

**AMENDING THE HERCULES MUNICIPAL CODE TITLE 10**

**Chapter 18. Development Impact Fees**

**Article 1. General Provisions for Development Impact Fees**

**Sec. 10-18.101 Authority.**

This Chapter is enacted pursuant to authority granted by California Government Code section 66000 et seq, and the general police power of the City. (Ord. 364 § 2 (part), 2001)

**Sec. 10-18.102 Application.**

This Chapter applies to development impact fees charged as a condition of development to defray all or a portion of the cost of public services, facilities, improvements and amenities. The cost of developing and administering the City's development impact fee program may be included as a component of the established fees. This Chapter is not intended to and does not apply to regulatory and processing fees; fees required pursuant to a development agreement adopted pursuant to Government Code Title 7, Chapter 4, Article 2.5 commencing with Section 65864; fees collected pursuant to redevelopment agreements in furtherance or for the benefit of a redevelopment project for which a redevelopment plan has been adopted pursuant to the Community Redevelopment Law (Health and Safety Code Division 24, part 1 commencing with Section 33000); or fees collected pursuant to a reimbursement agreement that exceed the developer's share of a public improvement, or to assessment district proceedings, assessments or taxes. (Ord. 364 § 2 (part), 2001)

**Sec. 10-18.103 Fee Credit.**

(a) The City Manager or the City Manager's designee is authorized to credit development fees imposed pursuant to this chapter in consideration for certain on- site and off-site facilities or improvements constructed or paid for by the developer. A developer is entitled to credit for the value of improvements if the improvement is identified in the city's capital improvement program (CIP) and the developer (1) dedicates an appropriate site, (2) constructs the improvements, (3) finances an improvement by cash, assessment district or Mello-Roos Community Facilities District, or (4) a combination of the above.

(b) A decision regarding a fee credit is appealable pursuant to Section 10-18.105. (Ord. 364 § 2 (part), 2001)

**Sec. 10-18.104 Fee Adjustment, Waiver or Finding of Exemption.**

(a) The developer of a project subject to a development fee pursuant to this chapter may apply to the City Manager or the City Manager's designee for an adjustment to or waiver of that fee or for a finding that the project is exempt from the fee. The waiver or adjustment of a fee shall be based upon the absence of any reasonable relationship (1) between the impact of that development on public facilities and either (i) the amount of fee charged or (ii) the type of facilities to be financed or (2) between that development project and the use of the fee or (3) between that development project and the need for related public facilities.

(b) This application shall be made in writing and filed with the City Manager or the City Manager's designee no later than the time of the issuance of a building permit authorizing construction of new floor area or remodeling to accommodate a change or expansion in use. If no building permit is required, the application shall be filed prior to issuance of any permit or other City approval required for a change in use. The application shall state completely and in detail both the applicant's factual basis and legal theory for adjustment or waiver. The City Manager or the City Manager's designee may refuse to consider factual assertions or legal theories not set forth in the written application.

(c) The City Manager or the City Manager's designee shall consider the application at an informal hearing, which may be continued from time to time, and which shall be held within sixty days after the filing of the complete application. The decision of the City Manager or the City Manager's designee is appealable pursuant to Section 10-18.105.

(d) The applicant bears the burden of proof in presenting substantial evidence to support the application. The City Manager or the City Manager's designee shall consider the following factors in his or her determination:

- (1) The factors identified in Government Code Section 66001;
- (2) The purpose and proposed uses;
- (3) The type of the fee;
- (4) The type of development;
- (5) The relationship between:
- (6) The fee's use and type of development;

(7) The need for the improvements to be paid for by the fee and the type of development; and

(8) The amount of the fee and the portion of it attributable to the development.

(9) The substance and nature of the evidence, including the City's development fee technical reports, and any technical data submitted by the applicant supporting its request.

(e) Staff time expended in processing the application shall be charged to and paid for by the applicant as a part of the fees chargeable for the project application. (Ord. 364 § 2 (part), 2001)

#### **Sec. 10-18.105 Appeal Procedure.**

(a) The City Manager or the City Manager's designee is responsible for administering, collecting, crediting, adjusting and refunding development fees. A decision by the City Manager or the City Manager's designee regarding a fee imposed under this ordinance and any implementing resolution shall be appealable in accordance with this section. A person appealing under this section shall have first sought a fee credit under section 1018.103, and adjustment or waiver, or a finding of fee exemption under section 10-18.104. A person seeking judicial review shall first complete an appeal under this section and shall pay all City charges for that appeal.

