

## **ORDINANCE NO. 523**

### **AN ORDINANCE OF THE CITY OF HERCULES RESCINDING ORDINANCE NO. 417 DATED JUNE 27, 2006 THEREBY REMOVING AND REPLACING THE HERCULES MUNICIPAL CODE, TITLE 10 – LAND USE, CHAPTER 17 - WEST CONTRA COSTA SUBREGIONAL TRANSPORTATION MITIGATION PROGRAM (STMP)**

**WHEREAS**, Measure C, the Contra Costa County half-cent sales tax measure adopted in 1988 for transportation projects and programs, requires the Contra Costa Transportation Authority (CCTA or Authority) to:

- Develop a program of regional traffic mitigation fees, assessments, or other mitigations, as appropriate, to fund regional and subregional transportation projects, as determined in the Comprehensive Transportation Plan of the Authority.
- Consider such issues as jobs/housing balance, carpool and vanpool programs, and proximity to transit service in the establishment of the regional traffic mitigation program.
- Implement the development mitigation program with the participation and concurrence of local jurisdictions in determining the most feasible methods of mitigating regional traffic impacts. The Authority shall take existing regional traffic impact fees into account.

**WHEREAS**, Measure J, the successor to Measure C, was passed by the voters in Contra Costa County in November 2004, extending the half-cent sales tax through March 31, 2034 and also containing a Growth Management component with the same obligations regarding regional traffic mitigation fees as described above; and

**WHEREAS**, West Contra Costa County traffic is heavily impacted by a combination of traffic generated by residents and employees of West County, as well as through traffic from other regions in Contra Costa County and other counties; and West Contra Costa County provides congestion relief through a regional traffic mitigation fee collected and expended to mitigate traffic on regional routes through capacity improvements on those routes, improved transit services for subregional and regional travel, and improved facilities that allow West County residents to more efficiently access regional routes and transit services; and

**WHEREAS**, the West Contra Costa Transportation Advisory Committee (WCCTAC) is comprised of elected officials from the cities of El Cerrito, Hercules, Pinole, Richmond, and San Pablo and the agencies AC Transit, BART, WestCAT and Contra Costa County, is governed by a Joint Exercise of Powers Agreement (JPA) and has been in existence since 1990; and

**WHEREAS**, WCCTAC is empowered to coordinate and administer fee revenues for regional transportation improvements and has been doing so since the West County Subregional Transportation Mitigation Program (STMP) fee was originally adopted in 1997 and updated in 2006; and

**WHEREAS**, through the aegis of WCCTAC, the West County jurisdictions and Contra Costa County have reached consensus on the 2019 STMP Update, as described in the Master Cooperative Agreement By and Among the Cities of El Cerrito, Hercules, Pinole, Richmond, and San Pablo, the County of Contra Costa and the West Contra Costa Transportation Advisory Committee for the 2019 Subregional Transportation Mitigation Fee Program (“Cooperative Agreement”), and are adopting this Ordinance to implement the collection of fees relative to the STMP in order to provide funding for regional transportation improvements necessary as part of each jurisdiction’s contribution to regional needs; and

**WHEREAS**, the City desires to assure that new development in the City contributes to such needed regional improvements based on the development’s proportionate contribution to the need for new or improved regional circulation and transit improvements; and

**WHEREAS**, WCCTAC’s consultant, Fehr & Peers, has prepared a nexus study report, which is provided as Exhibit A, and incorporated by reference herein, which outlines the basis for the updated STMP fee; and

**WHEREAS**, the aforementioned report describes the regional transportation improvements that will be necessary in the City and the other member jurisdictions because of new development expected under the adopted general plans of member jurisdictions, estimates the full cost of building said regional capital improvements, and sets forth the fees necessary to fund such necessary and vital improvements; and

**WHEREAS**, the General Plan of the City requires new developments to pay their fair share of impacts to existing public facilities and upgrading or constructing new public facilities and that the City work with other jurisdictions in order to establish and utilize regional funding mechanisms, including fees on new development, to fund regional transportation improvements; and

