

RESOLUTION NO. 2022- _____

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA
AMENDING ADMINISTRATIVE POLICY AND
PROCEDURE A-32 REGARDING PUBLIC
FACILITIES IMPACT FEES**

WHEREAS, The administrative guidelines for the calculation, reimbursement, credit or deferred payment of Public Facilities Impact Fees are adopted by City Council Resolution pursuant to Section 17.62.080 of the Merced Municipal Code; and,

WHEREAS, The Public Facilities Impact Fees Administrative Policy and Procedure A-32 was previously approved by City Council Resolution 98-40 and amended by Resolution Nos. 98-73, 98-87, 2003-93, 2005-113, 2021-82, and 2021-93; and,

WHEREAS, A comprehensive update of the Public Facilities Financing Plan and Public Facilities Impact Fee Program in 2022 necessitates certain updates to the Administrative Policy to be consistent with the modified Public Facilities Impact Fee Ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCED DOES HEREBY RESOLVE AND ORDER AS FOLLOWS:

SECTION 1. The City's Administrative Policy and Procedure A-32, as shown in Exhibit "A" attached hereto, is hereby adopted and incorporated herein by reference.

SECTION 2. Said Administrative Policy and Procedure repeals and replaces the previously adopted Administrative Policy and Procedure and establishes guidelines and procedures necessary to implement the provisions of the City's Public Facilities Impact Fee Ordinance.

SECTION 3. This Resolution shall be effective upon the effective date of the revised Public Facilities Impact Fee Ordinance on March 26, 2022.

PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the _____ day of _____ 2022, by the following vote:

AYES: Council Members:

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:

APPROVED:

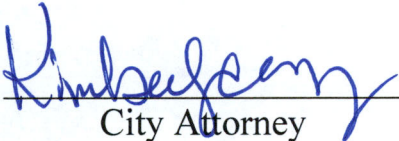
Mayor

ATTEST:
STEPHANIE DIETZ, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:

 _____
City Attorney Dated 1/27/22

ADMINISTRATIVE POLICIES AND PROCEDURES

SUBJECT: PUBLIC FACILITIES IMPACT FEES AND
ADMINISTRATIVE POLICY

EFFECTIVE: March 26, 2022 (Replaces policy dated October 18, 2021)

PURPOSE:

The purpose of this Administrative Policy is to establish a procedure for the Public Facilities Financing Plan and Fee Program.

POLICY:

The City Manager was granted authority by the Merced City Council on July 21, 2003 to establish this policy and procedure. This Policy supersedes and replaces the previous Policy with an effective date of October 18, 2021.

PROCEDURES:

PAYMENT OF PUBLIC FACILITIES FEES

Public facilities fees shall be charged and paid at the time of issuance of the certificate of occupancy, except for non-residential which shall be paid at time of building permit issuance. The fee shall be determined by the fee schedule in effect on the date of building permit issuance. If a Mello-Roos, assessment district, or other arrangement of such a nature has been made, only the portion of the fee not covered by the district shall be assessed. If a specific use is not addressed in the fee schedule or definitions contained in this document, the fee will be determined by the Development Services Department as described in Merced Municipal Code Section 17.62.100.

Fees not paid at building permit issuance shall require an agreement as specified in Government Code Section 66007, Subsection (C). Should any interpretation or disagreement arise which is not addressed by this administrative policy, the City Manager or his designee shall have the authority to render a decision. Such decisions shall be in writing.

DEFINITIONS

1. Retail Commercial

“Retail Commercial” includes a wide range of retail and service uses, both freestanding and in shopping centers including, but not limited to, supermarkets, drugstores, department stores, general merchandise, specialty retail stores, discount stores, hardware/paint stores, garden centers or nurseries, wholesale markets, apparel stores, furniture stores, video arcades and car sales. This category includes banks/savings and loans, restaurants of all types, and auto-oriented uses.

2. Industrial

Facilities in which the primary activity is the production of finished items through manufacture, fabrication, processing, packaging, or treatment of raw materials or parts, except heavy industrial uses. Uses, which are considered to be in this category, include uses such as those listed below:

- A) Electronics assembly, paper products
- B) Metal fabricator
- C) Bottling plant
- D) Cabinet shop
- E) Machine shop
- F) Sheet metal shop
- G) Welding shop
- H) Wholesale business
- I) Printing plant
- J) Material testing labs manufacturer
- K) Warehouse
- L) Corporation yard, freight yard
- M) Equipment rental yard
- N) Moving and storage service
- O) Bulk feed storage
- P) Lumber yard
- Q) Cannery/Food Processing

3. Mixed Uses

When a development proposal contains more than an incidental mixture of uses, the general types of uses should be segregated and treated separately for the purpose of calculating development fees.

4. Office

Includes professional offices, business parks, business or administrative offices, insurance sales, research centers, and medical or dental services, and other health-related services (excluding hospitals).

5. Residential Single Family

Typically single family detached homes on individual lots, such as in residential subdivisions, but could also be in planned developments. Density of development may vary, but is typically six dwellings per acre or less.

6. Public Facilities Impact Fee, But Not Including Sewer and Water Charges

The term “Public Facilities Impact Fee” shall mean the fee charged new construction, including, in some cases, the expansion of and/or the addition to an existing structure to mitigate an unfunded portion of the determined impact of the development. For the purpose of this policy, Public Facilities Impact Fees shall not include sewer and water charges as defined in Chapter 15 of the Merced Municipal Code.

7. Residential Multiple Family

Includes two- and multiple-family dwelling units of several types, including high and low rise apartments, high and low rise condominiums, and multi-family residential planned unit developments. This category also applies to mobile homes in mobile home parks.