(b) A person appealing a decision under this Chapter shall file an appeal with the City Manager or the City Manager's designee, who is responsible for processing the appeal toward a hearing. The appeal shall be in writing, stating completely and in detail the factual and legal grounds, and shall be filed within ten calendar days after the decision being appealed.

(c) The cost of the appeal shall be borne by the applicant, who shall pay a deposit against such costs at the time of filing the appeal. The amount of the deposit shall be established by resolution of the City Council, but may be reduced on a case by case basis when determined by the City Manager or the City Manager's designee to be substantially in excess of the probable cost of the appeal. Any part of the deposit not required to defray the cost of an appeal shall be refunded to the applicant. If the deposit is not adequate to defray the cost of an appeal, the applicant shall pay the difference between the cost of the appeal and the amount of the deposit. The cost of an appeal must be paid in full prior to issuance of any still to be issued building or occupancy permit or any other City permit that may be required in order to commence a new, changed or expanded land use and

shall in any case constitute an enforceable obligation of the developer.

(d) The City Manager or the City Manager's designee shall preside as the hearing officer for the appeal.

(e) The appointed hearing officer shall set the time and place for the hearing, serve notice on the parties, conduct the hearing, prepare written findings of fact and a written decision on the matter, and shall preserve the complete administrative record of the proceeding. The hearing officer may issue directives, including but not limited to directives that legal briefs be submitted in accordance with an established briefing schedule, to the parties in order to facilitate resolution of the appeal. The hearing officer shall consider relevant evidence presented by the appellant and by the community development department.

(f) The decision of the hearing officer is final and may not be further appealed. It is reviewable by a court under Code of Civil Procedure Section 1094.5. (Ord. 364 § 2 (part), 2001)

**Sec. 10-18.106 Refund of Fee.**

(a) If a building permit or use permit is canceled or voided and the fees paid have not been committed, the City Manager or the City Manager's designee may, upon the written request of the applicant and provided that work has not progressed to a point that would permit commencement of a new, changed or expanded use for which a fee would be payable, order return of the fee and interest earned on it less administrative costs.

(b) If a fee is not spent or committed five years or more after it was paid by the developer, the Hercules City Council may authorize a refund to the then owner of the property for which the fee was paid, under Government Code Section 66001.

(c) A decision regarding refund of a fee is appealable pursuant to Section 10-18.105. (Ord. 364 § 2 (part), 2001)

**Sec. 10-18.108 Developer's Acknowledgment of Fee Adjustment or Waiver.**

The City Manager or the hearing officer appointed pursuant to Section 10-18.105 may require as a condition of adjustment or of a finding of exemption that the developer provide a recordable document in a form acceptable to the City Manager or the City Manager's designee acknowledging the factual basis of the waiver for adjustment and further acknowledging that a subsequent change of facts may result in the requirement that additional fees be paid. (Ord. 364 § 2 (part), 2001)

## **Article 6. Transportation Facilities Impact Fees**

### **Sec.10-18.601 Intent and Purpose.**

The City Council of the City of Hercules finds and declares that:

(a) As a result of increasing regional growth, significant residential, commercial and industrial development is expected to occur within the City.

(b) The general plan specifies the permitted uses of land within the City, places limits on the intensity and density of such use, and includes policies to improve the safety of roadway facilities and to provide for pedestrian and bicycle infrastructure. The City Council has examined the relationship between the land uses and densities permitted under the general plan and the rate and amount of actual development of property within the City. Based upon this examination, the City Council has identified trends in growth and development which enable the council to project, with substantial certainty, the magnitude and extent of future development based upon the City's general plan.

(c) Based upon projected growth and development permitted under the general plan, a substantial amount of residential, commercial and industrial development will occur in the City before the City is fully built out.

(d) New development in Hercules will increase the demand for all modes of travel (including walking, biking, transit, automobile and truck/goods movement), and thus will increase the need for improvement to transportation facilities, including but not limited to vehicular, transit, bicycle, and pedestrian infrastructure and improvements. This anticipated development cumulatively will generate a substantial increase over existing levels of vehicular traffic, and transit, bicycle and pedestrian travel. This increase in multi-modal travel will result in traffic volumes which exceed the capacity of the existing City-wide circulation system to provide acceptable levels of service and safe transportation facilities. New development within the City will thus create an additional burden on the existing transportation facilities .

