

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA,
AMENDING CHAPTER 17.62, "PUBLIC
FACILITIES IMPACT FEES," AND REPEALING
CHAPTER 17.38 "PARK AND RECREATION
FACILITIES FEE" AND CHAPTER 18.40, "PARK
DEDICATION," OF THE MERCED MUNICIPAL
CODE.**

**THE CITY COUNCIL OF THE CITY OF MERCED DOES
ORDAIN AS FOLLOWS:**

SECTION 1. AMENDMENT TO CODE. Chapter 17.62
"Public Facilities Impact Fees," of the Merced Municipal Code is hereby
amended to read as follows:

**"Chapter 17.62
PUBLIC FACILITIES IMPACT FEES**

- 17.62.010 Purpose.**
- 17.62.020 Periodic Review.**
- 17.62.030 Impact Fee Calculation.**
- 17.62.040 Public Facilities Impact Fee
Established.**
- 17.62.045 Reserved.**
- 17.62.050 Collection and Expenditure of Fees.**
- 17.62.060 Developer Construction of Facilities.**
- 17.62.070 Refund of Impact Fees.**
- 17.62.080 Administrative Guidelines.**
- 17.62.090 Severability.**
- 17.62.100 Calculation – Special Determination.**

17.62.010 Purpose.

In order to implement the goals and objectives of the

City of Merced's ("City") General Plan and to mitigate the impacts caused by future development in Merced, certain public facilities must be or have been required to be constructed, and/or compensation measures must be or have been required to be taken to offset resources lost due to the future development. The City Council has determined that public facilities impact fees are needed in order to finance these public facilities, and/or compensation measures, and to pay for each development's fair share of the construction costs of these improvements, and/or the costs of the compensation measures. In establishing the fees, the City Council has found the fees to be consistent with its General Plan and pursuant to Government Code Section 65913.2 has considered the effects of the fee with respect to the City's housing needs as established in the Housing Element of the General Plan.

17.62.020 Periodic Review.

The City of Merced shall review the public facilities impact fees on an annual basis to determine whether the fee amounts are reasonably related to the impacts of developments and whether the described public facilities are still needed. The City Engineer shall be responsible for preparation of an annual report stating the amount of fees collected, the purposes for which the fees were collected, and the status of all projects proposed to be funded under this Chapter.

17.62.030 Impact Fee Calculation.

The City of Merced has conducted a needs assessment for capital improvements within the City's specific urban development plan area for which fees are to be levied. The needs assessment, known as the public facilities financing plan and impact fee update (the "plan"), adopted in May 1998, revised in July 2003, and further revised in January 2006, October 2012,

and December 2021, has identified level of service standards, public facilities capital improvement needs, and has distinguished existing from future needs, and is approved.

The data sources and methodology upon which fees are based are available for public inspection at the City Clerk's office during regular business hours. The amount of the fees imposed have been based upon reasonable estimates of capital costs of public facilities expansions that will in probability be incurred by local government as the result of new development.

The City Council further finds:

A. The provision of new, expanded, or otherwise enhanced public facilities, for which a fee is charged, are reasonably related to the needs created by new development;

B. The fees imposed do not exceed the proportionate share of the costs incurred, or to be incurred, by the City of Merced in accommodating new development. The following factors have been considered in determining proportionate share:

1. The need for public facilities capital improvements required to serve new development, based on a capital improvement program that shows deficiencies in capital facilities serving existing development, and the means, other than impact fees, by which any existing deficiencies will be eliminated within a reasonable period of time, and that shows additional demands anticipated to be placed on specified capital facilities by new development,

2. The cost of existing public facilities capital improvements.

17.62.040 Public Facilities Impact Fee Established.

1. A public facilities impact fee is hereby established on issuance of building permits for development in the City of Merced to pay for municipally owned public facilities, including, but not limited to, fire stations, police stations, community park and recreation facilities, traffic related improvements, bikeways facilities, public works facilities, and information technology infrastructure.

2. The benefit and impact area on which the public facilities impact fee is imposed, the municipally owned public facilities to be financed, the estimated cost of these facilities, and the reasonable relationship between the fee and the various types of new developments are as set forth in the plan.