8. Institutional

Includes nonprofit or quasi-public uses, such as a religious institution, library, public or private school or college, nonprofit cultural or community centers, hospitals, residential care facilities, charitable organizations, or government-owned or government-operated structures

used for public purposes. Note that federal, state, and county owned facilities are exempt from the City's impact fees. Fees for these uses will be determined on a case-by-case basis by the Director of Development Services based on his/her determination of the similar nature of the use to one of the other land use categories.

9. Lodging

Includes hotels, motels, and other commercial operations which provide lodging for a fee, with or without cooking facilities, in individual rooms or suites. Includes extended stay hotels/motels, but does not include residential care facilities.

EXEMPTIONS

Fees shall not be imposed on any of the following:

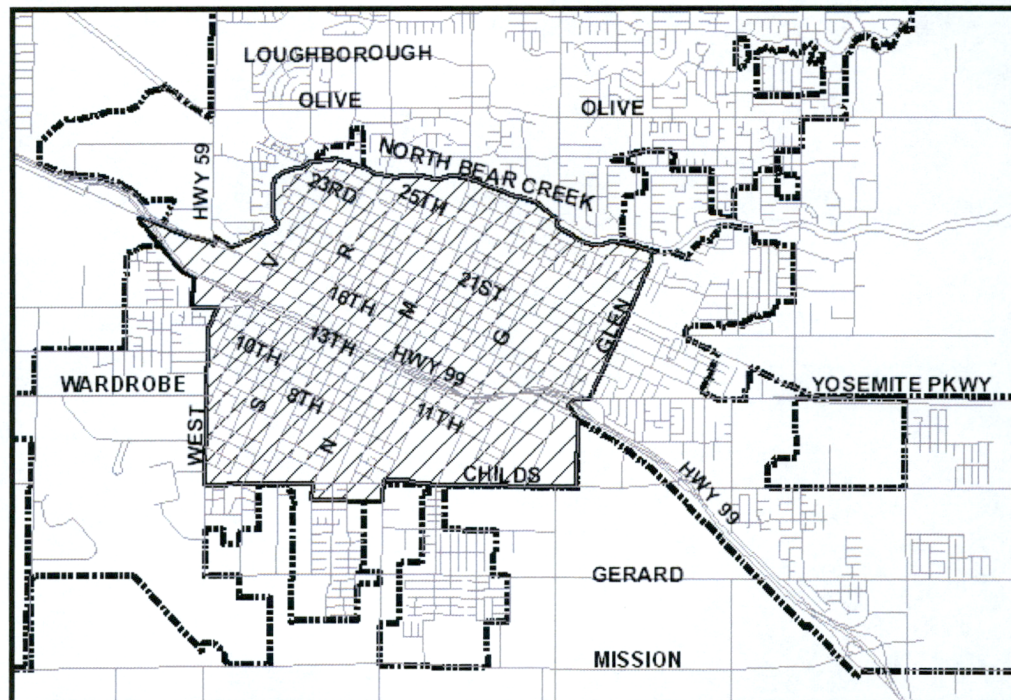
1. Any alteration or addition to a **residential** structure except to the extent that additional units or guestrooms are created.
2. Any alteration or addition to a **non-residential** structure if the square footage of the structure is increased less than 10 percent, unless the alteration or addition changes the use of the structure to a higher intensity category, or results in the generation of additional peak hour trips (PHT).
3. Any replacement or reconstruction of an **existing residential** structure that has become destroyed or demolished, provided that the building permit for reconstruction is obtained within five years after the building was demolished, except to the extent that additional units or guest rooms are created.
4. Any replacement or reconstruction of an **existing non-residential** structure that has been destroyed or demolished, provided that the building permit for reconstruction is obtained within five years after the building was demolished, unless the replacement or reconstruction increases the square footage of the structure 10 percent or more or changes the use of the structure to a higher intensity category or results in the generation of additional peak hour trips (PHT). Whenever the alteration, addition, replacement, or reconstruction is not exempt, the fee

shall be imposed only on the additional units of guest rooms, square footage, change in use to a higher intensity category, or additional peak hour trips (PHT) generated.

REDUCED FEES

Fees shall be reduced for the following:

1. **ACCESSORY DWELLING UNITS (ADUs):** Per MMC 20.42.040(D)(3), A new accessory dwelling unit shall be required to pay all applicable fees, including impact fees. However, no impact fees shall be imposed on ADUs of less than 750 square feet. For an ADU larger than 750 square feet, any impact fee shall be charged proportionately in relation to the square footage of the single-family dwelling on the property.
2. **INFILL DEVELOPMENT:** Within the central area of the City generally bounded on the north by Bear Creek, on the south by Childs Avenue, on the east by Glen Avenue, and on the west by West Avenue and Highway 99 (see map below), impact fees shall be reduced by 50 to 75 percent based on their reduced impact on public facilities.



Infill Development Zone

3. **AFFORDABLE HOUSING:** Fees for affordable housing projects shall be determined on a case-by-case basis depending on the level of affordability, number of affordable units, etc. The determination shall be made by the Director of Development Services but can be appealed to the City Council per the provisions of MMC 17.62.050.
4. **SINGLE-FAMILY HOMES SMALLER THAN THE AVERAGE HOME SIZE IN MERCED:** The average single-family home size in Merced based on building permits issued in 2021 was 1,920 square feet. For homes that are at least 10 to 20 percent below that average size, a reduced fee shall be charged proportional to the percent below the average single-family home size.