(e) If additional traffic-related as well as transit, bicycle, and pedestrian transportation facilities are not added as development occurs, the existing transportation facilities will not be adequate to serve the community consistent with the General Plan. This could result in adverse impacts, such as unacceptable levels of congestion on streets and at intersections, traffic accidents, air pollution, noise and restricted access for emergency vehicles. This would lead to a deterioration of the level of service for

vehicles and deterioration of other transportation facilities, such as transit, bicycle and pedestrian facilities, which the residents, employees, and property owners in Hercules now enjoy.

(f) To prevent these undesirable consequences, the capacity of the City-wide transportation facilities must be built at a rate which will accommodate the expected growth in the City.

(g) Although the traffic volume generated by an individual development project may not be, in and of itself, sufficient to overload the existing City-wide transportation facilities, the cumulative impact of all new development, including development currently approved or submitted for approval, will result in unacceptable levels of traffic congestion.

(h) It is the policy of the City that new development pay for the cost of improvements to the City-wide circulation system which are necessary to accommodate the traffic volumes generated by new development. In the absence of this Article imposing a traffic facilities fee, existing and future sources of revenue will be inadequate to fund a substantial portion of the transportation facilities which are necessary to avoid unacceptable levels of congestion and the related adverse impacts.

(i) All types of urban development require and use transportation facilities. The City Council also has examined the rates at which different land uses generate traffic. The City Council, in evaluating these traffic generation rates, has taken into consideration, among other things, other traffic-related studies and reports prepared by or on behalf of the City. The City Council finds that these traffic generation rates represent a reasonable estimate of the actual impact on the City's circulation system.

(j) A fair and equitable method of securing some of the revenues necessary to construct the required improvements to the transportation facilities is to impose a transportation impact fee based on the extent to which new development generates additional traffic volumes and impacts to the transportation facilities.

(k) The 2019 Hercules Transportation Impact Fee Nexus Study specifically identifies transportation facility improvements which are necessary to accommodate future growth. These improvements are and will be incorporated in the City's Capital Improvement Program (CIP).

(l) The circulation system improvements that will be constructed with funds generated pursuant to the article will significantly benefit the contributor in that the adverse impacts, such as noise, air pollution, delay, accidents, increased fuel consumption, harm to the local economy, and

inconveniences caused by traffic congestion will be substantially mitigated. Persons who undertake new development in the City are benefitted by a desirable community and the City's reputation for providing, and ability to provide, an adequate transportation system.

(m) Pursuant to Government Code section 66001, and based upon the 2019 Hercules Transportation Impact Fee Nexus Study and the terms of this Article, the Council finds that:

(1) The purpose of the fee imposed pursuant to this Article is to provide adequate transportation improvements to serve new development within the City.

(2) The improvements for which the fee will be used are identified in Hercules Transportation Impact Fee Nexus, as approved in 2019, summarized below and supported by the Hercules General Plan, to be contained in the City's Capital Improvements Program (CIP) y.

1.	Signalize intersection of San Pablo & Tsushima
2.	Reconfigure Sycamore Ave cross section from Willow to San Pablo
3.	San Pablo / Jon Muir Prkwy to I-80 ramp expansion
4.	Intersection improvements at Willow & Sycamore
5.	Add 3 <sup>rd</sup> NB through lane to San Pablo Ave at Sycamore
6.	Install pedestrian activated signal at Market Hall crosswalk
7.	Upgrade or add ADA curb ramps
8	Hercules Creekside trail from Alfred Noble to Sycamore
9.	Multiuse path at Market Hall
10.	Pedestrian connection along Palm between Sycamore and Willow
11.	Bay Trail gap closure and lighting
12.	Expand bicycle network
13.	Add sidewalk along Willow Ave to Hercules Transit Center
14.	Improve pedestrian connections to Hercules Transit Center from Creekside Shopping Center along Sycamore to Willow
15.	Extend sidewalk connections to Rodeo
16.	Complete bicycle facilities between Mariner's Pointe and HTC
17.	Add lighting to Refugio Valley Trail
18.	Remove crosswalk at north leg of San Pablo & Sycamore

19.	Provide bus shelters along San Pablo
20.	Parking for Intermodal Transit Center
21.	Complete Intermodal Transit Center/Rail Station (RITC)

(3) All types of urban development require and use the transportation system.