3. Effective as of March 23, 2022, the amount of the public facilities impact fee shall be as set forth in Table I below:

TABLE I

Per Dwelling		Per Room	Per 1,000 Sq. Ft. of Building Space		
Residential		Commercial			Industrial
Single Family	Multi-Family	Lodging	Retail	Office	Industrial
\$11,671	\$8,520	\$3,293	\$13,940	\$12,420	\$5,400

4. Effective as of March 26, 2022, the amount of the public facilities impact fee shall be as set forth in Table I and shall thereafter be adjusted annually beginning January 1, 2023, in accordance with the

Engineering Construction Cost Index as published by the Engineering News Record.

17.62.045 Reserved.

Editor's note(s)—Ord. No. 2400, § 3, adopted Dec. 3, 2012, repealed § 17.62.045, which pertained to temporary reduction in public facilities impact fees for specific residential properties and derived from Ord. No. 2360, § 2, adopted Oct. 4, 2010.

17.62.050 Collection and Expenditure of Fees.

A. The revenues raised by payment of the public facilities impact fee shall be placed in a separate and special account and such revenues, along with any interest earnings on that account, shall be used for the following purposes:

1. To pay for design and construction of designated public facilities and reasonable costs of outside consultant studies related thereto;
2. To reimburse the City for designated public facilities constructed by the City with funds (other than grants or gifts) from other sources;
3. To reimburse developers who have designed and constructed designated public facilities which are oversized with supplemental size, length or capacity; and
4. To pay for and/or reimburse costs of program development and ongoing administration of the public facilities fees program.

B. Within five (5) years of the date of collection, fees provided for under this Chapter shall be expended, encumbered or committed for the construction of public facilities capital improvements.

C. A developer of any project subject to the fee described in this Chapter may apply to the City Council for a reduction or adjustment to the fee, or waiver of all or a portion of the fee, based upon the absence of any reasonable relationship or nexus between the impacts of that development and either the amount of the fee charged or the type of facilities to be financed. The application shall be made in writing and filed with the City Clerk not later than: (1) ten (10) days prior to the date set for City Council consideration of the first development approval for the project, or (2) if no development approval by the City Council is required, at the time of the filing of the request for a building permit. The application shall state in detail the factual basis for the claim of waiver, reduction, or adjustment. The City Council shall consider the application at the same time as the development approval or at a separate hearing held within sixty (60) days after the filing of the fee adjustment application. The decision of the City Council shall be final. If a reduction, adjustment, or waiver is granted, any change in use within the project shall invalidate the waiver, adjustment, or reduction of the fees.

17.62.060 Developer Construction of Facilities.

Except as may otherwise be provided by development agreement, whenever a developer is required to construct a public facility described in the plan, which facility is determined by the city to have supplemental size, length or capacity over that needed for the impacts of that development, and when such construction is necessary to ensure efficient and timely construction of the facilities network, a reimbursement

agreement with the developer and a credit against the fees, which would otherwise be charged pursuant to this Chapter on the development project, shall be offered. The reimbursement amount shall not include the portion of the improvement needed to provide services or mitigate the need for the facility or the burdens created by the new development. The timing and amount of the reimbursement or credit shall be determined in accordance with the administrative guidelines adopted pursuant to Section 17.62.080, and shall in no event be owed until sufficient public facilities impact fees have been collected for such purpose.

17.62.070 Refund of Impact Fees.

Any fees that are not expended or encumbered within the period established in Section 17.62.050 shall be refunded to the fee payer or successor in title. The amount repaid shall include principal and accrued interest. Application for refund must be submitted to the City within one (1) year of the date on which the right to claim a refund arises. All refunds due and not claimed within one (1) year shall be retained in the trust fund and expended per Section 17.62.050.

17.62.080 Administrative Guidelines.

The City Council shall, by resolution, adopt administrative guidelines to provide procedures for the calculation, reimbursement, credit or deferred payment of the public facilities impact fees.

17.62.090 Severability.

In the event that any provision or application of this Chapter is held to be invalid, the other provisions and applications hereof shall not be thereby affected.

17.62.100 Calculation – Special Determination.

A. The department of development services may determine that any use, whether or not set forth in Section 17.62.040, based upon a reasonable relationship or nexus between the impacts of the proposed development and the type of facilities proposed, should pay a public facilities impact fee in lieu of the fee established in Section 17.62.040.

B. Upon such a determination, the department of development services shall, based upon criteria set forth in the plan, calculate a public facilities impact fee for the development.