DEFERRED PAYMENT - NON-RESIDENTIAL

If the total amount of public facilities fees due and payable at the time of issuance of a building permit for a project exceeds \$50,000, the property owner may enter into a Deferred Payment Agreement with the City to pay twenty-five percent (25%) of those fees at the time the building permit is issued with the remaining seventy-five percent (75%) to be paid in equal installments over the next five (5) years (or less at the developer's option).

REPAYMENT TERMS

- 1) **INTEREST:** The unpaid balance of the fees shall be subject to interest and collection charges. The annual interest rate will be equal to the 11th District Cost of Funds plus two percent (2%) [200 basis points] adjusted every July.
- 2) **DUE ON TRANSFER:** The unpaid balance, together with accrued interest, shall be due and payable in full upon the sale or any other transfer of the property.
- 3) **RECORDING AND PROCESSING FEES:** All such fees shall be paid by the owner or applicant.

SECURITY

The developer shall, as security for repayment, execute a promissory note evidencing the obligation and terms of repayment. In addition to the promissory note, the developer may be required, at the discretion of the City, to provide additional security of a type and amount determined by the City.

PROCESSING DEFERRED FEE REQUESTS

A developer who requests the deferral of public facilities fees shall make application to the Development Services Department, for review, processing, and determination of eligibility. Such requests shall have a processing fee of Eight Hundred Seventy-One Dollars (\$871.00) in 2022, adjusted each January 1, per the Consumer Price Index (CPI).

CREDIT OR REIMBURSEMENT

If the developer constructs improvements that are part of the public facility fee program and required by the City, the following shall apply:

1. If the actual cost of the improvement is equal to or less than the total amount of fees to be paid, the developer will receive a credit in an amount equal to the actual cost of the improvements (but in no event in excess of the City Engineer's estimate). No credit shall be given until and unless the improvement is constructed and accepted by City or until developer provides security for the improvement in the same manner as security for subdivision improvements.
2. If the actual cost of the improvements is greater than the total amount of fees to be paid, a reimbursement agreement with the City shall be established. No credit shall be given until and unless the improvement is constructed and accepted by City or until developer provides security for the improvement in the same manner as security for subdivision improvements.
3. Developers shall be reimbursed on a first in time basis and based on the availability of public facility fee program funds. First in time shall be determined by when the public improvement is secured or by when the public improvement is completed and accepted by City, whichever first occurs.

4. Of the fees collected for projects, one-half shall be dedicated to repayment for developer installed improvements and one-half shall be earmarked for improvements to be installed by the City. In its discretion, the City may use any or all of the fees to reimburse developers.
5. City shall be under no obligation to reimburse developers except from the one-half of the fees collected, and no reimbursement shall be owed until fees for said purpose have been collected and until the installing developer has filed a written request for reimbursement with the City Clerk. In no event shall reimbursement be made to the installing developer after the tenth anniversary of the date the public improvement was accepted by the City.
6. Reimbursements, if any, shall not bear interest.

RIGHT-OF-WAY DEDICATION AND REIMBURSEMENT

Unless provided otherwise by development agreement, by use permit, or by city standards, the developer will be eligible for credit/reimbursement for the cost of any additional right-of-way required for street improvements in excess of the first 37 feet (or other collector standard) required for a one-half street section measured from the ultimate right-of-way line. In calculating the value of the right-of-way, the value will be determined by the City Engineer. If the developer objects to the determined fair market value, he/she may appeal to the City Council. The burden of proof shall lie with the developer. Any right-of-way required to accommodate access to a given parcel such as “deceleration lanes” will be dedicated at the developer’s expense and is not subject to credit/reimbursement.

STREET CONSTRUCTION PAVING REIMBURSEMENT

The first 24 feet of paving adjacent to the curb line plus all paving required to accommodate deceleration lanes and driveways are a developer responsibility and are not subject to credit/reimbursement. The developer will be eligible for credit/reimbursement for the remainder of the street section outside of the first 24 feet of paving on either side of the street.

TRAFIC SIGNAL REIMBURSEMENT

Unless provided otherwise by development agreement or by use permit, the developer will be eligible for 100 percent credit/reimbursement for installation of traffic signals at the intersection of two arterial streets, and for 50 percent reimbursement at an intersection of an arterial and collector street.

ARTERIAL BRIDGE REIMBURSEMENT

Unless provided otherwise by development agreement or by use permit, the developer will be eligible for 100 percent credit/reimbursement for construction of arterial bridges.

APPROVED:

Stephanie R. Dietz
City Manager

**RECORDING REQUESTED
BY:**

City of Merced, A California
charter municipal corporation

**WHEN RECORDED MAIL
TO:**

City Clerk
City of Merced
678 West 18th Street
Merced, California 95340

(Above for Recorder's Use Only)

**AGREEMENT AFFECTING REAL PROPERTY & CREATING A
LIEN TO SECURE DEFERRED PAYMENT OF CITY PUBLIC
FACILITY FINANCING PLAN IMPACT FEES**

THIS AGREEMENT is made this ____ day of _____,
20__, by and between _____ [Requestor],
a(n) _____ [describe entity (individual, partnership,
LLP, corporation, etc.)] (hereinafter referred to as "Grantor") and the CITY
OF MERCED, a California charter municipal corporation (hereinafter referred
to as "Grantee").