(4) The amount of the fee imposed pursuant to this Article shall bear a fair and reasonable relationship to each development's burden on and benefit from the City-wide circulation system improvements to be funded by the traffic impact fee, and shall be based on the following considerations:

A. New development will pay only for those improvements which serve new development or which are necessary to reduce impacts to the transportation facilities which would otherwise be created by new development. The cost of improvements needed to alleviate existing transportation system deficiencies are not included in this fee.

B. Each type of development shall contribute to the needed improvements in proportion to the use of improvements by that type of development, based upon traffic generation and trip length characteristics of various land uses to those same rates for a typical single-family residential unit (referred to as a DUE – Dwelling Unit Equivalent) for each type of land use category.

(n) Periodic review, and possible revision, of the resolution adopted by the City Council under this Article will allow for the adjustment of the fee to ensure that the fee remains a fair and equitable method for the distribution of costs to construct circulation system improvements necessary to accommodate traffic volumes generated by development.

(o) The 2019 Hercules Transportation Impact Fee Nexus Study prepared by DKS for the City of Hercules, a copy of which is on file with the City clerk, and future council-approved amendments to it, are approved, incorporated herein by reference and provide the technical information on which the fee imposed pursuant to this Article is based.

#### **Sec. 10-18.602 Definitions.**

##### **In this Article:**

(a) Director means the City Manager or the City Manager's designee;

(b) 2019 Hercules Transportation Impact Fee Nexus Study is the report of

that title dated March 12, 2019 prepared by DKS for the City of Hercules, and future additions and amendments or supplements to or replacements of that report, all of which are incorporated in this Article.

(c) Permit means a building or use permit authorizing the development of new floor area or a change from one land use category to another.

(d) Floor area means the gross floor area of a building or, if a building contains separate uses for which the fee is payable, the floor area of each of those uses. It is determined by calculating the total combined floor area within the building's exterior walls or, in the case of a building containing more than one use, the area within the walls containing each separate use. Floor area includes the area of an addition where floor area is increased. Parking areas and exterior walkways are not included in this calculation.

(e) Improvements are the transportation facility improvements in the City which are identified in the 2019 Hercules Transportation Impact Fee Nexus Study, the Hercules General Plan, and the Capital Improvements Program (CIP). They include improvements to intersections, roadways, freeway ramps, traffic signals, pedestrian facilities, bicycle facilities, and transit facilities.

(f) Land uses referred to in this Article and in the resolution establishing fees are defined as follows:

(1) Single-family dwelling includes one detached single-family dwelling unit on a single parcel.

(2) Multi-family dwelling means all attached dwellings such as apartments, town houses, condominiums, duplexes, multiplexes, and new accessory units that are either detached, created by an addition on an existing single family dwelling or created by converting non-habitable space. Accessory dwelling units within the footprint of an existing dwelling unit's habitable space are not required to pay the fee.

(3) Office includes facilities primarily used for professional (medical, legal, engineering, accounting), general commercial, financial, insurance and other offices which do not function primarily for walk-in services, as well as uses with a similar impact on the services or facilities for which the fee is assessed.

(4) Retail includes facilities primarily engaged in the retail sales of goods or services to the general public or to small businesses. This category includes automobile dealers, non-fast food restaurants, hospitals, schools, colleges, banks, and uses with a similar impact on the services or facilities for which the fee is assessed.

(5) Industrial includes facilities primarily engaged in manufacturing, processing and assembling goods, business and construction services, passenger and freight transportation, research and development and uses with a similar impact on the services or facilities for which the fee is assessed.

(6) Hotel includes buildings used for the overnight lodging of guests for less than 30 days and uses with a similar impact on traffic volume.

(7) Fast Food / Drive thru are generally those convenience food places that generate much higher traffic rates than other retail uses due to their high turnover.

(8) Fuel Station Pumps (excludes convenience store building) allocate fees bases on the traffic generation for fuel stations, as the fuel canopy square footage does not adequately capture the traffic impacts.

(9) Other uses are uses not specifically set forth in subsections (1) through (8) above in accordance with the 2019 Hercules Transportation Impact Fee Nexus Study.

#### **Sec. 10-18.603 Fee Requirement.**

(a) General. The amount of the fee shall be established by resolution of the City Council and is based upon the following considerations.

(1) Development will pay only for improvements where there is a reasonable relationship between the improvements and the traffic generated by the new development.