C. In the event the developer does not agree with the determination, the developer may apply to the City Council for a reduction or adjustment of the fee calculated by the department of development services. The application shall be made in writing and shall comply with the requirements of Section 17.62.050.”

SECTION 2. DELETION TO CODE. Chapter 17.38, “Park and Recreation Facilities Fee,” of the Merced Municipal Code is hereby repealed as follows:

“17.38 Repealed.”

SECTION 3. DELETION TO CODE. Chapter 18.40, “Park Dedication,” of the Merced Municipal Code is hereby repealed as follows:

“18.40 Repealed.”

SECTION 4. EFFECTIVE DATE. This Ordinance shall be in full force and effect thirty (30) days after its adoption.

SECTION 5. SEVERABILITY. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, is for any

reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 6. PUBLICATION. The City Clerk is directed to cause a summary of this Ordinance to be published in the official newspaper at least once within fifteen (15) days after its adoption showing the vote thereon.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Merced on the ____ day of _____, 2022, and was passed and adopted at a regular meeting of said City Council held on the ____ day of _____, 2022, by the following called vote:

AYES: Council Members:

NOES: Council Members:

ABSTAIN: Council Members:

ABSENT: Council Members:

APPROVED:

Mayor

ATTEST:
STEPHANIE R. DIETZ, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:

Kimberly Mady 1/27/22
City Attorney **Date**

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, AMENDING CHAPTER 17.62, "PUBLIC FACILITIES IMPACT FEES," AND REPEALING CHAPTER 17.38 "PARK AND RECREATION FACILITIES FEE" AND CHAPTER 18.40, "PARK DEDICATION," OF THE MERCED MUNICIPAL CODE.

THE CITY COUNCIL OF THE CITY OF MERCED DOES ORDAIN AS FOLLOWS:

SECTION 1. AMENDMENT TO CODE. Chapter 17.62 "Public Facilities Impact Fees," of the Merced Municipal Code is hereby amended to read as follows:

"Chapter 17.62 PUBLIC FACILITIES IMPACT FEES

17.62.010 Purpose.

In order to implement the goals and objectives of the City of Merced's ("city") General Plan and to mitigate the impacts caused by future development in Merced, certain public facilities must be or have been required to be constructed, and/or compensation measures must be or have been required to be taken to offset resources lost due to the future development. The city council has determined that public facilities impact fees are needed in order to finance these public facilities, and/or compensation measures, and to pay for each development's fair share of the construction costs of these improvements, and/or the costs of the compensation measures. In establishing the fees, the city council has found the fees to be consistent with its General Plan and pursuant to Government Code Section 65913.2 has considered the effects of the fee with respect to the city's housing needs as established in the Housing Element of the General Plan.

(Ord. 2130 § 1 (part), 2003; Ord. 1989 § 1 (part), 1998).

17.62.020 Periodic review.

The City of Merced shall review the public facilities impact fees on an annual basis to determine whether the fee amounts are reasonably related to the impacts of developments and whether the described public

RED-LINE VERSION

facilities are still needed. The city engineer shall be responsible for preparation of an annual report stating the amount of fees collected, the purposes for which the fees were collected, and the status of all projects proposed to be funded under this chapter.

(Ord. 2130 § 1 (part), 2003; Ord. 1989 § 1 (part), 1998).

17.62.030 Impact fee calculation.

The City of Merced has conducted a needs assessment for capital improvements within the city's specific urban development plan area for which fees are to be levied. The needs assessment, known as the public facilities financing plan and impact fee update (the "plan"), adopted in May 1998, revised in July 2003, and further revised in January 2006, and October 2012, and December 2021, has identified level of service standards, public facilities capital improvement needs, and has distinguished existing from future needs, and is approved.

The data sources and methodology upon which fees are based are available for public inspection at the city clerk's office during regular business hours. The amount of the fees imposed have been based upon reasonable estimates of capital costs of public facilities expansions that will in probability be incurred by local government as the result of new development.