**WHEREAS**, in adopting the updated transportation impact fee described herein, the City has found the fee to be consistent with its General Plan and existing ordinances; and

**WHEREAS**, Measure J also requires that all Contra Costa County jurisdictions participate in the regional transportation mitigation program, and jurisdictions that are not participating in such a program are at risk of losing their Measure J local street maintenance and improvement funds; and

**WHEREAS**, adoption and approval of the STMP fee are also exempt from CEQA pursuant to Public Resources Code § 21080(b)(8)(D) and 14 Cal. Code Regs. § 15273(a), since they constitute the modification, restructuring or approval of a fee or charge needed to obtain funds for capital projects that are necessary only to maintain service within existing service areas within the City/County, pursuant to the findings set forth herein.

**NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS:**

**SECTION I: Remove and replace Title 10, Chapter 17 of the Hercules Municipal Code as follows:**

---

#### 10-17.101– TITLE

The title of this Chapter of the Hercules Municipal Code is the **West County Subregional Transportation Mitigation Program 2019 Update**.

#### 10-17.102 - PURPOSE

The purpose of the STMP Update and the STMP fee set forth in this Chapter is to meet the intent of Measure J by levying a fee on new development to mitigate the regional impacts of new trips generated by that development. Further, the purpose of the STMP fee set forth in this Chapter is to raise funds for regional transportation projects in West County.

#### 10-17.103 – FINDINGS

- A. The STMP fee is required to defray all or a portion of the costs of building transportation capital improvement projects needed to mitigate impacts of new development projects.
- B. The STMP fee will raise funds for twenty (20) projects, in the general categories of freeway and interchange improvements, local street and intersection improvements, transit and station-related improvements, bicycle and pedestrian-focused improvements, and complete streets projects. A detailed description of the projects can be found in Section 10-17.105.
- C. The total cost of the twenty(20) projects is approximately \$855 million in 2018 dollars. The nexus study report determined the maximum amount of eligible funding that could be collected through the STMP program at \$161.8 million.
- D. The nexus findings, in conformance with Government Code § 66000 et seq. can be found in the “2019 Nexus Update of the Subregional Transportation Mitigation Program (STMP) Impact Fee” (herein after referred to as the 2019 STMP Nexus Update) prepared by Fehr & Peers for WCCTAC dated December 2018. Two copies of the 2019 STMP Nexus Update are on file with the (City Clerk/Clerk of the Board) and is incorporated herein by reference (and also provided as Exhibit A).
- E. The 2019 STMP Nexus Update included the following steps:
  - Projecting the amount of new development anticipated in West County;
  - Setting criteria for identifying eligible capital improvement projects;
  - Specifying the transportation improvements needed to accommodate growth;
  - Evaluating the relationship between the improvements, the share of funding from new development, and the impacts of new trip generation;
  - Allocating the costs across land use types; and;
  - Preparing fee schedules and implementation documents.
- F. After considering the 2019 STMP Nexus Update, the testimony received at a noticed public hearing, the agenda statements, the General Plan, and all correspondence received (together, the “Record”), the City Council approves and adopts the 2019 STMP Nexus Update and incorporates such report herein by reference.

- G. Adoption of the STMP fee set forth in this Chapter, as it relates to development within the City, is intended to obtain funds for capital projects necessary to maintain service within the WCCTAC area. Accordingly, this fee, as it relates to development within the City, is not a “project” within the meaning of the California Environmental Quality Act. (Pub. Res. Code § 21080(b)(8)(D)).
- H. The Record establishes and finds:
- That there is a reasonable relationship between the use of the STMP fee set forth in this Chapter (funding for transportation capital infrastructure projects) and the type of development projects on which this fee is imposed in that all development in the City — both residential and non-residential—will contribute to the need for the projects listed in Section 10-17.105 of this Chapter; and
  - That there is a reasonable relationship between the need for the projects listed in Section 10-17.105 of this Chapter and the type of development projects on which this fee is imposed in that new development in the City — both residential and non-residential—will generate persons who live, work, shop, travel to and from, commute to and from, and visit the City and who, therefore, contribute to the need for the projects listed in Section 10-17.105 of this Chapter; and
  - That there is a reasonable relationship between the amount of the fee set forth in this Chapter and the cost of the projects listed in Section 10-17.105 of this Chapter or portion of such projects attributable to the development on which this fee is imposed in that such fee is calculated based on projections described in the 2019 STMP Nexus Update of new development, the total cost of the projects listed in Section 10-17.105, and allocation of a fair share of costs to new development across the various land use types.

