Impact Mitigation Fee imposed on New Development for the purpose of funding Transportation Facilities related to New Development.
- F. "New Development" shall mean all new building construction, conversion to a use that intensifies existing transportation demands, and any other new construction that creates additional transportation impacts. New Development shall include new residential and nonresidential development.

**3.60.040 Establishment of Transportation Impact Mitigation Fee.**

Except as otherwise provided in this chapter, developers of New Development shall pay a Transportation Fee in an amount established by resolution of the City Council in accordance with a nexus study that demonstrates the reasonable relationship between the fee's use and the type of development project on which the fee will be imposed and

demonstrates the reasonable relationship between the need for Transportation Facilities and the type of development projects on which the fees will be imposed.

**3.60.050 Exemptions.**

- A. The following developments shall be exempt from the requirements of this chapter:
  - 1. Governmental or public facilities.
  - 2. Developments on real property owned by a government transportation agency which are used exclusively for public transportation purposes.
  - 3. Public elementary schools and secondary schools.
  - 4. Private schools which meet the requirements contained in California Education Code Section 48222, or its successor, so that attendance at such schools complies with California compulsory education requirements.
  - 5. Alterations, renovations or expansion of an existing building or structure that do not add new square footage or dwelling units or intensify an existing use.
  - 6. Replacement of building square footage or dwelling units on the same lot that does not add new square footage or dwelling units or intensify an existing use.
  - 7. Replacement of a destroyed or partially destroyed or damaged building or structure that does not add new square footage or dwelling units or intensify an existing use.

**3.60.060 Determination of Required Fees.**

- A. The Community Development Director, or the Director's designee, shall be responsible for determining the fees required by this chapter. This determination shall be made at the time of application for the Building Permit or at the time of approval for a change in use.
- B. The Transportation Fee may be modified automatically on an annual basis in accordance with the change in the Engineering News Record ("ENR") Construction Cost Index for the San Francisco area. This adjustment shall not require any action of the City Council.

**3.60.070 Payment of Fees.**

- A. The fees required by this chapter from a developer shall be paid at the time the City issues a Building Permit for each development project, unless the developer of a residential development requests to enter into an agreement with the City to pay the fees at the time the Certificate of Occupancy is issued, pursuant to California Government Code section 66007(c). An agreement to defer payment until the issuance of a Certificate of Occupancy must be executed and recorded before the City will issue a Building Permit for the development project.
- B. If New Development changes or intensifies the existing use on the project site or adds additional square footage to an existing building, thereby requiring the payment of a new or additional Transportation Fee, the fee amount associated with the existing use on the project site shall be credited against the new total fee due, as determined by the Community Development Director, or the Director's designee; provided, however, that, in no event, shall the City refund the fees previously paid.

### **3.60.080 Transportation Fee Fund and Accounting.**

- A. Transportation Fee Fund: Fees collected pursuant to this chapter shall be deposited in the Transportation Fee Fund, and shall be segregated and used and expended primarily to fund planning, design, development, and construction of Transportation Facilities related to New Development. Any interest accrued by the account shall be used solely for the purpose of funding Transportation Facilities.
- B. Transportation Fee Accounting: The City shall maintain accounts and prepare reports in accordance with California Government Code Section 66001 et seq.

### **3.60.090 Fee Adjustments.**

Any person subject to a fee required by this chapter may apply to the Community Development Director, or the Director's designee, for a reduction, adjustment or waiver of that fee based upon the absence of a reasonable relationship between the impact of that applicant's development project on Transportation Facilities in the city and the amount of the fee charged.

- A. Application. An applicant shall file a written request to adjust fees with the Community Development Director, not later than 10 days after the City notifies the developer of the amount of the fee to be charged. Additional time, as determined by the Community Development Director, or the Director's designee, will be allowed when significant additional information is required of the developer. The application shall provide evidence illustrating that the payment of the fee authorized by this chapter and imposed by implementing resolution bears no reasonable relationship or nexus with the impact of the development on the need for Transportation Facilities within the city and state in detail the factual basis for the request for reduction, adjustment or waiver. If an applicant desires

to receive a Building Permit prior to the completion of the appeal process, applicant shall deposit the fee being appealed with the application. Such fee or portion thereof will be refunded if the appeal is successful.

- B. Decision of the Community Development Director. The Community Development Director, or the Director's designee, shall issue a decision on the application within 30 days after the application is filed with the Community Development Department. The Community Development Director's, or the Director's designee's, decision shall state his or her determination regarding the amount of the Transportation Fee that may reasonably be imposed on the New Development and include a brief description of the basis for the Director's decision.
- C. Appeal of the Decision of the Community Development Director. Decisions of the Community Development Director, or the Director's designee, may be appealed to the City Manager. Appeals must be filed within 10 days of the Community Development Director, or the Director's designee, decision. The City Manager shall review the application and evidence presented to the Community Development Director, or the Director's designee, and issue a decision within 15 days. The decision of the City Manager is final and may be appealed or protested pursuant to Government Code section 66020.