The city council further finds:

- A. The provision of new, expanded, or otherwise enhanced public facilities, for which a fee is charged, are reasonably related to the needs created by new development;
- B. The fees imposed do not exceed the proportionate share of the costs incurred, or to be incurred, by the City of Merced in accommodating new development. The following factors have been considered in determining proportionate share:
 1. The need for public facilities capital improvements required to serve new development, based on a capital improvement program that shows deficiencies in capital facilities serving existing development, and the means, other than impact fees, by which any existing deficiencies will be eliminated within a reasonable period of time, and that shows additional demands anticipated to be placed on specified capital facilities by new development,

RED-LINE VERSION

2. The cost of existing public facilities capital improvements.
(Ord. 2232 § 1, 2006: Ord. 2130 § 1 (part), 2003: Ord. 1989 § 1 (part), 1998).
(Ord. No. 2400, § 1, 12-3-2012)

17.62.040 Public facilities impact fee established.

1. A public facilities impact fee is hereby established on issuance of building permits for development in the City of Merced to pay for municipally owned public facilities, including, but not limited to, fire stations, police stations, community park and recreation facilities, traffic related improvements, and bikeways facilities, public works facilities, and information technology infrastructure.
2. The benefit and impact area on which the public facilities impact fee is imposed, the municipally owned public facilities to be financed, the estimated cost of these facilities, and the reasonable relationship between the fee and the various types of new developments are as set forth in the plan.
3. Effective as of ~~January 19, 2013~~ March 23, 2022, the amount of the public facilities impact fee shall be as set forth in Table I below:

TABLE I

Per Dwelling	Per 1,000 Square Feet of Space	Residential	Retail/Commercial	Office/Commercial	Industrial
Single	Family	Multi-family	Institutional	Retail Under 50,000 sf	Retail Over 50,000 sf
\$4,469.00	\$3,088.00	\$3,069.00	\$8,974.00	\$6,771.00	\$5,876.00
\$5,876.00	\$1,681.00				

RED-LINE VERSION

TABLE I

<u>Per Dwelling</u>		<u>Per Room</u>	<u>Per 1,000 Sq. Ft. of Building Space</u>		
<u>Residential</u>		<u>Commercial</u>			<u>Industrial</u>
<u>Single Family</u>	<u>Multi-Family</u>	<u>Lodging</u>	<u>Retail</u>	<u>Office</u>	<u>Industrial</u>
<u>\$11,671</u>	<u>\$8,520</u>	<u>\$3,293</u>	<u>\$13,940</u>	<u>\$12,420</u>	<u>\$5,400</u>

4. Effective as of ~~January 19, 2013~~March 23, 2022, the amount of the public facilities impact fee shall be as set forth in Table I and shall thereafter be adjusted annually beginning January 1, ~~2014~~2023, in accordance with the Engineering Construction Cost Index as published by the Engineering News Record.
(Ord. 2232 § 2, 2006; Ord. 2130 § 1 (part), 2003; Ord. 2000 § 1, 1998; Ord. 1989 § 1 (part), 1998).
(Ord. No. 2340, § 2, 9-8-2009; Ord. No. 2377, § 1, 9-19-2011; Ord. No. 2400, § 2, 12-3-2012)

17.62.045 Reserved.

Editor's note(s)—Ord. No. 2400, § 3, adopted Dec. 3, 2012, repealed § 17.62.045, which pertained to temporary reduction n public facilities impact fees for specific residential properties and derived from Ord. No. 2360, § 2, adopted Oct. 4, 2010.

17.62.050 Collection and expenditure of fees.

- A. The revenues raised by payment of the public facilities impact fee shall be placed in a separate and special account and such revenues, along with any interest earnings on that account, shall be used for the following purposes:
1. To pay for design and construction of designated public facilities and reasonable costs of outside consultant studies related thereto;
 2. To reimburse the city for designated public facilities constructed by the city with funds (other than grants or gifts) from other sources;
 3. To reimburse developers who have designed and constructed designated public facilities which are oversized with supplemental size, length or capacity; and

4. To pay for and/or reimburse costs of program development and ongoing administration of the public facilities fees program.
- B. Within five (5) years of the date of collection, fees provided for under this chapter shall be expended, encumbered or committed for the construction of public facilities capital improvements.
- C. A developer of any project subject to the fee described in this chapter may apply to the city council for a reduction or adjustment to the fee, or waiver of all or a portion of the fee, based upon the absence of any reasonable relationship or nexus between the impacts of that development and either the amount of the fee charged or the type of facilities to be financed. The application shall be made in writing and filed with the city clerk not later than: (1) ten (10) days prior to the date set for city council consideration of the first development approval for the project, or (2) if no development approval by the city council is required, at the time of the filing of the request for a building permit. The application shall state in detail the factual basis for the claim of waiver, reduction, or adjustment. The city council shall consider the application at the same time as the development approval or at a separate hearing held within sixty (60) days after the filing of the fee adjustment application. The decision of the city council shall be final. If a reduction, adjustment, or waiver is granted, any change in use within the project shall invalidate the waiver, adjustment, or reduction of the fees.