WHEREAS, Grantor has applied to the Grantee for a building permit on
the property known as _____
[Property Address or APN's], and more fully described on Exhibit "A"
attached hereto; and,

WHEREAS, Grantor has further applied for deferral of certain Public
Facility Financing Plan ("PFFP") fees in accordance with Section 17.62.050
of the Merced Municipal Code and the Administrative Procedures adopted
pursuant thereto, said fees being more fully described on Exhibit "B" attached
hereto.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, the parties hereto do hereby agree as follows:

1. **PFFP FEE OBLIGATION.** Grantor acknowledges and unconditionally agrees that it owes the Grantee the total sum of \$ _____ for PFFP fees.

2. **PFFP DOWN PAYMENT AND REPAYMENT SCHEDULE.** The Grantor agrees to pay twenty-five percent (25%) of the PFFP fees at the time the building permit is issued with the remaining seventy-five percent (75%) to be paid in equal monthly installments over the next five (5) years (or less at the Grantor's option).

3. **PFFP REPAYMENT TERMS AND CONDITIONS.**

A. **PAYMENT FREQUENCY:** Grantor shall make monthly payments on the remaining deferred PFFP fee obligation, the amount paid annually being at least one-quarter of the total deferred PFFP fee obligation, plus interest as described below. Payments shall be made on or before the first of each month and shall be made to the City of Merced, Finance Department, PFFP Fee Deferral for _____, [Reference to Fee Deferral Project] and made at 678 West 18th Street, Merced, California 95340. Grantee shall endeavor to send Grantor an invoice for payment at least thirty (30) days before the payment is due. However, Grantor unconditionally agrees to make said payment by the payment due date even if no invoice is received thereby. A late fee of five percent (5%) of the total fee payment shall be imposed for all late payments made.

B. **INTEREST:** The unpaid balance of the fees shall be subject to interest and collection charges. The annual interest rate will be equal to the 11th

District Cost of Funds plus two percent (2%) [200 basis points] adjusted every July.

- C. **DUE ON TRANSFER:** The unpaid deferred PFFP fee balance, together with accrued interest, and late fees shall be due and payable in full upon the sale or any other transfer of the property.
- D. **RECORDING AND PROCESSING FEES:** All such fees shall be paid by the Grantor.

4. **LIEN CREATED.** Grantor hereby grants to Grantee a lien against the real property described in Exhibit "A."

5. **LIEN AS SECURITY FOR DEFERRED PFFP FEES.** The lien created herein in the real property described in Exhibit "A" is intended to guarantee the payment in full, plus accrued interest, late fees, and the cost of collection of the deferred PFFP fees.

6. **LIEN PRECEDENCE.** The lien created herein shall be superior to all other liens or encumbrances against the real property described in Exhibit "A."

7. **GRANTEE'S AUTHORITY TO FORECLOSE ON LIEN.** The condition of this lien is such that if the above-named Grantor, its or their heirs or executors, administrators, successors, transferees, or assigns shall in all things stand to and abide by, and truly keep and perform the covenants, conditions, and provisions in this Agreement and any alteration thereof made therein and provided, on its or their part, to be kept and performed at the time and in the manner therein specified, and in all other respects according to their true intent and meaning, and indemnifies and saves harmless the Grantee, its officers, agents and employees as therein stipulated, then the liens shall become null and void upon recording of a release by the Grantee in substantially the form as shown on Exhibit "C" hereto; otherwise the lien shall remain in full force and effect.

8. **GRANTEE'S COSTS TO ENFORCE PAYMENT OBLIGATION INCLUDED IN AMOUNT OF LIEN.** As part of the obligation secured hereby and in addition to the amount stated above, there shall be included cost and reasonable expenses and fees, including reasonable

attorneys' fees and late fees, incurred by Grantee in successfully enforcing such obligations, all to be taxed as costs and included in any judgment rendered.

9. EXTENSIONS OF TIME SHALL NOT CHANGE OBLIGATION TO PAY, PRIORITY, OR ENFORCEABILITY OF LIEN. The Grantor hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of this Agreement shall in any manner effect Grantor's obligations with respect to this lien.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

GRANTOR:

By: _____
(Signature)

Name: _____
(Typed Name)

Title: _____

Address: _____

Telephone: _____

GRANTEE:

CITY OF MERCED
A California Charter Municipal
Corporation

BY: _____
City Manager

ATTEST:
CITY CLERK

BY: _____
Deputy City Clerk

APPROVED AS TO FORM:

BY: _____
City Attorney

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

ACKNOWLEDGEMENT

State of California

County of Merced

On _____, 20____, before me, _____,
a Notary Public, personally appeared, _____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
Notary Public

(seal)

EXHIBIT "A"

Legal Description

EXHIBIT "B"

Description of Deferred Fees

EXHIBIT “C”

Form of Notice to Release Lien When Payment is Paid

RECORDING REQUESTED BY:

City of Merced, A California Charter
Municipal Corporation

WHEN RECORDED MAIL TO:

City of Merced
City Clerk
678 West 18th Street
Merced, California 95340

**Exempt Recording Per Gov't Code
Section 6103**

(Above for Recorder's Use Only)

**RELEASE OF LIEN UPON REAL PROPERTY
[DEFERRED PUBLIC FACILITY FINANCING PLAN FEES]**

WHEREAS, On _____, 20__, _____
(hereinafter "Grantor") and the City of Merced, a California Charter Municipal
Corporation, ("Grantee") entered into that certain Agreement entitled "Agreement
Affecting Real Property and Creating a Lien to Secure Deferred Payment of City
Public Facility Financing Plan Impact Fees," (the "Agreement"), which
Agreement was recorded as Vol. _____, Page _____, *et seq.*, Official Records of
Merced County on _____, 20__; and,

WHEREAS, Grantor has satisfied the conditions for the release of lien upon
the real property described in said Agreement.