#### 10-17.104 – FEES

- A. Levy of the Fee and Fee Structure. In order to fund the program and projects stated herein, the following updated STMP fee schedule shall be implemented July 1, 2019 and shall terminate on March 31, 2040. The following fees, to be updated annually for inflation pursuant to Section 10-17.104(J), are payable to the City at the time of issuance of a building permit.

<u>LAND USE TYPE</u>	<u>FEE</u>
Single Family Residential	\$5,439/DU*
Multi-Family Residential	\$2,679/DU
Senior Housing	\$1,469/DU
Hotel	\$3,481/Room
Retail/Service	\$6.59/SF**
Office	\$8.72/SF
Industrial	\$5.56/SF
Storage Facility	\$0.76/SF
Other	\$7,350 per AM peak hour trip

\*DU = Dwelling Unit

\*\*Sq. Ft. = Square Foot

City is responsible for determining the appropriate land use category and fee amount to apply to specific development projects being considered by their jurisdiction. AGENCY will refer to the STMP Administrative Guidelines for guidance on how to apply these land use categories to development projects.

- B. No development shall be exempt from the fee, except if application of the fee to the development would be unlawful under and/or conflict with federal, state, or local law and/or regulation. In addition, accessory dwelling units within the footprint of an existing dwelling unit's habitable space are not required to pay the STMP Fee.
- C. A project that reconstructs or re-uses an existing structure or development that has been occupied within the previous three years is subject to the fee only to the extent that it would generate more A.M. peak hour vehicle trips than the existing development.
- D. Fees for uses not identified in Section 10-17.104A shall be determined by the City using the "Other" land use type and according to methodology provided by WCCTAC in the STMP Master Cooperative Agreement and the STMP Administrative Guidelines. The STMP Administrative Guidelines are incorporated into the STMP Master Cooperative Agreement and provided for reference as Exhibit B, and may be changed from time to time by the WCCTAC Executive Director. The current version of the STMP Administrative Guidelines is available from WCCTAC or the City clerk.
- E. An applicant may receive credit against fees for the dedication of land for right-of-way and/or construction of improvements for 2019 STMP projects listed in Section 10-17.105 where such right-of-way or construction is beyond that which would otherwise be required for approval of the proposed development. The calculation of the amount of credit against fees for 2019 STMP dedications or improvements shall be based upon a determination by the City that such credits are in fact exclusive of the dedications, setbacks, improvements, and/or traffic mitigation measures which are required by local ordinance, standards, or other practice. In addition, the credit shall be calculated based upon the actual cost of construction of improvements or, in the case of land dedication, on an independent appraisal approved by the local jurisdiction. The City must report any credit to WCCTAC prior to awarding the credit.

An applicant may receive reimbursement from STMP fees paid by other development projects to the extent that the amount of the credit is greater than the STMP fee obligation of the development project. The award of any credit or reimbursement by the City must be preapproved by the WCCTAC Board; in making that decision, the Board will take into consideration criteria and metrics related to funding availability and project prioritization that they use in making other STMP funding decisions.