(Ord. 2130 § 1 (part), 2003; Ord. 2000 § 2, 1998; Ord. 1989 § 1 (part), 1998).

17.62.060 Developer construction of facilities.

Except as may otherwise be provided by development agreement, whenever a developer is required to construct a public facility described in the plan, which facility is determined by the city to have supplemental size, length or capacity over that needed for the impacts of that development, and when such construction is necessary to ensure efficient and timely construction of the facilities network, a reimbursement agreement with the developer and a credit against the fees, which would otherwise be charged pursuant to this chapter on the development project, shall be offered. The reimbursement amount shall not include the portion of the improvement needed to provide services or mitigate

the need for the facility or the burdens created by the new development. The timing and amount of the reimbursement or credit shall be determined in accordance with the administrative guidelines adopted pursuant to Section 17.62.080, and shall in no event be owed until sufficient public facilities impact fees have been collected for such purpose.

(Ord. 1989 § 1 (part), 1998).

17.62.070 Refund of impact fees.

Any fees that are not expended or encumbered within the period established in Section 17.62.050 shall be refunded to the fee payer or successor in title. The amount repaid shall include principal and accrued interest. Application for refund must be submitted to the city within one (1) year of the date on which the right to claim a refund arises. All refunds due and not claimed within one (1) year shall be retained in the trust fund and expended per Section 17.62.050.

(Ord. 2130 § 1 (part), 2003; Ord. 1989 § 1 (part), 1998).

17.62.080 Administrative guidelines.

The city council shall, by resolution, adopt administrative guidelines to provide procedures for the calculation, reimbursement, credit or deferred payment of the public facilities impact fees.

(Ord. 2130 § 1 (part), 2003; Ord. 1989 § 1 (part), 1998).

17.62.090 Severability.

In the event that any provision or application of this chapter is held to be invalid, the other provisions and applications hereof shall not be thereby affected.

(Ord. 2130 § 1 (part), 2003; Ord. 1989 § 1 (part), 1998).

17.62.100 Calculation—Special determination.

- A. The department of development services may determine that any use, whether or not set forth in Section 17.62.040, based upon a reasonable relationship or nexus between the impacts of the proposed development and the type of facilities proposed, should pay a public facilities impact fee in lieu of the fee established in Section 17.62.040.
- B. Upon such a determination, the department of development

RED-LINE VERSION

services shall, based upon criteria set forth in the plan, calculate a public facilities impact fee for the development.

- C. In the event the developer does not agree with the determination, the developer may apply to the city council for a reduction or adjustment of the fee calculated by the department of development services. The application shall be made in writing and shall comply with the requirements of Section 17.62.050.

(Ord. 2130 § 1 (part), 2003: Ord. 2007 § 1, 1998).

SECTION 2. DELETION TO CODE. Chapter 17.38, "Park and Recreation Facilities Fee," of the Merced Municipal Code is hereby repealed as follows:

"17.38 Repealed"

SECTION 3. DELETION TO CODE. Chapter 18.40, "Park Dedication," of the Merced Municipal Code is hereby repealed as follows:

"18.40 Repealed"

SECTION 4. EFFECTIVE DATE. This Ordinance shall be in full force and effect thirty (30) days after its adoption.

SECTION 5. SEVERABILITY. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 6. PUBLICATION. The City Clerk is directed to cause a summary of this Ordinance to be published in the official newspaper at least once within fifteen (15) days after its adoption showing the vote thereon.

RED-LINE VERSION

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Merced on the ___ day of ____, 2022, and was passed and adopted at a regular meeting of said City Council held on the ___ day of ____, 2022, by the following called vote:

AYES: **Council Members:**

NOES: **Council Members:**


ABSENT: **Council Members:**

ABSTAIN: **Council Members:**

APPROVED:

Mayor

ATTEST:
STEPHANIE R. DIETZ, CITY CLERK

BY: 

Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:

City Attorney Date