NOW THEREFORE, the Grantee hereby releases all of its right, title, and
interest to the lien in the real property described in Exhibit "A" attached hereto,
and as created by the Agreement referenced above and recorded as Vol. _____, Page
_____, *et seq.*, Official Records of Merced County on _____, 200__.

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CITY OF MERCED
A California Charter Municipal
Corporation

BY: _____
City Manager

ATTEST:
CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: _____
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

EXHIBIT "A"
LEGAL DESCRIPTION

**AGREEMENT TO SECURE DEFERRED PAYMENT OF CITY
PUBLIC FACILITY FINANCING PLAN IMPACT FEES**

THIS AGREEMENT is made this ____ day of _____, 20__, by and between _____ [Requestor], a(n) _____ [describe entity (individual, partnership, LLP, corporation, etc.)] (hereinafter referred to as "Grantor") and the CITY OF MERCED, a California charter municipal corporation (hereinafter referred to as "Grantee").

WHEREAS, Grantor has applied to the Grantee for a building permit on the property known as _____ [Property Address or APN's], and more fully described on Exhibit "A" attached hereto; and,

WHEREAS, Grantor has further applied for deferral of certain Public Facility Financing Plan ("PFFP") fees in accordance with Section 17.62.050 of the Merced Municipal Code and the Administrative Procedures adopted pursuant thereto, said fees being more fully described on Exhibit "B" attached hereto.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, the parties hereto do hereby agree as follows:

1. **PFFP FEE OBLIGATION.** Grantor acknowledges and unconditionally agrees that it owes the Grantee the total sum of \$ _____ for PFFP fees.

2. **PFFP DOWN PAYMENT AND REPAYMENT SCHEDULE.** The Grantor agrees to pay twenty-five percent (25%) of the PFFP fees at the time the building permit is issued with the remaining seventy-five percent (75%) to be paid in equal monthly installments over the next five (5) years (or less at the Grantor's option).

3. **PFFP REPAYMENT TERMS AND CONDITIONS.**

- A. **PAYMENT FREQUENCY:** Grantor shall make monthly payments on the remaining deferred PFFP fee obligation, the amount paid annually being at least one-quarter of the total deferred PFFP fee obligation, plus interest as described below. Payments shall be made on or before the first of each month and shall be made to the City of Merced, Finance Department, PFFP Fee Deferral for _____, [Reference to Fee Deferral Project] and made at 678 West 18th Street, Merced, California 95340. Grantee shall endeavor to send Grantor an invoice for payment at least thirty (30) days before the payment is due. However, Grantor unconditionally agrees to make said payment by the payment due date even if no invoice is received thereby. A late fee of five percent (5%) of the total fee payment shall be imposed for all late payments made.
- B. **INTEREST:** The unpaid balance of the fees shall be subject to interest and collection charges. The annual interest rate will be equal to the 11th District Cost of Funds plus two percent (2%) [200 basis points] adjusted every July.
- C. **DUE ON TRANSFER:** The unpaid deferred PFFP fee balance, together with accrued interest, and late fees shall be due and payable in full upon the sale or any other transfer of the property.
- D. **RECORDING AND PROCESSING FEES:** All such fees shall be paid by the Grantor.

4. **SECURITY.** Grantor hereby provides security for the payment of the deferred PFFP Fees and related costs to Grantee the items of security as identified in Exhibit "A."

5. **SECURITY FOR DEFERRED PFFP FEES.** The security identified in Exhibit "A" is intended to guarantee the payment in full, plus accrued interest, late fees, and the cost of collection of the deferred PFFP fees.

6. **Reserved.**

7. **Reserved.**

8. **GRANTEE'S COSTS TO ENFORCE PAYMENT OBLIGATION INCLUDED IN AMOUNT OF SECURITY.** As part of the obligation secured hereby and in addition to the amount stated above, there shall be included cost and reasonable expenses and fees, including reasonable attorneys' fees and late fees, incurred by Grantee in successfully enforcing such obligations, all to be taxed as costs and included in any judgment rendered.

9. **EXTENSIONS OF TIME SHALL NOT CHANGE OBLIGATION TO PAY, PRIORITY, OR ENFORCEABILITY OF LIEN.** The Grantor hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of this Agreement shall in any manner effect Grantor's obligations with respect to this lien.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

GRANTOR:

By: _____
(Signature)

Name: _____
(Typed Name)

Title: _____

Address: _____

Telephone: _____

GRANTEE:

CITY OF MERCED
A California Charter Municipal
Corporation

BY: _____
City Manager

ATTEST:
CITY CLERK

BY: _____
Deputy City Clerk

APPROVED AS TO FORM:

BY: _____
City Attorney

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

EXHIBIT "A"

Identification of Security

EXHIBIT "B"

Description of Deferred Fees

EXHIBIT “C”

Form of Notice to Release Security When Payment is Paid

CITY OF MERCED

PUBLIC FACILITY FINANCING PLAN

RELEASE OF SECURITY FOR DEFERRED PFFP FEES

WHEREAS, On _____, 20____, _____
(hereinafter "Grantor") and the City of Merced, a California Charter Municipal Corporation, ("Grantee") entered into that certain Agreement entitled "Agreement to Secure Deferred Payment of City Public Facility Financing Plan Impact Fees," (the "Agreement"); and,

WHEREAS, Grantor has satisfied the conditions for the release of the security described in said Agreement.

NOW THEREFORE, the Grantee hereby releases all of its right, title, and interest to the lien in the security described in Exhibit "A" attached hereto, and as created by the Agreement referenced.