- F. The fees specified herein shall be made a condition of approval of all tentative and final subdivision maps. The fees shall be collected at the time of the issuance of any building permit.
  - G. The STMP fees specified above shall be collected for projects in the entire City.
  - H. Fees paid pursuant to this Chapter shall be deposited in a separate segregated interest-bearing account, and together with any interest accumulated on amounts on deposit, shall be remitted on a quarterly basis along with the required Quarterly Report to WCCTAC or its designee, to be placed in a fund to be used solely for the purposes described in this Chapter and in the Master Cooperative Agreement. Any interest accumulated on such funds shall also be used only for the purposes specified in this Chapter.
  - I. The fees will be used for, but are not limited to, the administration of the STMP, planning, environmental documentation, design, acquisition of right-of-way, and construction of the projects.
  - J. Effective July 1, 2020 and on each subsequent anniversary date of such date, the amount of each of the developer fees, set forth in Section 10-17.104A 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 for the twelve month period ending with the February index of the same calendar year. The percentage change will be calculated by WCCTAC, which will notify all signatories to the Cooperative Agreement of the change.
  - K. Pursuant to Government Code section 66001(d), after the fifth fiscal year following the first deposit of 2019 STMP revenues and every five (5) years thereafter, WCCTAC shall make all required findings with respect to that portion of the fee account or fund remaining unexpended, whether committed or uncommitted. Such findings shall be made in connection with the release of public information required by Government Code section 66006(b).
  - L. Pursuant to Government Code Section 66006, as specified, WCCTAC shall submit a public report to the WCCTAC Board on an annual basis, identifying the amount of fee revenues collected and other statutorily required information, which will also be shared with Agencies' City Managers/County Administrator.
  - M. An applicant may appeal the determination of the amount of the STMP fee due, and such appeal shall be made in writing to WCCTAC with supporting documentation. The WCCTAC Board shall consider the appeal at a regularly scheduled meeting, and shall make a decision on the appeal. The decision of the WCCTAC Board is final.
-

10-17.105 — PROJECT DESCRIPTIONS, FUNDING COMMITMENTS, AND ELIGIBLE COSTS, AND IMPLEMENTATION SCHEDULE

- A. List of Projects. The 2019 STMP Nexus Study fees provided for in this chapter shall be used exclusively for the following summary of projects (note that more detailed project descriptions can be found in the 2019 STMP Nexus Study report):
1. **San Pablo Avenue Complete Streets Projects** – Transit, bicycle, and pedestrian improvements along several segments of San Pablo Avenue.
  2. **Appian Way Complete Streets Project** – Pedestrian, bicycle, and transit access improvements along Appian Way in El Sobrante and in City of Pinole.
  3. **San Pablo Dam Road Improvements** – Multimodal access improvements along San Pablo Dam Road through downtown El Sobrante.
  4. **Bay Trail Gap Closure** – Improve transit access by closing three key Bay Trail gaps: along Goodrick Avenue in Richmond, between Bayfront Park and Pinole Creek in Pinole, and between Atlas Road and Cypress Avenue in unincorporated Contra Costa County.
  5. **Ohlone Greenway Improvements** – Crossing, wayfinding, signing, lighting, safety, access and landscaping improvements along Ohlone Greenway.
  6. **I-580/Harbor Way Interchange Improvements** – Improve pedestrian and bicycle access across interchange, to serve movements between waterfront/ferry terminal and central Richmond.
  7. **I-580/Marina Bay Parkway Interchange Improvements** – Improve pedestrian and bicycle access across interchange, to serve movements between waterfront and downtown Richmond.
  8. **Richmond Ferry to Bridge Bicycle Improvements** – Improve bicycle access between Richmond Ferry Terminal and Bay Trail near Richmond-San Rafael Bridge.
  9. **I-80 Express Bus** – Capital Improvements associated with implementing I-80 Express Bus service between Hercules and Oakland/Emeryville/Berkeley/San Francisco, with possible intermediate stops.
  10. **Hercules Regional Intermodal Transportation Center** – Complete construction of new Capitol Corridor train stop, with associated track improvements, parking and access facilities.
  11. **BART Extension from Richmond Station (Planning and Conceptual Engineering Phases)** – Planning, conceptual engineering and/or program level environmental clearance phases of potential BART extension to Contra Costa College/City of San Pablo.