### **3.60.100 Fee Refunds.**

Upon application, fees collected by the City pursuant to this chapter shall be refunded under the following circumstances:

- A. Fees collected pursuant to this chapter are erroneously or illegally collected.
- B. The Building Permit expires, and no extension has been granted, for the development project upon which fees were imposed pursuant to this chapter. An application for refund pursuant to this subsection (B) shall be filed with the Community Development Director no later than 90 days after expiration of the Building Permit. The amount of refund shall be reduced by an amount to cover the cost to the City for processing the refund.

### **3.60.110 Fees in Effect When Fee is Paid.**

Unless otherwise required by law, the amount of the fees to be paid under this chapter shall be in the amount of the fee in effect at the time the Transportation Fee is paid.

### **3.60.120 Fee Credits for Implementation of Transportation Mitigation Measures and/or Construction of Transportation Facilities.**

A developer may be entitled to a reduction in the amount of the fees required by this chapter, in an amount to be determined by the Community Development Director, or the

Director's designee, if that developer implements transportation mitigation measures or constructs Transportation Facilities. The Community Development Director, or the Director's designee, determination shall be based upon the actual costs reasonably incurred in constructing the Transportation Facilities.

**3.60.130 Fee Credits for Improvements Extra to the Project or Within Assessment Districts.**

A developer may be entitled to a reduction in the amount of the Transportation Fees required by this chapter, in an amount to be determined by the Community Development Director, or the Director's designee, if that developer's project was required to construct specific Transportation Facilities, which are extra to the project, or the development project is located within the boundaries of an assessment or other special district in which Transportation Facilities were constructed (or are intended to be constructed) with the use of funds derived by virtue of said district and that developer's property for which development is proposed has been financially encumbered or otherwise burdened to pay for all or a portion of the Transportation Facilities paid for or to be paid for by assessments levied by the district. The Community Development Director, or the Director's designee, determination of the amount of reduction required pursuant to this section shall be based upon the developer's actual costs reasonably incurred for the construction of the Transportation Facilities.

**Chapter 3.70  
PUBLIC SAFETY IMPACT FEE**

Sections:

3.70.020	Purpose.
3.70.030	Definitions.
3.70.040	Establishment of a Public Safety Fee.
3.70.050	Determination of Required Fees.
3.70.060	Payment of Fees.
3.70.070	Public Safety Fee Fund and Accounting.
3.70.080	Fee Adjustments.
3.70.090	Fee Refunds.
3.70.100	Fees in Effect When Application Complete.

**3.70.010 Findings and Intent.**

The City Council hereby finds and declares that:

- A. New Development projects in the city have had and will continue to have significant citywide (other than site specific) impacts on the availability and adequacy of Public Safety Facilities.
- B. It is the City's intent and desire to maintain well developed community facilities including Public Safety Facilities.
- C. The imposition of impact fees is one of the customary methods of ensuring that development bears a proportionate share of the cost of capital facilities necessary to accommodate such development in order to promote and protect the public health, safety, and welfare.
- D. The provisions of this Ordinance are enacted pursuant to the City of Foster City General Plan and section 66000, et seq. of the California Government Code (the "Mitigation Fee Act").

**3.70.020 Purpose.**

- A. The purpose of the public safety fee is to fund Public Safety Facilities by providing adequate levels of police and fire facility improvements, vehicles, and other equipment necessary for adequate police and fire service provision related to New Development.
- B. The intent of the public safety fee is to provide a funding mechanism to pay for the expansion or construction of Police and Fire facilities, the improvement of



existing buildings, and the acquisition of new vehicles and specialized equipment.

### **3.70.030 Definitions.**

For the purposes of this chapter, the following terms shall be defined as follows:

- A. "Certificate of Occupancy" as used in this Chapter as the same meaning as in California Government Code section 66007(e).
- B. "Building Permit" includes full structural building permits as well as partial permits such as foundation-only permits or permits for tenant improvements.
- C. "Public Safety Facility" means police and fire facility improvements, vehicles, and other equipment necessary for adequate police and fire service provision related to New Development.
- D. "Public Safety Fee" shall mean the Public Safety Impact Mitigation Fee imposed on New Development for the purpose of funding Public Safety Facilities related to New Development.
- E. "New Development" shall mean all new building construction, conversion to a use that intensifies existing public safety demands, and any other new construction that creates additional public safety impacts.

### **3.70.040 Establishment of a Public Safety Fee.**

Except as otherwise provided in this chapter, applicants shall pay a Public Safety Fee in an amount established by resolution of the City Council in accordance with a nexus study that demonstrates the reasonable relationship between the fee's use and the type of development project on which the fee will be imposed and demonstrates the reasonable relationship between the need for Public Safety Facilities and the type of development projects on which the fees will be imposed.

### **3.70.050 Determination of Required Fees.**

- A. The Community Development Director, or the Director's designee, shall be responsible for determining the fees required by this chapter. This determination shall be made at the time of application for the Building Permit for the New Development.
- B. The Public Safety Fee may be modified automatically on an annual basis in accordance with the change in the Engineering News Record ("ENR") Construction Cost Index for the San Francisco area. This adjustment shall not require any action of the City Council.