CITY OF MERCED
A California Charter Municipal Corporation

BY: _____
City Manager

ATTEST:
CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: _____
City Attorney

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

EXHIBIT "A"

DESCRIPTION OF SECURITY

**CITY OF MERCED
PROMISSORY NOTE
(CONTAINING ACCELERATION CLAUSE)
(PFFP FEE DEFERRAL)**

Amount: _____, California

Dated: _____

FOR VALUE RECEIVED, on or before _____, ____ [date] the undersigned individual(s) promise(s) to pay without demand therefore the City of Merced, a California charter law municipal corporation, or order at 678 West 18th Street, Merced, California 95340, or at such designate in writing, the principal sum of _____, [amount] (\$ _____), with annual the interest rate thereon equal to the 11th District cost of funds plus one percent (2%) [200 basis points] adjusted every July.

The undersigned promises and agrees to make monthly installment payments of _____ [amount] (\$ _____) for a period of time not to exceed five (5) years. Payments to be made to the City of Merced at the above referenced address. Should the Promisor fail to make any two consecutive payments, the entire remaining balance shall become due and payable immediately upon notice to the Promisor from the City or its legal representative. Notwithstanding the above, to any late payment, a late payment fee of five percent (5%) shall be imposed and applied on said payment. Should the late payments fee not be paid, it shall be added to and included within the sum secured by this Promissory Note.

If action is instituted on this Note, the undersigned promises to pay the holder thereof any expenses incurred thereby, including, but not limited to, court costs and such other sums as the Court may fix as reasonable attorney's fees.

It is further acknowledged and agreed that the unpaid balance, plus accrued interest shall be immediately due and payable upon the sale or transfer of the real property located at _____ and as described on Exhibit "A" hereto.

This Note or any portion thereof may be prepaid at any time without penalty.

In agreement thereof, I execute this Note on the ____ day of _____, 20__ in the City of _____, California.

Promisor's Signature

Promisor's Signature

CITY OF MERCED

BY: _____
City Manager

ATTEST:
CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: _____
City Attorney Date

ADMINISTRATIVE POLICIES AND PROCEDURES

SUBJECT: PUBLIC FACILITIES IMPACT FEES AND ADMINISTRATIVE POLICY

EFFECTIVE: ~~October 18, 2021~~ March 26, 2022 (Replaces policy dated - ~~November 19, 2012~~ October 18, 2021)

PURPOSE:

The purpose of this Administrative Policy is to establish a procedure for the Public Facilities Financing Plan and Fee Program.

POLICY:

The City Manager was granted authority by the Merced City Council on July 21, 2003 to establish this policy and procedure. This Policy supersedes and replaces the previous Policy with an effective date of ~~November 19, 2012~~ October 18, 2021.

PROCEDURES:

PAYMENT OF PUBLIC FACILITIES FEES

Public facilities fees shall be charged and paid at the time of issuance of the certificate of occupancy, except for non-residential which shall be paid at time of building permit issuance. The fee shall be determined by the fee schedule in effect on the date of building permit issuance. If a Mello-Roos, assessment district, or other arrangement of such a nature has been made, only the portion of the fee not covered by the district shall be assessed. If a specific use is not addressed in the fee schedule or definitions contained in this document, the fee will be determined by the Development Services Department as described in Merced Municipal Code Section 17.62.100.

Fees not paid at building permit issuance shall require an agreement as specified in Government Code Section 66007, Subsection (C). Should any interpretation or disagreement arise which is not addressed by this administrative

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policy, the City Manager or his designee shall have the authority to render a decision. Such decisions shall be in writing.

DEFINITIONS

1. Retail Commercial

"Retail Commercial" includes a wide range of retail and service uses, both freestanding and in shopping centers including, but not limited to, supermarkets, drugstores, department stores, general merchandise, specialty retail stores, discount stores, hardware/paint stores, garden centers or nurseries, wholesale markets, apparel stores, furniture stores, video arcades and car sales. This category includes banks/savings and loans, restaurants of all types, and auto-oriented uses.

~~2. Commercial/Less Than 50,000 Square Feet~~

~~Includes "commercial" uses defined above in a freestanding building or shopping center with less than 50,000 square feet of floor area.~~

~~3. Commercial/Greater Than 50,000 Square Feet~~

~~Includes "commercial" uses defined above in a freestanding building or shopping center with greater than 50,000 square feet of floor area.~~

4.2. Industrial

Facilities in which the primary activity is the production of finished items through manufacture, fabrication, processing, packaging, or treatment of raw materials or parts, except heavy industrial uses. Uses, which are considered to be in this category, include uses such as those listed below:

- A) Electronics assembly, paper products
- B) Metal fabricator
- C) Bottling plant
- D) Cabinet shop
- E) Machine shop
- F) Sheet metal shop

- G) Welding shop
- H) Wholesale business
- I) Printing plant
- J) Material testing labs manufacturer
- K) Warehouse
- L) Corporation yard, freight yard
- M) Equipment rental yard
- N) Moving and storage service
- O) Bulk feed storage
- P) Lumber yard
- Q) Cannery/Food Processing

5.3. Mixed Uses

When a development proposal contains more than an incidental mixture of uses, the general types of uses should be segregated and treated separately for the purpose of calculating development fees.

6.4. Office

Includes professional offices, business parks, business or administrative offices, insurance sales, research centers, and medical or dental services, and other health-related services (excluding hospitals).

7.5. Residential Single Family

Typically single family detached homes on individual lots, such as in residential subdivisions , but could also be in planned developments. Density of development may vary, but is typically six dwellings per acre or less .