12. **San Pablo Avenue Transit Corridor Improvements** – Extension and improvement of bus rapid transit (BRT) and/or rapid bus service along San Pablo Avenue through West County, with stops including Richmond Parkway Transit Center and Hercules Transit Center.
  13. **23<sup>rd</sup> Street Transit Corridor Improvements** – Provision of bus rapid transit (BRT) and/or rapid bus service along 23<sup>rd</sup> Street from Richmond Ferry Terminal/UC Berkeley Richmond Field Station to Richmond BART, to Contra Costa College, and potentially to Hilltop Mall.
  14. **West County BART Station Access and Parking Improvements** – Station modernization and capacity enhancements, parking, and access improvements at El Cerrito Plaza, El Cerrito del Norte, and Richmond BART stations, and Richmond Crossover Project to allow increased frequency along Richmond line.
  15. **Del Norte Area TOD Public Infrastructure Improvements** – Parking facilities, bicycle, pedestrian, and/or bus transit access improvements, signage, lighting, improvements to station access or station waiting areas, ADA improvements, improvements to adjacent streets, street crossings, or signals, and/or Ohlone Greenway improvements.
  16. **San Pablo Avenue Intersection Realignment** – Intersection reconfiguration, potential signal modifications to accommodate pedestrian, bicycle, and bus rapid transit (BRT) access at intersection of San Pablo Avenue, 23<sup>rd</sup> Street, and Road 20.
  17. **I-80/San Pablo Dam Road Interchange Improvements, Phase 2** – Interchange reconstruction, new bridge over Wildcat Creek, and improved bicycle and pedestrian facilities.
  18. **I-80/Central Avenue Interchange Improvements, Phase 2** – Increase intersection spacing to increase vehicle capacity, connect Pierce Street and San Mateo Street, convert Pierce Street access at Central Avenue to right-in/right-out and improve multimodal access.
  19. **I-80/Pinole Valley Road Interchange Improvements** – Improve merge from eastbound on-ramp to I-80, widen ramp terminal intersections, and make pedestrian crossing improvements.
  20. **Future Nexus Study Updates** – Two comprehensive nexus studies and fee updates, over the 22-year planning horizon of the 2019 STMP fee.
-

- B. Funding Commitments and Eligible Costs. Program revenues shall be available for project costs through completion of construction. Costs include, but are not limited to, environmental clearance, conceptual engineering, traffic studies, design, right-of-way acquisition, utility relocation, and costs of construction. Actual funding commitments will depend upon STMP fee revenues collected and project priorities as determined by WCCTAC.

Administrative costs for WCCTAC shall not exceed four percent (4%) of the STMP fee revenues collected under the Master Cooperative Agreement.

- C. Implementation Schedule. WCCTAC, the project sponsors and co-sponsors, shall work to promote steady progress on all of the projects, to the extent that funding and project readiness permit.

## **SECTION II– NOTICE AND HEARINGS**

This Ordinance was adopted pursuant to the procedures established by state law, and all required notices have been given, and the public hearing has been properly held and conducted.

## **SECTION III – EFFECTIVE DATE**

This Ordinance shall take effect and be enforced sixty (60) days after the date of its adoption, and prior to the expiration of fifteen (15) days from the passage thereof, the ordinance shall be published as required by law, and thereafter the same shall be in full force and effect.

## **SECTION IV – SEVERABILITY**

If any section, subsection, sentence, clause or phrase or word of this ordinance is for any reason held to be unconstitutional, unlawful or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City hereby declares that it would have passed and adopted this ordinance and each and all provisions thereof irrespective of the fact that any one or more of said provisions be declared unconstitutional, unlawful or otherwise invalid.

First read at a regular meeting of the Hercules City Council on the 9<sup>th</sup> day of April, 2019, and passed and adopted at a regular meeting of the Hercules City Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2019, by the following vote:

AYES:

NOES:

ABSENT:

---

Dan Romero, Mayor

ATTEST:

---

Lori Martin, City Clerk and Administrative Services Director

Exhibit A: 2019 Nexus Update of the Subregional Transportation Mitigation Program (STMP) Impact Fee (December 2018), accepted by WCCTAC Board on December 14, 2018.  
Exhibit B: 2019 STMP Fee Administrative Guidelines