**3.70.060 Payment of Fees.**

- A. The fees required by this chapter from a developer shall be paid at the time the City issues a Building Permit for each development project, unless the developer of a residential development project enters into an agreement with the City to pay the fees at the time the Certificate of Occupancy is issued, pursuant to Government Code section 66007(a). An agreement to defer payment until the issuance of a Certificate of Occupancy must be executed and recorded before the City will issue a Building Permit for the development project.
- B. If New Development changes or intensifies the existing use on the project site or adds additional square footage to an existing building, thereby requiring the payment of a new or additional Public Safety Fee, the fee amount associated with the existing use on the project site shall be credited against the new total fee due, as determined by the Community Development Director, or the Director's designee; provided, however, that, in no event, shall the City refund the fees previously paid.

**3.70.070 Public Safety Fee Fund and Accounting.**

- A. Public Safety Fee Fund: Fees collected pursuant to this chapter shall be deposited in the Public Safety Fee Fund, and shall be segregated and used and expended primarily to fund Public Safety Facilities related to New Development. Any interest accrued by the account shall be used solely for the purpose of funding Public Safety Facilities.
- B. Public Safety Fee Accounting: The City shall maintain accounts and prepare reports in accordance with California Government Code Section 66001 et seq.

**3.70.080 Fee Adjustments.**

Any person subject to a fee required by this chapter may apply to the Community Development Director, or the Director's designee, for a reduction, adjustment or waiver of that fee based upon the absence of a reasonable relationship between the impact of that applicant's development project on Public Safety Facilities in the City and the amount of the fee charged.

- A. Application. An applicant shall file a written request to adjust fees with the Community Development Director, not later than 10 days after the city notifies the developer of the amount of the fee to be charged. Additional time, as determined by the Community Development Director, or the Director's designee, will be allowed when significant additional information is required of the developer. The application shall provide evidence illustrating that the payment of the fee authorized by this chapter and imposed by implementing resolution bears no reasonable relationship or nexus to the impact of the development on the need for Public Safety Facilities within the City and state in detail the factual

basis for the request for reduction, adjustment or waiver. If an applicant desires to receive a Building Permit prior to the completion of the appeal process, applicant shall deposit the fee being appealed with the application. Such fee or portion thereof will be refunded if the appeal is successful.

- B. Decision of the Community Development Director. The Community Development Director, or the Director's designee, shall issue a decision on the application within 30 days after the application is filed with the Community Development Department. The Community Development Director's, or the Director's designee's, decision shall state his or her determination regarding the amount of the Public Safety Fee that may reasonably be imposed on the subject New Development and include a brief description of the basis for the Director's decision.
- C. Appeal of the Decision of the Community Development Director. Decisions of the Community Development Director, or the Director's designee, may be appealed to the City Manager. Appeals must be filed within 10 days of the Community Development Director's, or the Director's designee's, decision. The City Manager shall review the application and evidence presented to the Community Development Director, or the Director's designee, and issue a decision within 15 days. The decision of the City Manager is final and may be appealed or protested pursuant to Government Code section 66020.

### **3.70.090 Fee Refunds.**

Upon application, fees collected by the City pursuant to this chapter shall be refunded under the following circumstances:

- A. Fees collected pursuant to this chapter are erroneously or illegally collected.
- B. The Building Permit expires, and no extension has been granted, for the development project upon which fees were imposed pursuant to this chapter. An application for refund pursuant to this subsection (B) shall be filed with the Community Development Director no later than 90 days after expiration of the Building Permit. The amount of refund shall be reduced by an amount to cover the cost to the City for processing the refund.

### **3.70.100 Fees in Effect When Fee is Paid.**

Unless otherwise required by law, the amount of the fees to be paid under this chapter shall be in the amount of the fee in effect at the time the fee is paid.

## CERTIFICATE OF POSTING

I, Yelena Cappello, hereby certify as follows:

That I am, and at all time herein mentioned, was the duly acting and qualified Deputy City Clerk of the **City of Foster City**, Foster City, San Mateo County, California.

I further certify to the proper posting of:

Ordinance No. 650, "An Ordinance of the City Council of the City of Foster City Adopting a Transportation Impact Mitigation Fee, Adopting a Public Safety Impact Fee, and Adopting a Park Facilities Impact Fee to Be Imposed on New Development Projects in the City of Foster City"

in the following three public places of the **City of Foster City**, Foster City, San Mateo County, California:

1. Recreation Center Lobby  
650 Shell Boulevard
2. Council Chambers  
620 Foster City Boulevard
3. Foster City Public Library  
1000 E. Hillsdale Boulevard

Executed at the **City of Foster City**, Foster City, San Mateo County, California this 21st day of July 2022.

DocuSigned by:



7CD6EE52A6378434  
Yelena Cappello  
Deputy City Clerk