8.6. Public Facilities Impact Fee, But Not Including Sewer and Water Charges

The term "Public Facilities Impact Fee" shall mean the fee charged new construction, including, in some cases, the expansion of and/or the addition to an existing structure to mitigate an unfunded portion of the determined impact of the development. For the purpose of this policy, Public Facilities

Impact Fees shall not include sewer and water charges as defined in Chapter 15 of the Merced Municipal Code.

9.7. Residential Multiple Family

Includes two- and multiple-family dwelling units of several types, including high and low rise apartments, high and low rise condominiums, and multi-family residential planned unit developments. This category also applies to mobile homes in mobile home parks.

10.8. Institutional

Includes nonprofit or quasi-public uses, such as a religious institution, library, public or private school or college, nonprofit cultural or community centers, hospitals, residential care facilities, charitable organizations, or government-owned or government-operated structures used for public purposes. Note that federal, state, and county owned facilities are exempt from the City's impact fees. Fees for these uses will be determined on a case-by-case basis by the Director of Development Services based on his/her determination of the similar nature of the use to one of the other land use categories.

9. Lodging

Includes hotels, motels, and other commercial operations which provide lodging for a fee, with or without cooking facilities, in individual rooms or suites. Includes extended stay hotels/motels, but does not include residential care facilities.

EXEMPTIONS

Fees shall not be imposed on any of the following:

1. Any alteration or addition to a *residential* structure except to the extent that additional units or guestrooms are created.

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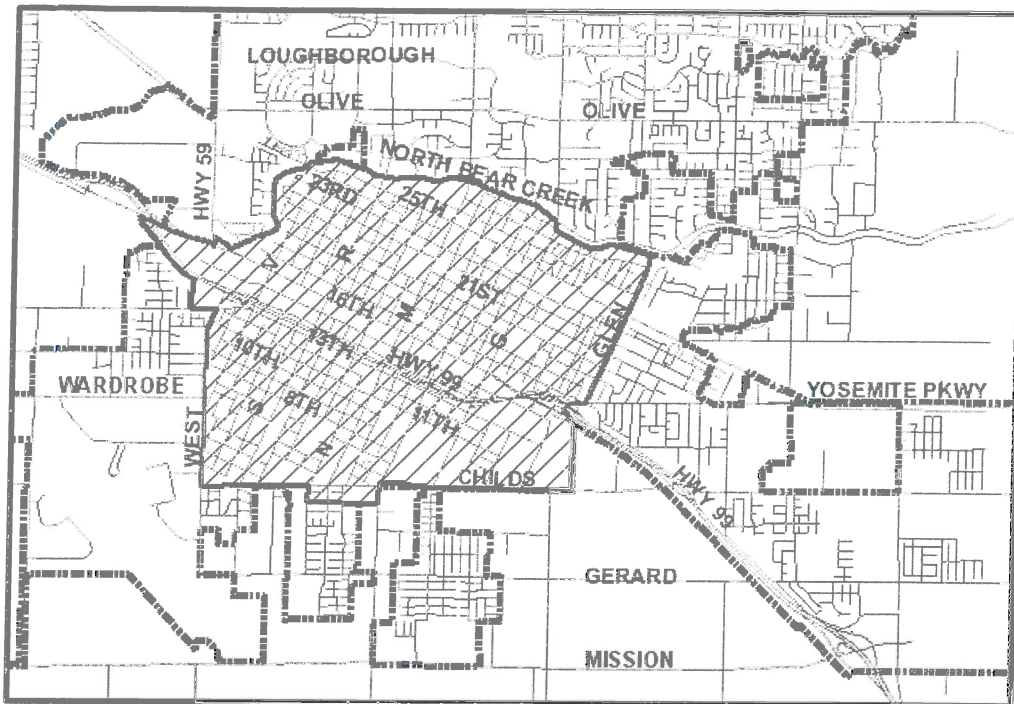
2. Any alteration or addition to a *non-residential* structure if the square footage of the structure is increased less than 10 percent, unless the alteration or addition changes the use of the structure to a higher intensity category, or results in the generation of additional peak hour trips (PHT).
3. Any replacement or reconstruction of an *existing residential* structure that has become destroyed or demolished, provided that the building permit for reconstruction is obtained within fifteen years after the building was demolished, except to the extent that additional units or guest rooms are created.
4. Any replacement or reconstruction of an *existing non-residential* structure that has been destroyed or demolished, provided that the building permit for reconstruction is obtained within fifteen years after the building was demolished, unless the replacement or reconstruction increases the square footage of the structure 10 percent or more or changes the use of the structure to a higher intensity category or results in the generation of additional peak hour trips (PHT). Whenever the alteration, addition, replacement, or reconstruction is not exempt, the fee shall be imposed only on the additional units of guest rooms, square footage, change in use to a higher intensity category, or additional peak hour trips (PHT) generated.

REDUCED FEES

Fees shall be reduced for the following:

1. ACCESSORY DWELLING UNITS (ADUs): Per MMC 20.42.040(D)(3), A new accessory dwelling unit shall be required to pay all applicable fees, including impact fees. However, no impact fees shall be imposed on ADUs of less than 750 square feet. For an ADU larger than 750 square feet, any impact fee shall be charged proportionately in relation to the square footage of the single-family dwelling on the property.
2. INFILL DEVELOPMENT: Within the central area of the City generally bounded on the north by Bear Creek, on the south by Childs Avenue, on the east by Glen Avenue, and on the west by West Avenue and Highway 99 (see map below), impact fees shall be reduced by 50 percent based on their reduced impact on public facilities.