(2) Each type of development shall contribute to the needed improvements in proportion to the use of the improvements by that type of development.

(b) Type of Development Subject to the Fee. The categories of land uses for which the fee will be charged are listed below, based on each uses Dwelling Unit Equivalents (accounting for trip lengths) in the Nexus Study. .

(1) Single-family residential per unit;

(2) Multifamily residential per unit;

(3) Office per square foot;

- (4) Retail per square foot;
- (5) Industrial per square foot;
- (6) Hotel per room;
- (7) Fast Food / Drive thru per square foot;
- (8) Fuel Station pumps
- (9) Other uses not specifically set forth, consistent with the 2019 Hercules Transportation Impact Fee Nexus Study.

(c) When and How Applicable. The fee is applicable to a building permit, certificate of occupancy or change of use as follows:

(1) The fee for residential construction is for each dwelling unit. There is no fee for unit replacement or remodeling or for an addition to an existing unit not resulting in a new accessory dwelling unit.

(2) The fee per square foot for retail, office and similar construction is imposed on a per square foot basis for all new floor area including additions where floor area is increased, and on a per room basis for hotel construction. There is no fee for remodeling or restoration where floor area is improved or replaced but not increased.

(3) A fee may be due for a change in land use category. The fee is based upon the incremental difference between the current applicable fee for the prior use and the current fee for the proposed new use.

(d) Improvements. The fee shall be based on the cost of the improvements attributable to new development as determined in the 2019 Hercules Transportation Impact Fee Nexus Study. The improvements included in the total cost are set forth in the 2019 Hercules Transportation Impact Fee Nexus Study, and do not and shall not include the costs to alleviate existing deficiencies in the circulation system.

#### **Sec. 10-18.604 Exemptions and Credit.**

(a) No fee is due if a traffic or transportation facilities impact fee was previously paid in full for a particular property and use.

(b) No fee is due for an increase in floor area of a retail use when such increase does not expand existing floor area by more than ten percent (10%) or seven hundred fifty (750) square feet.

**Sec. 10-18.605 Time of Payment.**

The time for payment of the traffic facilities fee shall be established by resolution of the City Council setting the fee and shall conform to the requirements of Government Code Section 66007. (Ord. 364 § 2 (part), 2001)

**Sec. 10-18.606 Transportation Facilities Fee Impact Fund—Use of Fee.**

(a) The City shall deposit the fees collected under this Article in a special fund, the Transportation Facilities Impact Fee Fund (previously known as the Traffic Facilities Impact Fee Fund), designated for transportation facilities improvements.

(b) The fees and any interest earned shall be used only to:

(1) Complete the transportation improvement projects specified in the 2019 Hercules Transportation Impact Fee Nexus Study and any amendment thereto or to reimburse the City for such construction if funds were advanced by the City from other sources; or

(2) Reimburse developers who have been required or permitted to install such improvements (after the effective date of this Article) which are oversized with supplemental size, length or capacity relative to the demand generated by the proposed project contained in the improvement list; or

(3) Reimburse the City for its reasonable costs in administering this Article. (Ord. 364 § 2 (part), 2001)

**Sec. 10-18.607 Authority for Separate Mitigation Measures.**

Fees collected under this Article are not intended to replace or limit other City requirements to provide site-specific mitigation of site-specific traffic impacts imposed upon development projects as part of normal development review process. (Ord. 364 § 2 (part), 2001)

**Sec. 10-18.608 Annual Review/ Index Adjustment.**

The City Council shall, as it deems necessary, review the traffic facilities fee authorized by this Article, implementing Council resolutions and supporting documentation, including the 2019 Hercules Transportation Impact Fee Nexus Study as amended, supplemented or replaced from time-to-time and any traffic mitigation or other studies, and may, based on such review, institute an amended traffic facilities impact fee program. (Ord. 364 § 2 (part), 2001)

Effective July 1, 2020 and on each subsequent anniversary of such date, the amount of each of the Transportation Facilities Impact Fees, set forth above, shall increase or decrease by the annual percentage change in the

Engineering News Record Construction Cost Index for the San Francisco Bay Area for the twelve month period ending with the February index of the same calendar year. The percentage change will be calculated by staff and presented to City Council with the annual update to the Master Fee Schedule.

**Sec. 10-18.609 General Provisions Apply.**

Article 1 applies to this traffic facilities impact fee. (Ord. 364 § 2 (part), 2001)