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Infill Development Zone

3. AFFORDABLE HOUSING: Fees for affordable housing projects shall be determined on a case-by-case basis depending on the level of affordability, number of affordable units, etc. The determination shall be made by the Director of Development Services but can be appealed to the City Council per the provisions of MMC 17.62.050.
4. SINGLE-FAMILY HOMES SMALLER THAN THE AVERAGE HOME SIZE IN MERCED: The average single-family home size in Merced based on building permits issued in 2021 was 1,920 square feet. For homes that are at least 20 percent below that average size, a reduced fee shall be charged proportional to the percent below the average single-family home size.

DEFERRED PAYMENT

If the total amount of public facilities fees due and payable at the time of issuance of a building permit for a non-residential or multi-family project exceeds \$50,000, the property owner may enter into a Deferred Payment Agreement with the City to pay twenty-five percent (25%) of those fees at the time the building permit is issued with the remaining seventy-five percent (75%) to be paid in equal installments over the next five (5) years (or less at the developer's option).

REPAYMENT TERMS

- 1) INTEREST: The unpaid balance of the fees shall be subject to interest and collection charges. The annual interest rate will be equal to the 11th District Cost of Funds plus two percent (2%) [200 basis points] adjusted every July.
- 2) DUE ON TRANSFER: The unpaid balance, together with accrued interest, shall be due and payable in full upon the sale or any other transfer of the property.
- 3) RECORDING AND PROCESSING FEES: All such fees shall be paid by the owner or applicant.

SECURITY

The developer shall, as security for repayment, execute a promissory note or bond evidencing the obligation and terms of repayment. In addition to the promissory note or bond, the developer may be required, at the discretion of the City, to provide additional security of a type and amount determined by the City.

PROCESSING DEFERRED FEE REQUESTS

A developer who requests the deferral of public facilities fees shall make application to the Development Services Department, for review, processing, and determination of eligibility. Such requests shall have a processing fee of Eight Hundred Seventy-One Dollars (\$871.00) in 2022, adjusted each January 1st per the Consumer Price Index (CPI).

CREDIT OR REIMBURSEMENT

If the developer constructs improvements that are part of the public facility fee program and required by the City, the following shall apply:

1. If the actual cost of the improvement is equal to or less than the total amount of fees to be paid, the developer will receive a credit in an amount equal to the actual cost of the improvements (but in no event in excess of the City Engineer's estimate). No credit shall be given until and unless the improvement is constructed and accepted by City or until developer provides security for the improvement in the same manner as security for subdivision improvements.
2. If the actual cost of the improvements is greater than the total amount of fees to be paid, a reimbursement agreement with the City shall be established. No credit shall be given until and unless the improvement is constructed and accepted by City or until developer provides security for the improvement in the same manner as security for subdivision improvements.
3. Developers shall be reimbursed on a first in time basis and based on the availability of public facility fee program funds. First in time shall be determined by when the public improvement is secured or by when the public improvement is completed and accepted by City, whichever first occurs.
4. Of the fees collected for projects, one-half shall be dedicated to repayment for developer installed improvements and one-half shall be earmarked for improvements to be installed by the City. In its discretion, the City may use any or all of the fees to reimburse developers.
5. City shall be under no obligation to reimburse developers except from the one-half of the fees collected, and no reimbursement shall be owed until fees for said purpose have been collected and until the installing developer has filed a written request for reimbursement with the City Clerk. In no event shall reimbursement be made to the installing developer after the tenth anniversary of the date the public improvement was accepted by the City.
6. Reimbursements, if any, shall not bear interest.

6.7. Unused Park and Recreation Facilities Fee credits granted per the now repealed Merced Municipal Code section 17.38 can be applied as credit toward the Public Facilities Impact Fees.

RIGHT-OF-WAY DEDICATION AND REIMBURSEMENT

Unless provided otherwise by development agreement, by use permit, or by city standards, the developer will be eligible for credit/reimbursement for the cost of any additional right-of-way required for street improvements in excess of the first 37 feet (or other collector standard) required for a one-half street section measured from the ultimate right-of-way line. In calculating the value of the right-of-way, the value will be determined by the ~~City based upon a written report prepared annually by the Development Services Department in conjunction with an appraiser acceptable to the City. The report shall be based upon sales activity of all properties zoned for Residential, Commercial, and/or Industrial uses within each park service area (as described in Section 18.40.080 of the Merced Municipal Code) and will establish an average fair market value for that area. These average figures will be applied to all projects within each zone until the fee is next reviewed~~ City Engineer. If the developer objects to the determined fair market value, he/she may appeal to the City Council. The burden of proof shall lie with the developer. Any right-of-way required to accommodate access to a given parcel such as "deceleration lanes" will be dedicated at the developer's expense and is not subject to credit/reimbursement.

STREET CONSTRUCTION ~~PAYING-PAVING~~ REIMBURSEMENT

The first 24 feet of paving adjacent to the curb line plus all paving required to accommodate deceleration lanes and driveways are a developer responsibility and are not subject to credit/reimbursement. The developer will be eligible for credit/reimbursement for the remainder of the street section outside of the first 24 feet of paving on either side of the street.

TRAFIC SIGNAL REIMBURSEMENT

Unless provided otherwise by development agreement or by use permit, the developer will be eligible for ~~100~~ 100 percent credit/reimbursement for installation of traffic signals at the intersection of two arterial streets, and for 50 percent reimbursement at an intersection of an arterial and collector street.

ARTERIAL BRIDGE REIMBURSEMENT

Unless provided otherwise by development agreement or by use permit, the developer will be eligible for 100 percent credit/reimbursement for construction of arterial bridges.

APPROVED:

Stephanie R. Dietz
City Manager